

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Telenor v. Pakpoint Network

Case No. C2008-0004

Also in PDF C2008-0004

1. The Parties

The Complainant is Telenor Pakistan (Pvt) Ltd. ("Complainant"), located at 13-K Moaiz Center, F-7 Markaz, Islamabad, having contact number; +92(051) 111-345-700, fax number; +92 (051) 265-2960, email: ansieyali@telenor.com.pk. The current legal status of the Complainant is that of 'private limited company', and the place of business is Islamabad, Pakistan, with the principal place of business being 13-K Moaiz Center, F-7 Markaz, Islamabad.

The Respondent's details as submitted by him to the PKNIC are as below:

Domain Name: djuice.pk
Registrant: PakPoint Network
Muhammad Imtiaz Shafiq
Faisalabad
Create Date: 2006-07-19
Expire Date: 2008-07-19
Agent Organization: PakPoint Network
Technical Contact: PakPoint Network
Muhammad Imtiaz Shafiq Manager
Lahore, 54590
Billing Contact: None specified (or deleted)
Nameservers: ns.vds2000.net, ns2.vds2000.net

2. The Domain Name and Registrar

The disputed domain name is <djuice.pk> (the "Domain Name"). The Complainant has informed DNDRC from the verified records with PKNIC that the Respondent applied for registration of the domain name through ns.vds2000.net and ns2.vds2000.net, on and its Create Date was 19th July 2006 with an Expire/Paid until Date of 19th July 2008, registered with PKNIC.

3. Procedural History

The Complaint was filed with the Domain Name Dispute Resolution Center (“DNDRC”). The DNDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the DNDRC Supplemental Rules.

In accordance with the Rules, paragraphs 2(a) and 4(a), the DNDRC, formally notified the Respondent of the Complaint and sent an invitation to submit a response, in accordance with the Rules, paragraph 5(a). The Respondent did not submit any response. Accordingly, the Center commenced the proceedings ex parte.

The DNDRC appointed Mr. Mustafa Syed as the sole panelist in this matter. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant is a leading cellular service provider, and was incorporated in April 2004, and has been actively involved in the provision of cellular services since March 15, 2005. The name Telenor has been registered globally, and is in the process of registration in Pakistan. The pending application certificates have been received by the DNDRC. ‘Djuice’ is one of the brand names of the Complainant.

Under the trade name ‘djuice’, Complainant and its affiliates, that include Djuice, provide telecommunication and cellular services through an international network of mutually interdependent licensees/franchisees and corporately-owned operations, all operating under and using the Djuice Mark.

The Complainant also provides access to its services through the internet using domain names ‘djuice’, both domestically, and internationally to its existing and potential users for customer support and for promotion of its services.

The Respondent is a private individual. Other details of the Respondents are not available.

5. Parties’ Contentions

A. Complainant

The Complainant asserted that it has intensively used the Djuice trademark throughout the world for decades and as a result thereof it has become well known, and has a an extensive customer loyalty, that is well established and a source of profit for the Complainant. The authorized Telenor dealers/franchisees use the Djuice marks, both internationally and domestically.

The Complainants are generally aggrieved by the domain name registration and potential use of <djuice.pk> by the Respondent.

The Complainants are the owners and applicants of the following registered trade and pending marks in Pakistan:

“Djuice”, Class 09, Application dated 13/06/2005, Application No. 210360

“Djuice”, Class 16, Application dated 13/06/2005, Application No. 210359

“Djuice”, Class 42, Application dated 13/06/2005 Application No. 210365

“Djuice”, Class 38, Application dated 13/06/2005 Application No. 210369

“Djuice”, Class 42, Application dated 13/06/2005, Application No. 210370

“Djuice”, Class 38, Application dated 13/06/2005, Application No. 210362

“Djuice”, Class 16, Application dated 13/06/2005, Application No. 210368

“Djuice”, Class 09, Application dated 13/06/2005, Application No. 210353

“Djuice”, Class 16, Application dated 13/06/2005, Application No. 210354

“Djuice”, Class 42, Application dated 13/06/2005, Application No. 210355

“Djuice”, Class 09, Application dated 13/06/2005, Application No. 210366

“Djuice”, Class 38, Application dated 14/03/2006, Application No. 210363

(Collectively referred to as the “Registered Trade Marks”).

