

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Logitech International S.A. vs Logitech

Case No. C2019-0004

Also in PDF C2019-0004

1. The Parties

The Complainant is Logitech International S.A. having its office at Les Les Châtagnis CH-1143 Apples Switzerland. The Complainant has initiated the Complaint vide their authorized representative, Mr. Christopher M. Dolan of Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, IL 60606, United States of America.

The Respondent's name is Logitech (Contact Name: Tahir Nazir) with its address at Gulberg, Lahore, Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <logitech.pk>, hereinafter referred to as the Disputed Domain Name. Vide email dated Friday 03 June 2019, PKNIC has informed DNDRC that the Agent Organization through which the registration was applied is InStep Host, 512-3, Al-Hafeez Shopping Mall, Lahore and its Create Date was 2017-07-06 with an Expire Date of 2019-07-06.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 24 May 2019.

The Respondent was issued notification of the dispute along with a copy of the Complaint and a Response Form on the email address mentioned on www.logitech.pk on 13 June 2019 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte. DNDRC also contacted the Respondent by phone and was provided

another email address sales@logitech.pk for the purpose of service of notice. DNDRC issued another notification of the dispute along with copy of the Complaint and Response Form on sales@logitech.pk on 19 June 2019, a reminder on 22 June 2019 and a second reminder on 25 June 2019. DNDRC awaited the submission by the Complainant of the Complaint as per the prescribed forms also available at www.dndrc.com/downloads. The Respondent failed to submit a response within the stipulated period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Mr. Malik Muhammad Ehsan as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <logitech.pk>.

PKNIC has confirmed via their email dated 03 June 2019 that the Disputed Domain Name has been registered by the Respondent named in the Complaint.

4. Parties Contentions

A. Complainant

The Complainant has submitted:

Logitech International S.A. (“Complainant”) is a leading worldwide provider of personal peripherals and computer and mobile accessories for PC navigation, video communication and collaboration, music and smart home. Complainant’s products include keyboards, computer mice, tablet accessories, webcams, portable speakers, headphones, universal remotes and more. Since at least as early as 1982, Complainant has used its famous trademark LOGITECH in connection with the sale and promotion of Complainant’s goods, and has sold its products under the LOGITECH mark in Pakistan since at least as early as 2013.

Complainant’s products bearing the LOGITECH mark are carried in tens of thousands of stores throughout the United States and worldwide and are also sold through Complainant’s website (www.logitech.com) as well as through major online retailers including Amazon, Best Buy, QVC, and Daraz.pk. Complainant has also prominently exhibited and sold its products under the LOGITECH mark at several major United States trade shows and conventions, including the Consumer Technology Association’s CES

trade show, which is the world's largest consumer technologies show; the National Association of Music Merchants ("NAMM") show, which is one of the two largest music product trade shows in the world; The South by Southwest Music and Media Conference (SXSW); TwitchCon; and E3, which is the world's premier event for computer and video games.

In addition, Complainant heavily markets its products under the LOGITECH mark on social media platforms including Facebook (<https://www.facebook.com/LogitechG>), Twitter (<https://twitter.com/LogitechG>), Instagram (<https://www.instagram.com/logitechg/>), and YouTube (<https://www.youtube.com/logitechg>).

In addition to its extensive common law trademark rights, Logitech owns an extensive worldwide portfolio of registrations for the LOGITECH mark, including registrations in Pakistan (since 1997) and the United States (since 1996). Complainant's portfolio of Pakistani and United States registrations for its famous LOGITECH mark include the following:

[list of trademarks registered in Pakistan and United States]

Registration Certificates for the above-referenced marks are attached here to as Annex D. Also included in Annex D are copies of an assignment document showing the assignment of the Pakistani Reg. Nos. 145498 and 145499 to Complainant. Also attached hereto as Annex E are copies of printouts from the United States Patent and Trademark Offices' Trademark Status & Document Retrieval ("TSDR") database showing the current status and Complainant as the owner of the United States Registrations listed above.

Complainant's United States Registration Nos. 1,969,025; 2,507,301; 2,170,413; and 2,835,047 for the LOGITECH mark have achieved incontestable status, and therefore serve as conclusive evidence of Complainant's ownership of the registered marks and Complainant's exclusive right to use the marks in United States commerce. Printouts from the TSDR database indicating the Section 15 acknowledgements for these registrations are attached hereto as Annex E.

