



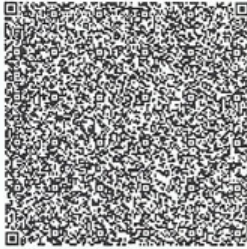
सत्यमेव जयते

## INDIA NON JUDICIAL

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Purchased by : ANKUR RAHEJA  
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Property Description : Not Applicable  
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**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ADMINISTRATIVE PANEL DECISION**  
**Velcro Industries B.V. v. Velcro Technologies (velcrotechnologies.in)**  
**SOLE ARBITRATOR: ANKUR RAHEJA, LLB FCS MCA**

*A. Raheja*  
19-03-2017

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**In the matter of:**

**Velcro Industries B.V.** ... **Complainant**

versus

**Velcro Technologies** ... **Respondent**

**ARBITRATION AWARD**

**Disputed Domain Name: [www.velcrotechnologies.in](http://www.velcrotechnologies.in)**

**1. The Parties:**

**1.1. Complainant:** The Complainant in this arbitration proceedings is:  
**Velcro Industries B.V. (hereinafter referred to as Complainant),**  
**Castroweg 22-24, Curacao Netherlands Antilles** represented by  
Sujata Chaudhari IP Attorneys B-36, Sector 13, Expressway, Noida  
(UP), India.

**1.2. Respondent:** The Respondent in this arbitration proceedings is Velcro  
Technologies having incomplete WHOIS address as Hyderabad,

Telangana - 500042, India (E-mail: info@velcrotechnologies.in) and also additional address H. No 1-10-44, F No. T402B, Technopolis Complex, Ratnadeep Super Market, Begumpet, Hyderabad, Telangana - 500016.

**2. The Domain Name and the Registrar:**

2.1. The Disputed Domain Name is www.velcrotechnologies.in.

2.2. Disputed Domain Name is registered with GoDaddy.com, LLC.

Further, WHOIS details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details (*same for Registrant, Admin and Tech Contacts*):

Domain ID:D9775671-AFIN

Domain Name:VELCROTECHNOLOGIES.IN

Created On:25-Aug-2015 07:47:01 UTC

Last Updated On:30-Dec-2016 08:51:51 UTC

Expiration Date:25-Aug-2017 07:47:01 UTC

Sponsoring Registrar:GoDaddy.com, LLC (R101-AFIN)

Registrant ID:CR251754145

Registrant Name:Velcro Technologies

Registrant Organization:

Registrant Street1:Hyderabad

Registrant Street2:

Registrant Street3:

Registrant City:Hyderabad

Registrant State/Province:Telangana

Registrant Postal Code:500042

Registrant Country:IN

Registrant Phone:+91.22004422

Registrant Phone Ext.:

Registrant FAX:

Registrant FAX Ext.:

Registrant Email:info@velcrotechnologies.in

Name Server:NS09.DOMAINCONTROL.COM

Name Server:NS10.DOMAINCONTROL.COM

### **3. Procedural History [Arbitration Proceedings]**

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Advocate Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and

Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceedings commenced on 15 January 2017 in terms of INDRP Rules. Relevant Dates are as follows:

| <b>Sr No</b> | <b>Particulars</b>                                                                                   | <b>Date</b>      |
|--------------|------------------------------------------------------------------------------------------------------|------------------|
| 1.           | Arbitration Case referred to Arbitrator & Acceptance given                                           | 09 January 2017  |
| 2.           | Date of Handover of Complaint by NIXI                                                                | 11 January 2017  |
| 3.           | Soft Copy of Complaint served upon Respondent by Nixi                                                | 11 January 2017  |
| 4.           | Hard Copy of Complaint received by Arbitrator                                                        | 12 January 2017  |
| 5.           | Notice of Arbitration issued to the Respondent, also referred as date of commencement of Proceedings | 15 January 2017  |
| 6.           | Second Notice to the Respondent                                                                      | 28 January 2017  |
| 7.           | Ex-parte Order                                                                                       | 08 February 2017 |
| 8.           | Award Passed                                                                                         | 10 March 2017    |

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 15th January 2017, with the instructions to file his reply / response by 27th January 2017. Nixi did service of electronic copy of the Complaint upon the Complainant on 11th January 2017 to expedite the proceedings.
- But the WHOIS Email ID was unreachable, therefore it was confirmed from Nixi, about the status of the delivery of the hard copy of the complaint, which was delivered successfully at the additional address, submitted by the Complainant.
- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain and also at POSTMASTER were served and also the hard copies of the Complaint were successfully delivered to the Respondent. Therefore, service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- An order for ex-parte proceedings was issued on 08th February 2017, as no response was received from the Respondent. No personal hearing was requested / granted / held.

#### 4. Factual Background

*According to the documentary evidence and contentions submitted:*

##### **The Complainant and its Rights in the Complainant's VELCRO® Marks**

A. The Complainant, Velcro Industries B.V., is a limited liability company organized and existing under the laws of Netherlands, with its registered office at Castorweg 22-24, Curacao, Netherlands Antilles. Henceforth, unless the context otherwise requires, references to the Complainant will include the Complainant's subsidiaries around the world, its predecessors-in-interest, and its affiliated companies.

B. The Complainant, an industry leader in hook and loop fasteners, is a global organization with a presence in more than forty (40) countries around the world, and approximately twenty-five hundred (2500) employees worldwide. The Complainant was founded by a Swiss engineer and inventor named George de Mestral who invented the first hook and loop fastener in the 1940s. Mr. Mestral named the hook and loop fastener VELCRO®.