The duly certified copies of the entries in the Register of Trade Marks in respect of each of the above-mentioned trade marks issued by the Pakistan Trade Mark Registry have been received by the DNDRC.

The Domain Name was registered by the Respondent on July 19, 2006, for a validity period of 2 years, and having the expiry date of July 19, 2008. The Domain Name leads to a so-called “click through” website with pop-ups (e.g. an advertisement for on-line cellular services) and different links to other websites and companies, none of them associated with the Complainant or its authorized dealers, but all of the seemingly similar expertise as the Complainant, being that of cellular-based services.

A print-out of djuice.pk PKNIC database discloses the Registrant to be Muhammad Imtiaz Shafiq, at Pakpoint Network who is the Respondent.

Through the Complainant’s many years in service, and the many satisfied customers, Djuice is now known for consistent high quality services and boasts an unsurpassable reputation. In addition, the users recognize the Djuice mark as indicative of the high quality services provided by the Complainant. Inherent in Djuice’s reputation, and the value of the Djuice mark, is its recognition and wealth of the media attention. In order to safeguard its rights and legitimate interests in the Djuice Mark, the Complainant has registered the trade mark and the trade name all across the world, and has applied for the same in Pakistan. The relevant certificates of the application have been received by the DNDRC.

It came to the Complainant’s knowledge that the Domain Name is being used by the Respondent, and hence the Complainant contends that the domain name in dispute be transferred to them.

The Respondent has not countered the Complainant’s contentions, nor has responded to the invitation to submit a response to the DNDRC.

In addition to the above mentioned contentions by the Complainant, it is further alleged that:

The disputed domain name is identical or confusingly similar a trade mark in which the Complainant has rights

The letters “Djuice” form the prominent part of the trade name and of the trademark of the Complainant and are identical to the Domain Name, which the Complainant’s customers associate exclusively with the Complainant.

The inclusion of the top-level domain designation “.pk” in the disputed domain name, does not in any way affect the confusing similarity that the Domain Name has with the Complainant’s trade name ‘Djuice’.

The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant has neither authorized nor licensed the Respondent to register or use the disputed domain name and the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name. The sole purpose of the registration of the disputed domain name can therefore only be to misappropriate the reputation and goodwill associated with the Complainants’ well-known and registered trade name Djuice, and to confuse the users, and divert them to the Respondent’s home page.

The Respondent is not and has never been commonly known by the name “djuice” or any other similar name or mark. The Respondent has no affiliation or dealership with the Complainant.

Further, the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods/services.

It is worthy to note that the trade name ‘djuice’, does not hold a literate or dictionary meaning, and has been created by the Complainant, for its own trade purposes, hence its, adoption by any body, other than the Complainant, or its authorized dealers, is an infringement of the trade mark and trade name regulations, and hence proof of the mala fide intent of the Respondent. The Complainant’s trade name ‘djuice’ is closely associated with the young generation, and targets the niche that is specifically for the youth. This calls for some attention towards the fact that, as Djuice is very closely associated with the young generation, it is most likely that it would be this niche of the market that would be using the Complainant’s service, which include, but are not limited to the web based services. The young generation, being more vulnerable and indifferent, would be very likely to be adversely affected, and very easily misled into believing that the domain name in dispute <djuice.pk> belongs to the Complainant. Hence the Panel is led to establish that the Respondent does not hold any legitimate rights or interests in the domain name in dispute <djuice.pk>

The disputed domain name has been registered and adopted by the Respondent in bad faith:

The Complainant submits that the Respondent was well aware when it registered the disputed domain name that the Domain Name consisted of the Complainant’s well known trade name ‘Djuice’ and the Respondent has no reason to use the designation “djuice.pk” other than to mislead the users into thinking that it belongs to, or is in some way associated with the Complainant. The Complainant further alleges that it is not possible that the Respondent was and is not aware of the fact that the Complainant’s trading name ‘Djuice’ does not stand alone, but in fact, is associated with a strong reputation and is widely and substantially used throughout the world, including Pakistan and is well-known.

The Complainant alleges that the Respondent’s intentional, dishonest and *mala fide* registration of the disputed domain name <djuice.pk> has prevented the Complainant from reflecting their well-known and registered trademark Djuice in their corresponding domain names, that they use in order to provide web bases services.