Complainant's registrations for the LOGITECH mark are prima facie evidence of validity of the mark, and establish Complainant's rights for purposes of the Policy. Metro. Life Ins. Co. v. Bonds, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a trademark registration adequately demonstrates a complainant's rights in a mark). Accordingly, a

Complainant can demonstrate its rights in the mark by evidencing registration by the USPTO and an ICANN panel is not empowered to disturb that determination. American Airlines, Inc. v. Insane Entertainment, LLC c/o Adam Maysonet, FA 1065242 (Nat. Arb. Forum Oct. 7, 2007) (citations omitted).

In addition, Complainant owns registrations for the LOGITECH mark in several countries worldwide other than the United States and Pakistan. A report listing Complainant's registrations for the LOGITECH mark are attached hereto as Annex F.

The Complainant's brief contentions are reproduced below:

- A. The Disputed Domain Name infringes upon Complainant's registered LOGITECH mark, Respondent is not making bona fide use of the Disputed Domain Name and registered and is using the Disputed Domain Name in bad faith, and the Disputed Domain Name violates the Pakistani Penal Code.*
- B. The Disputed Domain Name is confusingly similar to the Complainant's LOGITECH Marks.*
- C. Respondent has no rights or legitimate interest in the Disputed Domain Name.*
- D. Respondent registered and is using the Disputed Domain Name in bad faith.*

Therefore, the Complainant seeks the following remedy:

That the Panel Issue a decision that the Disputed Domain Name be transferred from Respondent to Complainant.

B. Respondent

The Respondent has not submitted any response to DNDRC.

Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules.

The Respondent applied for and was granted registration of the Disputed Domain Name on the

basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the PKNIC - Internet Domain Registration Policy, dated 07-Aug-2007, version 4.2 and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*
- iv. *Registration and use of the domain name in bad faith (a UDRP criteria).*

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy Aug-07-2007 version 4.2 states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*

- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy Aug-07-2007, version 4.2,

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name, is not bona fide as recognized by international best practice, is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the Disputed Domain Name shall be assessed in consideration of the following criteria:

- i. Whether the Disputed Domain Name infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the Disputed Domain Name is bona fide?
- iii. Whether the application and/or registration of the Disputed Domain Name contravenes the Pakistan Penal Code, 1860 (the “Penal Code”) or any applicable criminal law?

The Panel will deal with each of these sub-issues sequentially below.

i. Whether the Disputed Domain Name infringes upon, or is an obvious derivation of, a registered trade name / trade mark?

The Complainant has stated:

As discussed in detail below, the Disputed Domain Name infringes upon Complainant's registered LOGITECH mark. Respondent's registration of the Disputed Domain Name

(which incorporates Complainant's famous LOGITECH mark in its entirety) constitutes, among other things, trademark infringement and passing off. As such, Respondent's use and registration of the Disputed Domain Name infringes Complainant's exclusive rights to its famous LOGITECH mark, including Complainant's trademark rights in Pakistan. Respondent is using the website that resolves at the Disputed Domain Name ("Respondent's Website") to impersonate Complainant and pass-off Respondent's Website as an official website owned and/or operated by Complainant. In doing so, Respondent deliberately intends to mislead the public, including consumers in Pakistan, into mistakenly believing that Complainant is affiliated with, sponsors, or otherwise authorizes Respondent, Respondent's business, Respondent's use and registration of the Disputed Domain Name, and/or Respondent's Website. Indeed, as described in detail in section 8(c) below, Respondent's actions are designed to give the false impression that Respondent's Website, which is strikingly similar to Complainant's official LOGITECH website, is owned and operated by the Complainant. Respondent's unauthorized and infringing adoption, registration and use of the Disputed Domain Name further falls within the prohibition of the provisions of the Trade Marks Ordinance 2001 and the Pakistan Penal Code, 1860, including, in particular, sub-section (6) of section 40 of the Trade Marks Ordinance 2001; clause (1) of paragraph 4 of Third Schedule to the Trade Marks Ordinance 2001; and sections 480, 481, 482, 483, 485 and/or 486 of the Pakistan Penal Code 1860. Furthermore, in this regard, Complainant relies on the analysis and findings of the DNDRC Panel in Amazon Technologies, Inc. v. Amazon Shopping, Case No. C2019-0002 (9 March 2019). In light of the above, Respondent's use and registration of the Disputed Domain Name clearly violates the provisions of the Policy Agreement and the PKNIC - Internet Domain Registration Policy incorporating the ICANN Policy, which provide, among other things, that an applicant for registration of a domain name expressly represents, agrees and warrants as follows:

- (a) applicant's statements in the application are true and the applicant has the right to use the domain name as requested in the application; applicant has a bona fide intention to use the domain name on a regular basis on the Internet; the use or registration of the domain name by the applicant does not interfere with or infringe the right of any third party in Pakistan, with respect to trade mark, service mark, trade name, company name or any other intellectual property right; and applicant is not seeking to use the domain name for any unlawful purpose, including, without limitation, tortious interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, or for the purpose of confusing or misleading a person, whether natural or incorporated.*

(b) *The applicant of a domain name at the time of making the application certifies that, to his or her knowledge, the use of the domain name does not violate trade mark or other statutes.*

In this case, Respondent intentionally registered and is using the Domain Name with knowledge of Complainant and Complainant's prior rights to the LOGITECH mark. As a result, Respondent's registration and use of the Disputed Domain name constitutes a violation of the Policy Agreement and the PKNIC - Internet Domain Registration Policy.

Complainant notes that the DNDRC Panel in Standard Chartered PLC v. Hosting Campus Domain (Case No. C2007-0001, dated 30 August 2007) found that if a complainant simply establishes that the respondent's domain name infringes upon the complainant's registered trade name or trade mark, the respondent's domain name shall be considered to be illegal, unlawful and invalid and further constitutes an adequate ground for the transfer of the domain name to the complainant.

For the foregoing reasons, Respondent's registration and use of the Disputed Domain Name is illegal, unlawful, and invalid under the relevant laws and policies including but not limited to the Pakistan Penal Code, the Policy Agreement and the PKNIC - Internet Domain Registration Policy. The Panel may decide for Complaint and transfer the Disputed Domain Name on this factor alone. Amazon Technologies, Inc. v. Amazon Shopping (Case No. C2019- 0002, dated 19 March 2019).

On the other hand, the Respondent has not provided any information whatsoever with respect to the Disputed Domain Names and as such, no data is available to the Panel to consider on the part of the Respondent.

The Panel has assessed the detailed information submitted by the Complainant to support the Complainant's position that it has registered the mark "LOGITECH" in Pakistan. The Panel finds that the Disputed Domain Name is an obvious derivation of the marks in which the Complainant enjoys rights, and that the application and registration of the Disputed Domain Name by the Respondent appears to be illegal under the Pakistani legislations cited in the Complaint. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC- Internet Domain Registration Policy Aug 7, 2007.ver 4.2.

ii. Whether the application and/or registration of Disputed Domain Name is bona fide?

The Complaint has submitted:

To demonstrate that a domain name is confusingly similar to a complainant's trademark pursuant to UDRP Policy ¶ 4(a)(i), the complainant need only demonstrate that its mark is included in the disputed domain name. Yahoo! Inc. v. James Fato d/b/a 458 Online, FA 286410 (Nat. Arb. Forum Jul. 26, 2004), Red Bull GmbH v. PakSys Software LLC, C2009-0003 (DNDRC June 11, 2009). Here, the Disputed Domain Name incorporates Complainant's LOGITECH mark in its entirety. Indeed, the only difference between Disputed Domain Name and Complainant's LOGITECH mark is the addition of the generic country code top-level domain for Pakistan, ".pk". This slight difference does nothing to distinguish the Disputed Domain Name from the LOGITECH mark, and thus the Disputed Domain Name is identical to Complainant's LOGITECH mark. It is well-established that cc-TLD's fail to play a role in distinguishing domain names from trademarks because every domain name must include a top-level domain. Nokia Corporation v. Firdaus Adinegoro/Beli Hosting, D 2004-0814 (WIPO Nov. 19, 2004), Travelscape, LLC vs Travelocity Pakistan, Case No. C2017-0005 (DNDRC December 12, 2017). For the purposes of the domain name dispute resolution process, a low threshold of proof is all that is required to meet the test in Policy ¶ 4(a)(i). Yahoo! Inc. v James Fato d/b/a 458 Online, Case No. 286410 (Nat. Arb. Forum Jul. 26, 2004). All that Complainant need demonstrate is that its mark is included in the domain name. Id.; see also Avaya Inc. v. Jomar Technologies / Jomar Technologies, Inc., FA 1554827 (Nat. Arb. Forum May 15, 2014) (ending the Identical and/or Confusingly Similar analysis after finding that the domain included Complainant's identical mark). Accordingly, Paragraph 4(a)(i) of the UDRP, requiring that the domain name at issue be "identical or confusingly similar to a trademark or service mark in which the complainant has rights" is satisfied in this case. Respondent registered and is using the Disputed Domain Name in bad faith as evidenced by the fact that the domain name incorporates in full Complainant's LOGITECH mark, and because Respondent is using the Disputed Domain Name in connection with Respondent's Website, which is intended to impersonate Complainant's website and mislead Internet users to mistakenly believe that the website and Respondent's business is affiliated with or authorized by Complainant. Here, there is no doubt that prior to registering and using the Disputed Domain Name, Respondent had knowledge of Complainant, Complainant's business, and Complainant's LOGITECH Mark. Respondent's Website prominently displays the LOGITECH mark, contains direct references to and photos of Complainant's products, and copies the design and appearance of Complainant's official LOGITECH website. Thus, it is clear that Respondent registered