C. VELCRO® is a coined word that derived from a combination of the French words "velours", meaning velvet, and crochet, meaning hook. Since VELCRO® is a coined word, it is entitled to the highest level of protection under the law on

trademarks. In the year 1951, Mr. Mestral applied for a Swiss patent for his hook and loop fastener. Subsequently, in the year 1952, Mr. Mestral founded a Swiss corporation named Velcro SA, a predecessor-in-interest of the Complainant. Thus, VELCRO® has been used as part of a corporate name since the year 1952.

D. The Complainant first used VELCRO® as a trade mark at least as early as the year 1958. Today, nearly sixty (60) years later, the Complainant continues to use VELCRO® and marks that incorporate VELCRO® as trade marks to designate and identify the Complainant's hook and loop fasteners. The Complainant uses the Complainant's VELCRO® Marks in numerous ways, including, on labels attached to hook and loop fasteners, on business stationary, on its web sites, including the web site located at [www.velcro.com](http://www.velcro.com), on its social media sites and in promotional materials.

E. The Complainant's VELCRO® hook and loop fasteners have evolved extensively since they were first invented. Today the Complainant manufactures and sells more than 35,000 fastening products under the Complainant's VELCRO® Marks. These fasteners are featured in products around the world, ranging from transportation, personal care, apparel and outerwear and even packaging. The Complainant has a library of more than 1000 patents worldwide that it leverages to develop fastening solutions that can replace traditional



mechanical and even chemical fasteners used in processes for temporary protection, flooring/finishes, solar energy, abrasives and even artificial turf. Today the Complainant's business spans the globe. The Complainant has manufacturing facilities around the world in North America, South America, Europe and Asia, and a presence in more than forty (40) countries worldwide.

F. The Complainant's worldwide business is carried on through subsidiary companies that have been set up in countries around the world. Some of the Complainant's subsidiaries are Velcro USA Inc., Velcro Canada Inc., Velcro de Mexico S.A de C.V., Velcro Europe S.A., Velcro Industries France, Velcro GMBH, Velcro Italia S.R.L., Velcro Australia Pty. Ltd., Velcro (China) Fastening Systems Company Limited, and Velcro Hong Kong Ltd.

G. The Complainant, through its subsidiary, Velcro USA Inc., registered the domain name VELCRO.COM in the year 1994, and for numerous years, this domain name has resolved to an active web site on which the Complainant's VELCRO® Marks are prominently displayed. The website located at [www.velcro.com](http://www.velcro.com) is extremely well-known to customers, the trade and other segments of the public and provides an enormous amount of information with respect to the Complainant and its products under the Complainant's VELCRO® Marks.

H. In addition to the top-level domain name, VELCRO.COM, the Complainant, either directly, or through its subsidiaries, owns country-code top level domain names such as VELCRO.CO.IN (registered in 2009), VELCRO.IN (registered in 2013), VELCRO.COM.AU, VELCRO.COM.BR (registered in 2014), VELCRO.COM.CN (registered in 2000), VELCRO.FR (registered in 2002), VELCRO.DE, VELCRO.IT (registered in 2002) and VELCRO.CO.UK (registered in 1996). Some of these domain names resolve to active web sites on which the Complainant's VELCRO® Marks are prominently displayed.

I. The Complainant boasts of impressive sales figures that are attributable to the Complainant's VELCRO® Marks. During the five-year period from 2000-2004, the Complainant's average yearly sales exceeded USD 200 million. For the year 2008, the Complainant's sales were in excess of USD 290 million. Since 2008, the Complainant's sales figures have continued to show increases. These enormous sales figures demonstrate the popularity of the Complainant's goods, each of which bear the Complainant's VELCRO® Marks.

J. The Complainant has been promoting and advertising its goods for more than forty-eight (48) years. The Complainant spends large sums of money on advertising and promoting its goods that are sold under the Complainant's VELCRO® Marks. Additionally, the Complainant also promotes and advertises its



products under the Complainant's VELCRO® Marks extensively through social media.

K. The Complainant has received numerous awards in relation to its VELCRO® hook and loop fasteners. In the year 2013, the Complainant's VELCRO brand was the recipient of the REBRAND 100 Global Award. In 2015, the Complainant won the Gold Pro Award for its Holiday Themed Pop-up store in New York City, and in 2016, the Complainant was awarded the Mom's Choice Award and deemed to be have the best products/services for families.

L. Given the fame of the Complainant's VELCRO® Marks, it is hardly surprising that the marks have received extensive media coverage over the years in renowned publications that have a worldwide circulation and on the Internet. The aforesaid media coverage has left an indelible impression in the minds of the public that the VELCRO® Marks are exclusively associated with the Complainant and none other. The Complainant is the proprietor of over two hundred (200) registrations for the Complainant's VELCRO® Marks in more than one hundred and fifty (150) countries and jurisdictions around the world, including India, the United States of America, the United Kingdom, Australia, the European Union and Singapore.

M. With specific reference to India, the Complainant owns numerous valid and subsisting registrations for the Complainant's VELCRO® Marks, including Registration Nos. 184852, 203742, 1114518 and 2009357. Notably, the Complainant's earliest registration for the VELCRO mark in India dates back to 1958.