Also, potential and/or actual customers of the Complainant, who are not aware of the website “djuice.pk” and who are seeking to access it, will be confused when they arrive at the Respondent’s web site, which does not offer any of the services provided by the Complainant, under their trademark.

All these aforesaid elements clearly indicate that the Respondent has registered the disputed domain name <djuice.pk> with a *mala fide* intention, much to the financial loss, detriment and disadvantage of the Complainant and the continued use of the disputed domain name by the Respondent as its website is disrupting the business of the Complainant, and causing the users to be confused and misled into believing that it belongs to the Complainant, hence adversely disrupting the business of the Complainant.

(Policy, paras 4(a)(iii) and 4(b); Rules, para 3(b)(ix)(3))

In *Telstra Corporation Limited v Nuclear Marshmallows* Case No. D2000-003 (“Telstra Case”), the Administrative Panel held that inactivity by a respondent may amount to the domain name being used in bad faith in the certain circumstances. Amongst others, the following two (2) circumstances were mentioned by the Administrative Panel in finding that passive bad faith use existed. These circumstances are where:

- (1) The complainant’s trade mark has a strong reputation and is widely known, as evidenced by its substantial use in the country of registration of the domain name as well as in other countries; and
- (2) There is no evidence whatsoever of any actual or contemplated good faith use by a respondent of the domain name.

Applying the first test in determining passive bad faith, namely that a complainant’s trade mark has a strong reputation and is widely known, as evidenced by its substantial use in the country of registration of the domain name as well as in other countries, it is understood that the Complainant has been operating as a cellular service provider in Pakistan for more than three years, is a large international firm in Pakistan, and maintains several branches in major cities across Pakistan through “djuice” brand of services. The Respondent must have been aware of the existence of the Complainant and its rights at the time of registration of the Domain Name. Given that the “djuice” mark is well-known in Pakistan, the Respondent must have had prior knowledge of these Registered Trade Marks and Trade Mark Applications. The Domain Name is therefore so obviously connected with such a well-known name that its very use by someone with no connection with the industry suggests opportunistic bad faith (see *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v The Polygenix Group Co.* Case No. D2000-0 163).

Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the requested remedy can be granted if the Complainant asserts and proves each of the following:

- A. Illegality, unlawfulness or otherwise invalidity of the Application & Registration
- B. that the Domain Name is identical or confusingly similar to a trademark or a service mark in which Complainant has rights;
- C. that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- D. that the disputed domain name has been registered and is being used in bad faith.

In *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), the Panel laid down the following 4 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 various provisions of the Policy have been discussed extensively in the recent decision of the DNDRC, of the domain name <telenor.pk>, and hence is a landmark decision in providing guidance and the implementation of the Policy.

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

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

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*
- c. *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, Trade Mark Ordinance 2000.*
- 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, Para 4,

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 (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

The PKNIC – Internet Domain Registration Policy Aug 07, 2007 version 4.2 para 15 states that:

The party requesting registration of this name certifies that, to his/her knowledge, the use of this name does not violate trademark or other statutes.

Furthermore, Para 25, sub-section (iii) and (iv) state that:

- i. *The use or registration of the domain name by Applicant does not interfere with or infringe the right of any third party in any jurisdiction in Pakistan, with respect to trademark, service mark, trade name, company name or any other intellectual property right;*
- ii. *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.*

Hence, any registration in contravention of paragraph 1 of The PKNIC - Internet Domain Registration Policy Aug-07-2007, version 4.2 would be *ab initio* void and in any case voidable in terms of paragraph 4 of The PKNIC - Internet Domain Registration Policy Aug-07-2007, version 4.2.

Para 4 of the Policy states:

'If a party claims that a domain name already registered with PKNIC violates their registered trade name, 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 (with PKNIC amendments) or as per the orders of a court judgment in Pakistan'.