and is using the Disputed Domain Name with Complainant and its LOGITECH mark squarely in mind, and with an intent to impersonate Complainant and mislead consumers. Respondent's registration and use of the Disputed Domain Name with knowledge of Complainant's rights to its LOGITECH Mark creates a presumption of bad faith registration and use under the Policy ¶ 4(a)(iii). See *Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) (holding that "there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively.") See *AutoZone IP LLC v. Cornell Kay / www.cyberFactor.com*, FA 1668828 (Nat. Arb. Forum April 27, 2016) (finding that in light of the fame and notoriety of Complainant's mark it is inconceivable that Respondent could have registered the domain without knowledge of Complainant's rights in the mark.); *Home Depot Product Authority, LLC v. Tu Pham Ngoc*, FA 1662977 (Nat. Arb. Forum March 31, 2016) (finding that respondent had actual knowledge of complainant's marks as demonstrated through respondent's use of the domain name, which include direct references to Complainant's business); see also *Black Hills Ammunition, Inc. v. Wall*, FA 1541570 (Nat. Arb. Forum March 17, 2014) (finding actual knowledge because there was no legitimate reason for respondent "to register a domain name containing 'BLACK HILLS AMO' other than to trade on complainant's trademark").

Additionally, Respondent's use of the Disputed Domain Name and Respondent's Website in an attempt to pass itself off as Complainant is clear evidence of Respondent's bad faith in registering and using the Disputed Domain Name. Panels have found bad faith in similar situations where Respondent is using the disputed domain name to resolve to a webpage attempting to impersonate Complainant in order to obtain sensitive financial information through the purchase of products as is the case here. See *Wells Fargo & Co. v Maniac State*, FA 608239 (FORUM, Jan 19 2006) (finding bad faith registration and use where the respondent was using the domain name in order to act fraudulently to acquire financial information of the Complainant's customers.); *Xylem Inc. and Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi*, FA1504001612750 (FORUM, May 13, 2015) ("The Panel agrees that Respondent's use of the website to display products similar to Complainant's, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy ¶ 4(b)(iv).").

Additionally, Respondent is attempting to attract consumers to Respondent's Website with the hope that they will purchase the products available for sale at the website, which may be counterfeit LOGITECH-branded products, for Respondent's commercial gain. Respondent's intent to profit through the deliberate confusion of consumers is also evidence of bad faith. *G.D. Searle & Co. v. Celebrex Cox-2 Vioxx.com*, FA 124508 (Nat.

Arb. Forum Oct. 16, 2002) (“Unauthorized use of Complainant’s CELEBREX mark to sell Complainant’s products represents bad faith use under Policy ¶ 4(b)(iii)”); Hunter Fan Co. v. MSS, FA 98067 (Nat. Arb. Forum Aug. 23, 2001) (finding bad faith where respondent used domain name to sell the complainant’s products without permission and mislead Internet users by implying that respondent was affiliated with complainant).

Based on the foregoing, Respondent registered and is using the Disputed Domain Name in bad faith under UDRP Rule 3(b)(ix)(3) and UDRP Policy ¶ 4(a)(iii).

Once again, the Respondent failed to provide a response to the Complainant’s contentions.

The Respondent has resorted to the use of a recognized trademark. Plus, there seems to be a conscious effort to pass off the said website as Complainant’s official website. Moreover, the Respondent has failed to submit any response in the matter. Thus, the Panel finds that the registration of the Disputed Domain Name by the Respondent was not bona fide.

iii. Whether the application and/or registration of the Disputed Domain Name contravene the Penal Code or any applicable criminal law?