N. Owing to the Complainant's ubiquitous use of the Complainant's VELCRO® Marks, consumers have come to associate the marks solely and exclusively with the Complainant and its goods. In fact, the Complainant's VELCRO® Marks have acquired the status of well-known mark under Article 6bis of the Paris Convention and section 2(1)(zg) of the Trade Marks Act, 1999.

### **The Complainant's Enforcement Efforts**

O. In order to safeguard its valuable rights in the Complainant's VELCRO® Marks, the Complainant vigilantly polices any unauthorized third-party usage of the Complainant's VELCRO® Marks and/or marks that may be similar to the Complainant's VELCRO® Marks. The Complainant has filed complaints under the Uniform Dispute Resolution Policy ("UDRP") against individuals and entities that have registered domain names which are identical or deceptively similar to the Complainant's VELCRO® Marks, and successfully obtained decisions ordering the transfer of such domain names.

P. It is pertinent to note that, in the year 2014, the Complainant filed a complaint under the .IN Domain Name Dispute Resolution Policy in respect of the domain name VELCRO.IN, and successfully obtained the transfer of the domain name. A copy of the decision in Velcro Industries B.V. v. Zhao Ke, INDRP 602/2014 (August 10, 2014) is annexed - In this case, the learned arbitrator held in that due to extensive and continuous use of the Complainant's VELCRO® Marks by the Complainant, the marks have become well-known and come to be exclusively associated with the Complainant and no one else.

#### **The Registrant and the Disputed Domain name**

Q. The disputed domain name is VELCROTECHNOLOGIES.IN. As per the WHOIS record pertaining to the domain name, the Registrant is Velcro Technologies, located in Hyderabad, Hyderabad, Telengana – 500042. As per the WHOIS record the Registrant registered the disputed domain name on August 25, 2015.

R. Although the name of the Registrant as per the WHOIS record is Velcro Technologies, investigations have revealed that the full name of the Registrant is, in fact, Velcro Technologies Pvt. Ltd. Velcro Technologies Pvt. Ltd. has a registered address at H No. 1-10-44, F No. T402B, Technopolis Complex,

Pantaloons Lane, Ratnadeep Super Market, Begumpet, Hyderabad, Hyderabad, Telengana – 500016. As per the online records of the Ministry of Corporate Affairs, Velcro Technologies Pvt. Ltd. was incorporated in Hyderabad on November 14, 2014 with a Company Identification Number U74900TG2014PTC096392.

S. Currently the disputed domain name resolves to an active web site on which the Registrant provides information about its data conversion services, and solicits orders for these services from consumers. The Complainant, upon learning of the registration of the domain name VELCROTECHNOLOGIES.IN, instructed its Indian representative to send a legal notice to the Registrant to demand that the disputed domain name be transferred to the Complainant without any monetary consideration. The Indian representative sent the letter on November 18, 2016. However, no response has been received till date.

T. After the letter referred to above was sent out, and no response received, the Complainant's Indian representative found that the Registrant has also registered the domain name VELCROTECH.IN. The Complainant is also filing, simultaneously, with this complaint, a complaint against the domain name VELCROTECH.IN.

## 5. The Dispute

- 5.1. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- 5.2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- 5.3. The Disputed Domain Name has been registered or is being used in Bad Faith.

## 6. Parties Contentions

### Complainant contends as follows:

#### 6.1. Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(i) of the INDRP)

A. As discussed above, the Complainant owns registrations for the Complainant's VELCRO® Marks in various countries and jurisdictions around the world, including in India. The earliest registration in India dates back to 1958. WIPO panelists, over the years, have arrived at a consensus that if a complainant owns a trade mark registration, then it generally satisfies the threshold requirement of trade mark rights. Accenture Global Services Private Limited v. Sachin Pandey, INDRP/828

(November 28, 2016). Here, the Complainant has adequately proved that it has statutory trade mark rights in the Complainant's VELCRO® Marks, and these rights precede the registration of the disputed domain name. Furthermore, the Complainant has used the Complainant's VELCRO® Marks for a number of years, and such use also precedes the disputed domain name.

B. The disputed domain name, VELCROTECHNOLOGIES.IN, incorporates Complainant's VELCRO® mark in its entirety together with the word TECHNOLOGIES. However, the addition of TECHNOLOGIES does nothing to distinguish the disputed domain name from the Complainant's VELCRO® mark because VELCRO is the most distinctive element of the domain name.

C. .IN is a country code and non-distinctive. It is an essential part of every domain name. Thus, the .IN part of the domain name does nothing to distinguish the disputed domain name from the Complainant's VELCRO® mark. *Accenture Global Services Private Limited v. Sachin Pandey*, INDRP/828 (November 28, 2016).



D. It follows that the disputed domain name, VELCROTECHNOLOGIES.IN, is identical and/or confusingly similar to the VELCRO® Marks.

**6.2 No Rights or Legitimate Interests (paragraph 4(ii) of the INDRP)**

E. Clearly, as of August 25, 2015, the date of registration of the disputed domain name, the Complainant was the proprietor of registrations for the Complainant's VELCRO® Marks. In fact, the Complainant's earliest registration for the Complainant's VELCRO® Marks predates registration of the domain name by fifty-six (56) years. Furthermore, the Complainant has had common law rights in the Complainant's VELCRO® Marks much prior to August 25, 2015. These common law rights also predate registration of the disputed domain name by nearly sixty (60) years. The Complainant has not authorized the Registrant to use the Complainant's VELCRO® Marks or to register the disputed domain name, nor is the Registrant a licensee of the Complainant. In fact, the Registrant has no relationship with the Complainant. These factors demonstrate that the Registrant has no rights or legitimate interest in the disputed domain name. Google Inc. U.S.A. v. Vaibhav Jain, INDRP/132 (April 3, 2010).