The provisions mentioned herein above impose an obligation on the Complainant to prima facie establish that the Domain Name in dispute is infringing upon their registered trade name. The Sole Panelist finds that the Complainant has established this prima facie based upon the facts placed before the Panel by the Complainant, as they have registered the trade name 'Djuice' and the respective trademark, both globally and domestically, and this is evidenced by the certificates of registration of the trademark and the trade name in more than 10 countries, and the use of the trade name and the trademark by the Complainant, over the world, for more than a decade now. In case of registration in Pakistan, the Complainant has applied for the registration, and this is shown by the certificates of application of the trademark and the trade name, provided to DNDRC as annexure "B" and "C". In addition to this, the above stated clause requires the Complainant to show that a domain name already registered with PKNIC is an obvious derivation of their registered company name. This is portrayed by the fact that the domain name in dispute 'djuice.pk' is, in its totality, the trade name of the Complainant, which has been registered beforehand. There are no subsequent additions to the word, and neither is there any typo squatting, that could be seen by a change in the spelling or variation in the context of the word 'djuice'. Furthermore, the word 'djuice' does not possess a generic, or a literate meaning. It is very closely associated with the provision of the services by the Complainant and hence does not refer to any other thing generally. As for the third alternative requirement (it is clarified that any of these requirements being solely met will lead to a determination against the Respondent) in the above mentioned clause, the Complainant is required to demonstrate that the Respondent is involved in some activity that is not considered to be bona fide, as per the international best practice. This burden is satisfied by the fact that the Complainant's business and market is inextricably and uniquely connected with the trade name 'Djuice', and the provision of services under this name, and this is shown by the popularity level of the Complainant, and its fame and well-established reputation, in regards to the provision of cellular services, both internationally and domestically. Once the Complainant has shown compliance with this requirement (which the Panel is satisfied by), the burden of proof shifts to the Respondent to counter the Complainant's allegations. However, the Respondent has not submitted any response or facts to rebut the Complainant's contentions which, hence, stand determined in favour of the Complainant. It is quite clear from the facts that the Respondent has not registered the trade name 'djuice', and this is further strengthened by the fact that the respective trade name belongs to the Complainant, and hence it cannot be registered by the Respondent at the same time (no opposition with the Trade Mark Registry has been filed by the Respondent), and neither has the Complainant authorized or permitted the Respondent to use this trade name, nor is the Respondent, in any way affiliated with the Complainant, thus, it is clear that the Respondent has no legitimate rights in the trade name/mark, 'djuice'. Furthermore, the Respondent is making use of the trade name in its entirety, and complete derivation. There are no changes or alterations in the trade name. Moreover, the Respondent is utilizing the domain name in dispute 'djuice.pk' in a mala fide fashion. The Domain Name is being utilized to divert the Complainants' customers and prospective customers as well as general internet users to this as well as other websites through links. This negates the bona fide use of the domain name requirement and hence the Respondent's requirement to establish the bona fide intent or provision of services fails. The Complainant's contention as to legitimate rights and interests in the Domain Name, as evidenced by the fact that the Complainant is a well-established business with a reputable goodwill and fame are sustained. Moreover, there is not evidence available to show that the

Respondent is a known establishment nor a registered individual entity, nor has it been authorized by the Complainant, or is an associated dealer or franchisee of the Complainant. Hence, the Panel concludes that the Complainant succeeds in complying with the requirement set out in the Para 4 of the Policy, whereas the Respondent fails to do so.

Para 7 reads as:

'Any claim to trade name or copyright under .PK domain name is considered valid only if it is registered with an official trade-name/copyright/patent office in Pakistan, or is recognized by the courts of law in Pakistan (e.g. international trademarks).'

Hence, the Complainant is called upon to show that it has registered or applied for the registration of the trade name/trade mark. The Sole Panelist is hereby satisfied that this requirement is established, as the Complainant has provided the registration certificates of the trade name 'Djuice' in more than 10 countries, and the certificates of application for registration in Pakistan. The Respondent however has failed to do so, as the Respondent has not submitted any response or any evidence countering the Complainant's allegations, and hence not being successful in satisfying this requirement.

Para 16 of the Policy states:

'Registering a domain name does not confer any legal rights to that name and any disputes between parties over the rights to use a particular name are to be settled between the contending parties using normal legal methods and the "Dispute Resolution" method described above.'

The Sole Panelist finds that the proceedings have been commenced and concluded in accordance with the Rules. The Complainant submitted the Complaint, duly and appropriately filled, in compliance with the Rules, the Respondent however failed to do so, even though an opportunity was provided to them, as per the Rules.