Prior to discussing this sub-issue, it is pertinent to clarify the grounds for examining relevant Pakistani law provisions. Although Pakistani law does not apply by force of law over PKNIC’s jurisdiction, by operation of the PKNIC- Internet Domain Registration Policy Aug 07, 2007 version 4.2, it is necessary to examine provisions of the Penal Code and other applicable criminal laws. It is in this spirit and for this purpose alone that the following provisions of Pakistani law are being analyzed. The ordinances, and the sections mentioned herein below, have been discussed at length in *Standard Chartered PLC v. Hosting Campus Domain (case no. C2007-0001)*.

Trade Marks Ordinance, 2001

40. Infringement of registered trade mark.-

(6) A person shall infringe a registered trade mark if the person uses such registered trade mark as his domain name or part of his domain name or obtains such domain name without consent of the proprietor of the registered trade mark, with the intention of selling such domain name to another including the proprietor of the registered trade mark.

4. Domain name not to be misleading as to character or significance.- *(1) A domain name shall not be registered if the public is liable to mislead as regards the character or significance of the mark, in particular, if it is likely to be taken to be something other than a domain name.*

Electronic Transactions Ordinance, 2002 (“ETO”)

3. Legal recognition of electronic forms.—

No document, record, information, communication or transaction shall be denied legal recognition, admissibility, effect, validity, proof or enforceability on the ground that it is in electronic form and has not been attested by any witness.”

Penal Code

478. Trade mark.

A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purpose of this Code the expression “trade mark” includes any trade mark which is registered in the register of trade marks kept under the Trade Marks Act, 1940 (V of 1940)

Upon a study of the above-quoted sections of the Trade Marks Ordinance, 2001 and the Penal Code, the Panel is of the view that the infringement of Trade Marks and Trade Names have been equated with domain names under Pakistani law. Therefore, the provisions of the Penal Code dealing with Trade Mark infringement appear to apply to domain names.

Moreover, according to Section 3 of the ETO, all material, instruments that would otherwise be in writing or in physical form, if generated or made available in electronic form would attract the provisions of the same sections of the Penal Code or any other applicable law had the material been in physical, written or in printed form. The Penal Code, therefore, by the operation of Section 3 of ETO, equally applies to transactions, publications or materials including the use of any trade mark or trade name made available in any electronic form on the internet through the use of a domain name.

By continuing the registration of the Disputed Domain Name by a person who is other than the owner, holder or authorized user of the trade mark or trade name, the registrant would be an aider, abettor, encourager and co-conspirator and also liable to criminal offences.

479. Property mark.

A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. Using a false trade mark.

Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

As such, if a person other than the owner, rightful holder or authorized user of the trade mark or trade name uses the Disputed Domain Name, if possibly linked to any service or goods, it may constitute an offence under the Penal Code.

481. Using a false property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Punishment for using a false trade-mark or property mark.

Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

As decided in *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), the use of a false property mark (which includes domain names on electronic encasements, packaging or containers such as websites or TCP/IP packets or messages) with the reasonable expectation that people would be misled to believe that the trade mark or trade name or domain name belongs to a person to whom it does not belong may also constitute an offence under the Penal Code.

The Panel, therefore, is of the view that the Respondent's registration of the Disputed Domain Name may attract the above-mentioned provisions of the Trade Marks Ordinance, 2001, Penal Code and ETO. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC- Internet Domain Registration Policy Aug 7, 2007.ver 4.2.

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

To demonstrate that a domain name is confusingly similar to a complainant's trademark pursuant to UDRP Policy ¶ 4(a)(i), the complainant need only demonstrate that its mark is included in the disputed domain name. Yahoo! Inc. v. James Fato d/b/a 458 Online, FA 286410 (Nat. Arb. Forum Jul. 26, 2004), Red Bull GmbH v. PakSys Software LLC, C2009-0003 (DNDRC June 11, 2009).

Here, the Disputed Domain Name incorporates Complainant's LOGITECH mark in its entirety. Indeed, the only difference between Disputed Domain Name and Complainant's LOGITECH mark is the addition of the generic country code top-level domain for Pakistan, ".pk". This slight difference does nothing to distinguish the Disputed Domain Name from the LOGITECH mark, and thus the Disputed Domain Name is identical to Complainant's LOGITECH mark. It is well-established that cc-TLD's fail to play a role in distinguishing domain names from trademarks because every domain name must include a top-level domain. Nokia Corporation v. Firdaus Adinegoro/Beli Hosting, D 2004-0814 (WIPO Nov. 19, 2004), Travelscape, LLC vs Travelocity Pakistan, Case No. C2017-0005 (DNDRC December 12, 2017).