F. The Registrant registered the disputed domain name on August 25, 2015 which, as stated above, is nearly six (6) decades after the date on which the Complainant first used the Complainant's VELCRO® Marks, and fifty-six (56) years after the Complainant first obtained a registration of the VELCRO® mark in India. The Complainant's VELCRO® Marks are famous and are registered in many countries including India. Accordingly, it is unlikely that the Registrant did not know about the Complainant's rights in the Complainant's VELCRO® Marks or the domain name VELCRO.COM. The magnitude and length of Complainant's commercial activities and use of the Complainant's VELCRO® Marks could not have passed Registrant unnoticed. Registration of a domain name, based on awareness of a complainant's trademark rights is recognized as bad faith registration under the Policy. *Lego Juris v. Robert Martin INDRP/125* (February 14, 2010).

G. The Registrant also does not have any rights or legitimate interest in the disputed domain name because the Registrant is not making a legitimate non-commercial or fair use of the domain name. In fact, the Registrant's use of the disputed domain name is for commercial gain for the purpose of misleadingly diverting consumers or to tarnish the Complainant's VELCRO® Marks. The disputed domain name resolves to a web site on which the Registrant provides information relating to its

services, and also solicit business from consumers around the world. Clearly, the Registrant is using the disputed domain name to generate revenue from consumers. It follows that the Registrant's use of the disputed domain name is for commercial purposes. Furthermore, the Registrant is making use of the domain for commercial purposes knowing fully well that the Complainant's VELCRO® mark is well-known. It is also pertinent to note that the Registrant uses a V VELCRO device mark on its home page is deceptively similar to the Complainant's V VELCRO device mark that is the subject of registrations, including Registration No. 2009357 in India.

H. Such use of the Complainant's VELCRO® Marks could not be a mere coincidence. Based on the above, it is amply clear that the Registrant is using the domain name for commercial purposes, and with an intent to misleadingly divert consumers and/or tarnish the Complainant's VELCRO® Marks. In addition, the INDR Policy paragraph 3(b) clearly states that it is the responsibility of the Respondent to find out before registration that the domain name does not violate the rights of a third party. A copy of the INDR Policy is annexed as Annexure-24. Certainly, given that the Complainant's VELCRO® Marks are well-known, the Registrant should have known about these marks before choosing the disputed domain name.

I. From the facts narrated in the preceding paragraphs, it is amply clear that the Registrant has blatantly copied the Complainant's trade name, trademarks, and domain name. Therefore, the Registrant appears to be engaged in a planned campaign to methodically misappropriate the Complainant's VELCRO® Marks and the Complainant's trade names. Clearly, the Registrant's actions are not bona fide. As held in *Bloomberg Finance L.P. v Bloomberg Realty (India) Private Limited INDRP/364* (February 20, 2014), it is "a well-settled principle of law that no right can accrue if the very adoption of the trademark in question is tainted with malafides and dishonesty." Given that the Complainant's rights in the Complainant's VELCRO® Marks predate the Registrant's registration of the domain name by fifty-six (56) years, coupled with the fact that the Complainant's VELCRO® Marks are well known and are universally recognized lead to one, and only one, conclusion, namely, that the Registrant does not have any rights and legitimate interest in the disputed domain name. *General Electric Company v. La Porte Holding Inc. WIPO Case No D20050076* (March 30, 2005).

J. Also, the Registrant's lack of rights and legitimate interests in the disputed domain name is evident because the Registrant is not commonly known by the domain name as is required by Paragraph 7(ii) of the INDRP

(which must be read with Paragraph 4(ii) of the INDRP). Section 7(ii) of the INDRP corresponds to Paragraph 4(c)(ii) of the UDRP. UDRP Panelists have interpreted Paragraph 4(c)(ii) of the UDRP as requiring a registrant to demonstrate that it was known by the disputed domain name prior to or as of the date of the registration of the domain name. Here, although the Registrant has registered a company named Velcro Technologies Pvt. Ltd. (the Complainant is taking appropriate action against the company name registration), given that the Complainant's rights predate the Registrant's registration by decades, and the fame of the Complainant's VELCRO® Marks, the Registrant cannot establish its rights and legitimate interest in the disputed domain name.

K. In any case, it is established that the Complainant's VELCRO® Marks have become famous at the time the Registrant registered the disputed domain name. The use of the Complainant's VELCRO® Marks in the disputed domain name is likely to mislead the public and internet users. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bona fide offering of goods and services under the Policy. Zurich American

Insurance Company v. Administrator, Domain, WIPO Case No. D20070481 (April 11, 2011).

L. Thus, the Registrant has no right or legitimate interest in the disputed domain name under INDRP Policy Paragraph 4(ii) read with Paragraph 7(ii). The Complainant has discharged the onus to prove the requirements of these paragraphs, and has made a prima facie case in its favour by making positive assertions that the Registrant has no legitimate right in domain name. In fact, the Complainant states that the Registrant's registration of the disputed domain name is a clear case of cyber-squatting. The Registrant's intention is to take advantage of the Complainant's substantial reputation and prominent presence on the Internet, divert business, tarnish the repute and goodwill of the Complainant and unduly gain in all aspects to the detriment of the Complaint.