Para 25 of the Policy reads:

'PKNIC has neither the resources nor the legal obligation to screen requested domain names to determine if the use of a domain name by an Applicant may infringe upon the right(s) of a third party. Consequently, as an express condition and material inducement of the grant of an applicant's ("Applicant") request to register a Domain Name, Applicant represents, agrees and warrants the following four statements and a failure to comply with them, or any other parts of the PKNIC policy, will cause PKNIC to cancel the domain registration of the non-compliant domains of Applicant:

- i. Applicant's statements in the application are true and Applicant has the right to use the domain name as requested in the Application;*
- ii. Applicant has a bona fide intention to use the domain name on a regular basis on the Internet;*
- iii. The use or registration of the domain name by Applicant does not interfere with or infringe the right of any third party in any jurisdiction in Pakistan, with respect to trademark, service mark, tradename, company name or any other intellectual property right;*
- iv. Applicant is not seeking to use the domain name for any unlawful purpose, including, without limitation, tortuous 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.'*

The Panelist finds it helpful to provide a detailed analysis of each of the above mentioned sub-clauses in the Para 25 of the Policy, and their applicability in this case.

Applicant's statements in the application are true and Applicant has the right to use the domain name as requested in the Application

The Applicant, in this case being the Respondent, is required to verify that he holds legitimate rights in the disputed domain name and a right to use the domain name. However, in this case, the Respondent fails to show any such rights, first, by the failure to respond to the Complainant's contentions, and secondly, the Respondent has failed to supply any documentation, showing his legitimate rights/interests in the disputed domain name, for example, registration certificates, etc, to the DNDRC. Another matter that calls for attention and consideration is the fact that the Respondent is not a known individual or a well-established company, thus it cannot be apprehended that the Respondent has any legitimate rights or interest in the Domain Name. The Complainant has been using other variants of the Domain Name for quite an extensive period of time now and hence it is evident that it holds legitimate interests in the Domain Name. This is further strengthened by the fact that the trade name 'Djuice' is quite reputable and is associated with the provision of the cellular services by the Complainant, both internationally and nationally. The trade name is well connected with the Complainant and thus it is the Complainant, rather than the Respondent, who holds rights in using the domain name in dispute.

Applicant has a bona fide intention to use the domain name on a regular basis on the Internet;

The Respondent is under an obligation to apply for and use the domain name with bona fide intention. This however, is not the case here, as the Respondent does not have any legitimate right to use the Domain Name, as the trade name, which forms the entirety of the Domain Name, is a registered trade name belonging to the Complainant. Furthermore, the Respondent has not obtained any permission or authorization by the Complainant to utilize the domain name in dispute. Moreover, since the trademark/name 'djuice' is a well known and established, the Respondent knew full well at the time of applying for the domain name that the Complainant had the legitimate right to the domain name. As such the intent of registering the domain name is not bona fide. Moreover, the use by the Respondent of the website also; the fact that at times the 'djuice' trademark and the use of telecom, mobile and wireless services etc. on the website exist demonstrates the intentional and violative use of by the Respondent of the domain name misleadingly to divert users. Hence, summing up the crux, it can be concluded that the Respondent is not involved in a bona fide use of the Domain Name.

The use or registration of the domain name by Applicant does not interfere with or infringe the right of any third party in any jurisdiction in Pakistan, with respect to trademark, service mark, trade name, company name or any other intellectual property right;

It is crucial to satisfy this requirement, as copyright infringement or breach of a trade mark ordinance clause is a severely punishable offence. The Respondent is in clear violation of the section.74 of the Trade Marks Ordinance 2000, which states that:

Use of trade mark by a person other than the proprietor thereof:-

- (1) The permitted use of a trade mark shall be deemed to be use of the trade mark by the owner of the trade mark and shall be deemed not to be use of the trade mark by a person other than the owner for any purpose for which such use is material under this Ordinance or any other law for the time being in force.*

- (2) *The tribunal while determining as to whom the benefit of use of a trade mark be passed, shall pass the benefit to none else, except to-*
- (a) *the proprietor of the trade mark, if the trade mark is registered; or*
 - (b) *the owner of the trade mark, if the trade mark is entitled to protection under the Paris Convention as a well known trade mark.*

Neither has the Respondent registered the trade name 'Djuice', nor has it applied to do so. However, the Complainant has not only registered the trade name 'djuice' globally, but it has also applied for the registration of the respective trade name in Pakistan, and this is evidenced by the certificates of application of the trade name in Pakistan, that the Complainant has provided to the DNDRC. Hence, the registration of the domain name by the Respondent interferes with and infringes the Complainant's rights.