For the purposes of the domain name dispute resolution process, a low threshold of proof is all that is required to meet the test in Policy ¶ 4(a)(i). Yahoo! Inc. v James Fato d/b/a 458 Online, Case No. 286410 (Nat. Arb. Forum Jul. 26, 2004). All that Complainant need demonstrate is that its mark is included in the domain name. Id.; see also Avaya Inc. v. Jomar Technologies / Jomar Technologies, Inc., FA 1554827 (Nat. Arb. Forum May 15, 2014) (ending the Identical and/or Confusingly Similar analysis after finding that the domain included Complainant's identical mark). Accordingly, Paragraph 4(a)(i) of the UDRP, requiring that the domain name at issue be "identical or confusingly similar to a trademark or service mark in which the complainant has rights" is satisfied in this case.

On the other hand, the Respondent has not provided any information in response to the Complainant's contentions.

Based upon the information provided by the Complainant, the Panel finds that the Complainant has rights in the mark "LOGITECH" based upon trademark registrations in both Pakistan and the United States. The Panel also agrees with the submission of the Complainant that the Disputed Domain Name incorporates the Complainant's trademark in its entirety. The addition of a ccTLD in the Disputed Domain Name in the Panel's view does not sufficiently distinguish the Disputed Domain Name from the mark of the Complainant. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the mark of the Complainant.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

"proved based on all evidence presented" that "shall demonstrate" the Respondent's "rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii)."

Paragraph 4(a)(ii) states that:

"(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial 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."

The Complainant has contended:

Respondent has no rights or legitimate interests in the Disputed Domain Name because Respondent (1) has never been known or referred to as LOGITECH or any variation thereof, (2) is not affiliated with, licensed or otherwise authorized by Complainant to use the LOGITECH mark, and (3) has not used the Disputed Domain Name in connection with a bona fide offering of goods or services.

There is no other entity, apart from Complainant and its related companies, that is known as Logitech. Further, there is no indication that Respondent or any business or other organization owned or controlled by Respondent has ever been commonly known by or referred to as the Disputed Domain Name or that the Disputed Domain Name is Respondent's legal name. See Radio Flyer Inc. v Stefan Hansmann / Invertising, FA 1610574 (Forum, May 12, 2015) (finding had no rights or legitimate interests where respondent was not commonly known as the disputed domain).

Furthermore, Respondent is not associated with Complainant, and Complainant has not licensed or otherwise authorized Respondent's use of the LOGITECH mark and/or the Disputed Domain Name, which also demonstrates Respondent's lack of rights or legitimate interests in the Disputed Domain Name. See Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin, FA1408001574905 (Forum Sept. 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark); Red Bull GmbH v. PakSys Software LLC, C2009-0003 (DNDRC June 11, 2009).

Finally, Respondent is using the Disputed Domain Name and Respondent's Website in an attempt to pass itself off as Complainant and Respondent's Website as Complainant's official LOGITECH website by inter alia prominently displaying the LOGITECH Mark on Respondent's Website, displaying images of Complainant's products bearing the LOGITECH Mark on Respondent's Website, and offering, without Complainant's authorization, Complainant's products (or potentially counterfeit versions of Complainant's products) for sale through Respondent's Website. A printout of Respondent's Website is attached hereto as Annex G. In addition, the design and appearance of Respondent's website is strikingly similar to Complainant's official website, a copy of which is attached hereto as Annex H. The similarities between the website include, but are not limited to, (1) the prominent display of the LOGITECH mark and identical LOGITECH logo, (2) photos of the same LOGITECH branded products, and (3) use of the same black and white color scheme and accent colors. See Annexes G and H. Respondent's Website even includes a notice at the bottom of the landing page stating "Logitech Pakistan. All Rights Reserved," which is further evidence that Respondent is attempting to pass off Respondent's Website and Respondent's business as those of Complainant, the rightful owner of the LOGITECH mark worldwide, including in Pakistan.