### **6.3 Registered or used in bad faith (paragraph 4(iii) of the INDRP)**

M. The Registrant's bad faith is evident because the Registrant is using the Complainant's VELCRO® Marks, business name, and the V VELCRO logo (as discussed above). Clearly, these actions show its prior knowledge of the Complainant's VELCRO® Marks and intentional use of

the domain name to attract Internet users. Although the Complainant's and the Registrant's businesses are different, there is no doubt that any Internet user searches on the Internet by typing in the first or prominent part of the domain name in the web browser. Here, the first, and the most prominent, element of the disputed domain name is VELCRO. Therefore, there is every possibility of an Internet user getting confused till he actually scrutinizes the type of services available on the web site to which the disputed domain name resolves. *Alibaba Group Holding Limited v. Webmaster, Alibaba Consulting Limited, INDRP/073 (October 23 2008).*

N. It is clearly more than a coincidence that the Registrant chose and registered a domain name that is identical/confusingly similar to the Complainant's VELCRO® Marks. The Complainant has a long and well established reputation in the Complainant's VELCRO® Marks through its exclusive use throughout the world, including in India. There can be no doubt that the Registrant was aware of the Complainant's VELCRO® Marks when it chose and registered the disputed domain name, and in fact chose the domain name because it was confusingly similar to the Complainant's VELCRO® Marks, and intended to capitalize on that confusion. This constitutes evidence of bad faith. *Kenneth Cole Productions Inc. v. ViswasInfomedia, INDRP/93 (April 10, 2009).* In fact, it has been held that registration of a domain name that incorporates a

well-known mark by an entity that has no relationship to the owner of the mark is in itself evidence of bad faith. Disney Enterprises Inc. v. Registrant ID: DI\_7305075, INDRP/596 (17 June 2014).

O. The Registrant's use of the disputed domain name is bound to lead to confusion and deception in the minds of the public. The Complainant's VELCRO® Marks have been used extensively by the Complainant and understood by consumers, including those in India, as marks that identify the Complainant's goods. On account of the high reputation attributable to the Complainant's VELCRO® Marks, use of the disputed domain name would lead to confusion and deception in the trade. Etechaces Marketing and Consulting Private Limited v. Dan Mahoney, INDRP/658 (18 May 2015).

P. The Registrant uses the disputed domain name in connection with a web site on which it provides information regarding its data conversion services. Thus, the Registrant is generating revenue or attempting to generate revenue through consumers who visit this web site. Clearly, given the tremendous reputation attributable to the Complainant's VELCRO® Marks, this revenue generation is attributable to this reputation. It does not matter that the Registrant's services are different from the goods of the Complainant sold under the Complainant's



VELCRO® Marks. It is well-settled that a well-known mark, if adopted by a rival trader in respect of a different description of goods/services, is not an answer to the question as to how such person hit upon the well-known mark. The adoption of the well-known mark is dishonest and in bad faith at the inception itself. N.R. Dongre and Ors. v Whirlpool Corporation and Anr., 1996 (67) ECR 232 (SC). This is evidence of the Registrant's bad faith registration and use. Boehringer Ingelheim Pharma GmbH & Co. KG v. Bel Arbor, INDRP/680 (22 June 2015).

Q. The Registrant's bad faith in obtaining registration of more than one domain name that incorporates the Complainant's VELCRO® Marks is clear evidence of bad faith. It is well-settled that multiple registrations of domain names by a single registrant is evidence of bad faith. As stated above, the Registrant has also registered the domain name VELCROTECH.IN. The Complainant is also filing, simultaneously, with this complaint, a complaint against the domain name VELCROTECH.IN. Such registrations indicate that the Respondent is harbouring plans for illegal gains, either from the Complainant or its competitors. Bloomberg Realty (India) Private Limited INDRP/364 (February 20, 2014).

R. By registering the disputed domain name, the Registrant is preventing the Complainant from using the VELCROTECHNOLOGIES.IN

domain name in connection with its goods for consumers in India. This is not evidence of good faith use of the disputed domain name.

S. The Registrant has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. Past WIPO Panels have held that failure to respond to a cease and desist letter may properly be considered a factor in finding bad faith registration and use of a domain name. *Encyclopedia Britannica v. Zuccarini*, D2000-0330 (WIPO, June 7, 2000) in which it was held that failure to positively respond to a demand letter provides "strong support for a determination of 'bad faith' registration and use". Therefore, the Registrant's domain name has been registered, and is being used, in bad faith under INDRP Policy Paragraph 4(iii).

T. Thus, the Registrant has registered and is using the disputed domain name in bad faith. The Complainant has discharged the onus to prove the requirements of paragraph 4(iii) read with paragraph 6 of the INDRP Policy, and has made a prima facie case in its favour by making positive assertions that the Registrant has registered and is using the disputed domain name in bad faith. The Complainant also reiterates all the contentions made in the above paragraphs relating to lack of rights and legitimate interest in the disputed domain name. The Registrant's intention is to take advantage of the Complainant's reputation in order to make

illegal gains to the detriment of the Complainant, prevent the Complainant from reflecting the Complainant's VELCRO® Marks in a corresponding domain name and create a likelihood of confusion amongst the public as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

#### 6.4 **Respondent:**

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 15 January 2017 and 28 January 2017 respectively. And also the hard copy of the Complaint was successfully delivered upon the Respondent.