Respondent's infringing unauthorized use of the LOGITECH Mark and unauthorized sale of Complainant's products (or counterfeit versions of Complainant's products) demonstrates that Respondent is attempting to impersonate Complainant and its business in an attempt to mislead consumers in to believing that Respondent's Website is Complainant's official website for the Pakistani market. Thus, Respondent is not using the Disputed Domain Name in connection with a bona fide offering of goods or services or a noncommercial fair use. Clark Equipment Company v. Domain Admin / Whois Privacy Corp., FA 1604001672697 (FORUM June 1, 2016) (finding no legitimate interest in <bobcat-manual.net> where Respondent attempted to pass itself off as complainant); Farallon Capital Management, L.L.C. v. Farallon Capital Asia (Hong Kong)

International, FA 1409001579916 (FORUM, October 21, 2014) (finding bad faith where the disputed domain name resolves to a website impersonating Complainant); Exxon Mobil Corporation v. Orville Walk, FA 1503047 (Nat. Arb. Forum July 17, 2013)(finding Respondent has no rights or legitimate interests in the domain where it displays a website including Complainant's logo, content, and graphics associated with Complainant); See also American International Group, Inc. v. Walter Busby d/b/a AIG Mergers and Acquisitions, FA 0156251 (Nat. Arb. Forum May 30, 2003)(finding Respondent has no rights or legitimate interests in the disputed domain name where he impersonates Complainant's services by incorporating Complainant's registered word mark).

Even if Respondent were properly reselling Complainant's LOGITECH branded products, which it is not, several panels have ruled that a re-seller, even an authorized re-seller, cannot use another's trademark in a domain name without the express consent of the owner of the mark. For example, in The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co. Inc., the panel held that "even if Respondent is a retail seller of Complainant's products, the collateral trademark use necessary to allow resell of Complainant's products is not enough to give Respondent proprietary rights in Complainant's trademarks, and certainly not enough to confer the right to use these trademarks as domain names." D2000-0113 (WIPO April 13, 2000). Here, Respondent is not an authorized dealer of Complainant's goods, and does not have Complainant's consent, express or otherwise, to use the LOGITECH mark in any way. Nor does Respondent have Complainant's consent, express or otherwise, to prominently display the LOGITECH mark on Respondent's website, copy the appearance of Complainant's website, or otherwise impersonate Complainant in any way. Therefore, Respondent does not have a legitimate interest in the Disputed Domain Name under UDRP Policy ¶ 4(c)(i). Microsoft Corporation v. Story Remix / Inofficial, FA 1706001734934 (FORUM July 10, 2017) ("Attempting to impersonate Complainant [through use of a copyright notice] is clearly against the Policy."); Churchill Insurance Co. Ltd. v. Minton Edwards, FA 1006001328594 (FORUM July 23, 2010) ("The addition of the generic term "imports" is insufficient to distinguish Respondent's disputed domain name from Complainant's mark without the risk for confusion.")

Accordingly, Respondent is not using the Disputed Domain Name in connection with a bona fide offering of goods or services under UDRP Policy ¶ 4(c)(i) and is not making noncommercial fair use of the Disputed Domain Name, and thus does not have rights or a legitimate interest in the Disputed Domain name under UDRP Policy ¶ 4(c)(iii).

On the other hand, the Respondent has failed to provide any information in support of the contention that the Respondent has a legitimate interest in the Disputed Domain Name.

The Complainant has stated that the Respondent was not authorized or licensed to use the Complainant's mark LOGITECH in the Disputed Domain Name or on the website to which the Disputed Domain Name resolves. The Respondent has not provided any information that would support a position that the Respondent is otherwise known by the name Logitech. Thus, the Panel finds that the Respondent does not have a legitimate interest in the Disputed Domain Name.

IV. Registration and use in bad faith

The Complainant has made the following submission:

Respondent registered and is using the Disputed Domain Name in bad faith as evidenced by the fact that the domain name incorporates in full Complainant's LOGITECH mark, and because Respondent is using the Disputed Domain Name in connection with Respondent's Website, which is intended to impersonate Complainant's website and mislead Internet users to mistakenly believe that the website and Respondent's business is affiliated with or authorized by Complainant.

Here, there is no doubt that prior to registering and using the Disputed Domain Name, Respondent had knowledge of Complainant, Complainant's business, and Complainant's LOGITECH Mark. Respondent's Website prominently displays the LOGITECH mark, contains direct references to and photos of Complainant's products, and copies the design and appearance of Complainant's official LOGITECH website. Thus, it is clear that Respondent registered and is using the Disputed Domain Name with Complainant and its LOGITECH mark squarely in mind, and with an intent to impersonate Complainant and mislead consumers. Respondent's registration and use of the Disputed Domain Name with knowledge of Complainant's rights to its LOGITECH Mark creates a presumption of bad faith registration and use under the Policy ¶ 4(a)(iii). See Digi Int'l v. DDI Sys., FA 124506 (Nat. Arb. Forum Oct. 24, 2002) (holding that "there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively.")

See AutoZone IP LLC v. Cornell Kay / www.cyberFactor.com, FA 1668828 (Nat. Arb. Forum April 27, 2016) (finding that in light of the fame and notoriety of Complainant's mark it is inconceivable that Respondent could have registered the domain without knowledge of Complainant's rights in the mark.); Home Depot Product Authority, LLC v.

Tu Pham Ngoc, FA 1662977 (Nat. Arb. Forum March 31, 2016) (finding that respondent had actual knowledge of complainant's marks as demonstrated through respondent's use of the domain name, which include direct references to Complainant's business); see also Black Hills Ammunition, Inc. v. Wall, FA 1541570 (Nat. Arb. Forum March 17, 2014) (finding actual knowledge because there was no legitimate reason for respondent "to register a domain name containing 'BLACK HILLS AMO' other than to trade on complainant's trademark").

Additionally, Respondent's use of the Disputed Domain Name and Respondent's Website in an attempt to pass itself off as Complainant is clear evidence of Respondent's bad faith in registering and using the Disputed Domain Name. Panels have found bad faith in similar situations where Respondent is using the disputed domain name to resolve to a webpage attempting to impersonate Complainant in order to obtain sensitive financial information through the purchase of products as is the case here. See Wells Fargo & Co. v Maniac State, FA 608239 (FORUM, Jan 19 2006) (finding bad faith registration and use where the respondent was using the domain name in order to act fraudulently to acquire financial information of the Complainant's customers.); Xylem Inc. and Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi, FA1504001612750 (FORUM, May 13, 2015) ("The Panel agrees that Respondent's use of the website to display products similar to Complainant's, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy ¶ 4(b)(iv).").

Additionally, Respondent is attempting to attract consumers to Respondent's Website with the hope that they will purchase the products available for sale at the website, which may be counterfeit LOGITECH-branded products, for Respondent's commercial gain. Respondent's intent to profit through the deliberate confusion of consumers is also evidence of bad faith. G.D. Searle & Co. v. Celebrex Cox-2 Vioxx.com, FA 124508 (Nat. Arb. Forum Oct. 16, 2002) ("Unauthorized use of Complainant's CELEBREX mark to sell Complainant's products represents bad faith use under Policy ¶ 4(b)(iii)"); Hunter Fan Co. v. MSS, FA 98067 (Nat. Arb. Forum Aug. 23, 2001) (finding bad faith where respondent used domain name to sell the complainant's products without permission and mislead Internet users by implying that respondent was affiliated with complainant).

Based on the foregoing, Respondent registered and is using the Disputed Domain Name in bad faith under UDRP Rule 3(b)(ix)(3) and UDRP Policy ¶ 4(a)(iii).

The Respondent on the other hand has not provided any information in support of the contention that the Disputed Domain Name has been registered or is being used in bad faith.

Based upon the detailed information submitted by the Complainant, the Panel finds that it is unlikely that the Respondent was not aware about the Complainant's mark LOGITECH, especially given that the Respondent has used the same mark on the Disputed Domain Name to offer products that are being passed off as those sold by the Complainant. at the time of registration and use of the Disputed Domain Name. In the absence of any information submitted by the Respondent, it appears to the Panel that the Respondent is indeed attempting to attract customers of the Complainant to the Respondent's website by taking advantage of the brand name of the Complainant. Hence this Panel finds that the registration and use of the Disputed Domain Name by the Respondent is in bad faith.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the LOGITECH mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the Disputed Domain Name.

Taking all of the case law and discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the Disputed Domain Name is contrary to the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2
2. The Respondent has no legitimate interest in the Disputed Domain Name.
3. The Disputed Domain Name is identical to the Complainant's trademark/names and registered domain names.
4. The Disputed Domain Name was registered and being used in bad faith.

Pursuant to Section 4 of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2, and Section 4(i) of the Policy, the Panel therefore recommends that PKNIC transfer the registration of the domain name in dispute <logitech.pk> to the Complainant, as prayed within 48 hours of receipt of this decision by email or its being uploaded on to DNDRC's website www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Mr. Malik Muhammad Ehsan

Sole Panelist

Date: 12 August 2019