B. However, Respondent failed to file any response to the Complaint filed by the Complainant despite being given an adequate notification and the opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

## 7. Discussion and Findings:

### I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

(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 has no rights or legitimate interests in respect of the domain name; and

(iii) the Registrant's domain name has been registered or is being used in bad faith.

## II. Respondent's Default

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and

any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

**III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:**

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

**(i) Identical or Confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]**

A. The Complainant, Velcro Industries B.V., is a limited liability company organized and existing under the laws of Netherlands. The Complainant, an industry leader in hook and loop fasteners, is a global organization with a

presence in more than number countries around the world, and approximately twenty-five hundred employees worldwide.

- B. **VELCRO** was derived from the combination of French words, named so by its inventor Mr George de Mestral in the 1940s. It is protected under the Patent Law since 1951 and the Trademark was first applied in the year 1958 to designate and identify the Complainant's hook and loop fasteners.
- C. The Complainant has a huge presence around the world, in more than forty countries worldwide and has manufacturing facilities around the world in North America, South America, Europe and Asia. It registered the gTLD **Velcro.com** in 1994 through its US subsidiary and also owns many ccTLDs, including **Velcro.in** and **Velcro.co.in**, among others.
- D. All these websites, mostly are active websites and prominently display the Complainant's Trademark. While the statistics of the main website **Velcro.com** and its social media presence annexed vouch for the popularity of the Complainant's Trademark **VELCRO**. Complainant has further provided evidence as to the media recognition and the awards conferred upon it.

- E. The Complainant has registered the Trademark **VELCRO** in over 150 countries including India in various classes, selected information in this respect has been annexed by the Complainant.
- F. The Complainant asserts that Respondent has registered the Disputed Domain Name **<velcrotechnologies.in>** on 25 August 2015, it entirely comprised of Complainant's mark. WIPO panelists, over the years, have arrived at a consensus that if a Complainant owns a trademark registration, then it generally satisfies the threshold requirement of trademark rights.
- G. The disputed domain name, **<velcrotechnologies.in>** incorporates Complainant's **VELCRO** mark in its entirety together with the word TECHNOLOGIES. The incorporation of a trademark in its entirety in the disputed domain name may be sufficient to establish that said domain name is identical or confusingly similar to the Complainant's registered mark, see WIPO cases *Societe des Participations du Commissariat a l'Energie Atomique v. David Morton*, WIPO Case No. D2007 - 0679; and *AT&T Corp. v. William Gormally*, WIPO Case No. D2005-0758; and *AREVA v. MIC / Hussain, Syed*, WIPO Case No. D2010-0098; *ITC Limited v Travel India* (INDRP Case No. 065); *Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana* (WIPO Case No. D2006-1594); *Allied DOMECCQ Spirits and Wine Limited v Roberto Ferrari*, (INDRP Case No. 071); *Philip Morris*



USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)].

- H. **VELCRO** is a coined term, derived from the combination of French words and therefore, entitled to highest level of protection. Further, Complainant already has several top level and country level domains that incorporate the said style and marks, the WHOIS of all these Domain names has been annexed with the Complaint. And it is apparent that the Respondent's Domain Name entirely contains the Complainant's trade mark.
- I. Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of **The Hershey Company V. Rimi Sen**, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [**INDRP/289 - Hersheys.co.in**]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [**Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213**]. Thus, the .IN part of the domain name does nothing to distinguish the disputed domain name from the

Complainant's **VELCRO** mark. [**Accenture Global Services Private Limited v. Sachin Pandey, INDRP/828 (November 28, 2016)**].

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

**(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]**

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

*(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.*

A. The onus of proof is on the Complainant to prove that respondent has no legitimate interests in the Disputed Domain Name. The evidence produced by the Complainant prima-facie proves the same:

- a. The Respondent's domain name is identical and/or confusingly similar to the Trademark in which Complainant has rights.
- b. The domain name has been registered and just parked with default nameservers at Godaddy LLC itself. Archive.org also evidences the fact that no use of the Domain Name has ever been made.
- c. The Complainant has filed the complaint with Ministry of Company Affairs (MCA) under section 16(1)(b) of the Companies Act, 2013 for

the rectification of the name of the Respondent Company “Velcro Technologies Pvt Ltd” as it resembles the Trademark of the Complainant. *[Evidence has been annexed by the Complainant]*

- d. The Domain WHOIS is incomplete and mostly false and the Respondent could be reached on postal address, only because Complainant provided for an additional address, which is the registered office address of the Respondent.
  - e. The Email ID as provided in the WHOIS (info@velcrotechnologies.in) is unreachable.
- B. It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. **[Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]**. Also Respondents’ failure to respond can be construed as an admission that they have no legitimate interest in the domain names **[Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221]**.

- C. There is no showing that 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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but has been parked with the Domain Registrar, GoDaddy LLC only. It has been held that merely registering the domain name is not sufficient to establish rights or legitimate interests. **[Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244].**
- D. Further in terms of clause (ii) of Para 7 of the INDRP Policy, given the facts, it is evident from WHOIS, that as a business / organization, Respondent may have been known by the domain name, though he may not have acquired any trademark or service mark rights. But the WHOIS information provided has been incomplete/incorrect, therefore cannot be relied upon. Further, there is nothing on record, which may prove that the Respondent is commonly known by the Domain Name, when the Domain Name has never been put to use.
- E. Moreover, the Complainant has strong rights over the Trademark and has produced the evidence as to filing of the complaint with Ministry of Company Affairs (MCA) under section 16(1)(b) of the Companies Act, 2013 for the

rectification of the name of the Respondent Company “Velcro Technologies Pvt Ltd” as it resembles the Trademark of the Complainant.

F. The Complainant denies giving any authorization to the Respondent to use his trademark **VELCRO** and states the Complainant got the Trademark 56 years prior to the Respondent registered the disputed domain name and given the recognition received by the Complainant it is not possible that Respondent had no knowledge of the Complainant’s mark. Complainant further points to the logo style of the Respondent which is quite similar to the Complainant’s logo.

G. Even if Respondent is assumed as a reseller for the Complainant’s products, but still due to the fact no legitimate use of the disputed domain name is being made. The Respondent could never have been able to satisfy the matter of OKI DATA, wherein a proper test has been laid down as to what constitutes a bona fide offering of goods set out in Oki Data Americas, Inc v. ASD, Inc, WIPO Case No. D2001 0903.

H. In the WIPO matter of **American Home Products Corporation vs. Ben Malgioglio, [WIPO Case No. D2000-1602]**, it was held that the Respondent’s website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use to constitute a legitimate



non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. Further in the WIPO matter of **Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364]**, if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill."

- I. Lastly, it is quite evident from the parked webpage at the disputed domain name that neither any legitimate, non-commercial or fair use of the disputed domain name being made, but the Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark **VELCRO**, in order to capitalize / profit from the goodwill associated with the famous mark.
  
- J. Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the

goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these **[Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com]**.

K. The Complainant has adopted and used the **VELCRO** trademark for several decades prior to the registration of the disputed domain name and it has invested substantial amounts for publicizing its mark. Under these circumstances it can be inferred that the similarity of the disputed domain name to the Complainant's trademark **VELCRO** is not a coincidence. The Respondent has intentionally acquired the disputed domain name for exploiting its value as a phonetically similar variant and as a misspelling of the Complainant's trademark. **[Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER, WIPO Case No. D2010-0858]**

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (ii) of the Policy.



**(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]**

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

*Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain*

*Name in Bad Faith:*

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*

*(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding*

*domain name, provided that the Registrant has engaged in a pattern of such conduct; or*

*(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

A. INDRP casts a duty upon the Domain Registrant/Respondent in terms of clause 3(b) of the INDRP Policy as well, to do a research before registering a domain name so that it does not violate a third party's rights. The Complainant contends that the it's use of mark goes back to 1926 and has acquired immense goodwill and popularity over the last nine decades and has a huge social media presence as well. As simple google search can reveal that the **VELCRO** brand is associated with the Complainants and is being used by them in their trade and business.

B. The Registrant represents that the registration of the Domain Name will not infringe upon or otherwise violate the rights of any third party, as follows:

**Clause 3 of INDRP Policy reads as follows:**

By applying **to register a domain name**, or by asking a Registrar to maintain **or renew** a domain name registration, the Registrant represents and warrants that:

(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;

(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

(c) the Registrant is not registering the domain name for an unlawful purpose; and

(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

C. There can be no doubt that the Registrant was aware of the Complainant's **VELCRO** Marks when it chose and registered the disputed domain name, and in fact chose the domain name because it was confusingly similar to the Complainant's **VELCRO** Mark, and intended to capitalize on that confusion. This constitutes evidence of bad faith. [**Kenneth Cole Productions Inc. v. ViswasInfomedia, INDRP/93 (April 10, 2009)**]

- D. It has been laid down in the INDRP matter of **ITC Limited v Travel India** that registration of Domain Name which is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith [**INDRP Case No 065**]. Also in the matter of **The Caravan Club v. Mrgsale, FA 95314** it was held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization or legitimate purpose to utilize the mark reveals bad faith.
- E. That the Respondent's ownership of the disputed domain name **<velcrotechnologies.in>** shows the malafide intent on its part to earn undue advantage by capitalizing on the goodwill and reputation of the Complainant's well-known mark **VELCRO**. Clearly, the disputed domain name **<velcrotechnologies.in>** incorporates the said Complainant's mark in its entirety. Recently in January 2017, Delhi High Court held: "With the domain name taking up the entire name of the Petitioner, there could be no doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of Respondent No. 1 with the Petitioner, when there is none". [**Thoughtworks Inc vs Super Software Pvt Ltd. & Anr on 12 January, 2017 - O.M.P. 530/2015**]. In fact, it has been held that registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the owner of the mark is in itself

evidence of bad faith **[Disney Enterprises Inc. v. Registrant ID: DI\_7305075, INDRP/596 (17 June 2014)]**

F. The Complainant have registered and used many country specific ccTLDs like VELCRO.com.au for Australia, VELCRO.fr for France, VELCRO.de for Germany, VELCRO.co.jp for Japan to provide information as to about their bikes, various events, owner's clubs, dealers and so on. Moreover, the disputed domain <velcrotechnologies.in> also had website for over 4 years, almost till the time, when the disputed domain seems to have been acquired by the Respondent. Under the Policy, it is evidence of bad faith registration and use that by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement or your web site or location of a product or service on your web-site or location.

G. Further, given the Complainant's mark / brand popularity, as the Complainant's websites are extremely popular and attract a huge traffic from visitors across the globe. Therefore, the use of substantially similar or identical mark, the Respondent has intentionally attempted to attract Internet users to the said website, by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or

endorsement of the said domain name. In the **INDRP matter of Lego Juris V Robert Martin**, it has been held that “where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration” **[INDRP/125 - lego.co.in]**.

H. In the INDRP matter of **QRG Enterprises Limited and Havells India Limited V Zhang Mi** - “The Complainant’s prior adoption of the mark predates the Respondent’s domain name registration of a name that is so obviously connected with the Complainants is suggestive of the Respondent’s Bad Faith” **[INDRP/852 - QRG.co.in]**. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant’s well-known trademark **VELCRO**, in order to capitalize / profit from the goodwill associated with the famous mark. In the UDRP matter of **Barney’s Inc. v B N Y Bulletin Board** - Only a person who is familiar with Complainant’s mark could have registered a domain name that is confusingly similar **[WIPO Case No D2000-0059]**.

I. In the matter of **LACER, S.A. v Constanti Gomez Marzo [Case No. D2001-0177]** - the lack of use of the domain name must also be re-examined under the perspective of good or bad faith. The lack of use by itself does not indicate anything. Nevertheless, the lack of use of a domain name that is not

backed up by any trademark and that coincides with a known, well-known or renowned trademark owned by someone else, does not indicate other than bad faith in the sense of paragraph 4(b) of the Policy. (Ingersoll-Rand Co. v. Frank Gully, d/b/a Advcomren, WIPO Case no. D2000-0021; Compaq Computer Corporation v. Boris Beric, WIPO Case no. D2000-0042; InfoSpace.com, Inc. v. Tenenbaum Ofer, WIPO Case no. D2000-0075; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case no. D2000-0003; Association of British Travel Agents Ltd .v. Sterling Hotel Group Ltd, WIPO Case No. D2000-0086; Marconi Data Systems, Inc. v. IRG Coins and Ink Source, Inc., WIPO Case no. D2000-0090; Sanrio Company, Ltd. and Sanrio, Inc. v. Neric Lau, WIPO Case no. D2000-0172.

- J. In the matter of Telstra Corporation Limited v. Nuclear Marshmallows [WIPO Case No D2000-0003] the question was considered as to what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith ?
- K. In the said Telstra matter, the Administrative Panel has considered whether, in the circumstances of this particular Complaint, the passive holding of the domain name by the Respondent amounts to the Respondent acting in bad faith. It concludes that it does. The particular circumstances of this case which lead to this conclusion are:

- a. the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries,
- b. the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- c. the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,
- d. the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

Taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

- L. Clearly, the above factors are proved in the current matter of **<velcrotechnologies.in>** as well, as the Complainant has a strong reputation due to well known mark globally on the one hand, on the other hand Respondent has failed to provide any evidence whatsoever of any actual or contemplated good faith use by it of the domain name and the Respondent seems to have deliberately provided false WHOIS details.



- M. Given the distinctiveness of the Complainant's mark, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. In the matter of **N.R. Dongre and Ors. v Whirlpool Corporation and Anr., 1996 (67) ECR 232 (SC)**: "The adoption of the well-known mark is dishonest and in bad faith at the inception itself."
- N. In the **UDRP matter of PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov**, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy [WIPO Case No. D2002-0562]. And given the popularity of the Complainant's www.VELCRO.com website, the Complainant's mark **VELCRO** is acknowledged as a "well-known" mark, and is as such exclusively associated with Complainant's products/services.
- O. In the matter of **HSBC Holdings plc v Hooman Esmail Zadeh [INDRP Case No 032]**, it was held that non-use and passive holding are evidence of bad-faith registration. The evidence furnished by the Respondent does not give a plausible explanation as to why there was no use of the domain name for more than two years. [**Bayer Aktiengesellschaft v. Henrik Monssen, Wipo Case No D2003-0275**]

- P. In the WIPO matter of **Ga Modefine, Giorgio Armani S.p.A. v. Kim Hontage** - the Panel accepts the Complainant's arguments that the worldwide fame of the trademarks leaves no question of the Respondent's awareness of those at the time of the registration of the disputed domain names which wholly incorporate the Complainant's trademarks, as even recognized by numerous previous UDRP panels, **[WIPO Case No. D2007-0851]**.
- Q. Even where the domain name has not been used to identify a web site, Panels have held that the ICANN Policy 'use in bad faith' requirement is met by registering a domain name that will ultimately result in consumer confusion. In the matter of **CBS Broadcasting, Inc. v. LA-Twilight-Zone, [WIPO Case no D2000-0397]** - finding bad faith where Respondent failed to provide any evidence to controvert Complainant's allegation that it registered the domain name in bad faith and where any future use of the domain name would do nothing but cause confusion with the Complainant's mark, except in a few limited noncommercial or fair use situations, which were not present.
- R. In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (iii) of the Policy i.e. both registration and use of the Domain Name in bad faith.

## 8. Decision:

- Therefore, the Arbitrator concludes that the Complainant has established all the three essential elements to maintain its complaint being that the disputed domain name is identical or confusingly similar to its Trademark **VELCRO**; the Respondent has no rights or legitimate interests in respect of the disputed domain name; the Disputed Domain Name was registered or is being used in bad faith.
- Consequently the Arbitrator orders that in accordance with INDRP policy that the disputed domain name **<velcrotechnologies.in>** be transferred to the Complainant.



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Ankur Raheja, LLB FCS MCA

Sole Arbitrator, NIXI, India

Date: 10th March 2017

Place: New Delhi