Applicant is not seeking to use the Domain Name for any unlawful purpose, including, without limitation, tortuous 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.'

The Respondent is actively involved in the provision of web based services, that are very closely identical to the services provided by the Complainant, hence the Respondent is interfering in and with the prospective business of the Complainant by misleadingly diverting users. The Respondent's activity by using the Domain Name utilizes the Complainant's reputation to injure its business interests. This is also supported by the fact that the Respondent is misleading users to other links. All of the hereby mentioned allegations are supported by the fact that the Respondent is using the Domain Name for provision of a wide array of web based services conflicting with the services provided by the Complainant. It is also a threat to the gain that the Complainant might have in order to expand the profitability of its business. This is strengthened by the Respondent's failure to show any legitimate rights or interest that it might have in the Domain Name. The Complainant is a well-known cellular service operator and hence has a widely spread network, that is closely connected with fame, good reputation, goodwill and its trade name. This is being put at risk by the Respondent's use of the Domain Name in dispute, as the users, looking for the Complainant's web based services, might end up on the Domain Name, thinking it belongs to the Complainant, or is affiliated to the Complainant. Hence, causing confusion and ambiguity as to the authenticity of the domain name in dispute to the Complainant's users, who utilize the web based services, offered by the Complainant, on a regular basis.

The various ways, in which the domain name in dispute <djuice.pk> would cause confusion, is not limited to the ones mentioned above. In addition to the above discussed problems of the cyber squatting of the domain name that the Respondent's activity affects the critical issue of sending of email(s) by a user to the intended recipient, being the Complainant, but however, being received by the Respondent.

In case any "reasonable bystander" or "reasonable user" may be misled and confused when sending emails to this domain name that he is actually sending emails to the Complainant when in fact they are being misleadingly diverted to the Respondent. The confusing similarity and in fact identical natures of the domain name may lead to confidential and/or commercially valuable messages being received by the Respondent. This situation would be similar to the one that arose in the famous case commonly known as the One In A Million Judgment before the Supreme court of the Judicature In the Court of Appeal (Civil Division) On Appeal from the High Court of Justice Chancery Division, UK. The Judgment identified the likelihood that the sending of such emails would lead to substantial confusion which would be detrimental to business of an established business with legitimate interest in the use of the domain name. The Court also came to the conclusion that the act of registration of confusingly similar domain name would constitute passing-off:

It is accepted that the name Marks & Spencer denotes Marks & Spencer Plc and nobody else. Thus anybody seeing or hearing the name realises that what is being referred to is the business of

Marks & Spencer Plc. It follows that registration by the appellants of a domain name including the name Marks & Spencer makes a false representation that they are associated or connected with Marks & Spencer Plc. This can be demonstrated by considering the reaction of a person who taps into his computer the domain name marksandspencer.co.uk and presses a button to execute a "whois" search. He will be told that the registrant is One In A Million Limited. A substantial number of persons will conclude that One In A Million Limited must be connected or associated with Marks & Spencer Plc. That amounts to a false representation which constitutes passing-off.

Mr Wilson submitted that mere registration did not amount to passing-off. Further, Marks & Spencer Plc had not established any damage or likelihood of damage. I cannot accept those submissions. The placing on a register of a distinctive name such as marksandspencer makes a representation to persons who consult the register that the registrant is connected or associated with the name registered and thus the owner of the goodwill in the name. Such persons would not know of One In A Million Limited and would believe that they were connected or associated with the owner of the goodwill in the domain name they had registered. Further, registration of the domain name including the words Marks & Spencer is an erosion of the exclusive goodwill in the name which damages or is likely to damage Marks & Spencer Plc.

I also believe that domain names comprising the name Marks & Spencer are instruments of fraud. Any realistic use of them as domain names would result in passing-off and there was ample evidence to justify the injunctive relief granted by the judge to prevent them being used for a fraudulent purpose and to prevent them being transferred to others.

This case represents good law even today and was upheld finally in Appeal by the Court of Appeal. As such similarly, in this case the registration of the domain name "<djuice.pk>" by the Respondents would also constitute passing-off and a contravention of the criteria of The PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2.

In terms of The PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2 if a Complainant simply establishes this one criterion the registration would be deemed illegal, unlawful or otherwise invalid. As such since, in the opinion of the Panel this criteria has been established by the Complainant and no evidence to the contrary has been tendered by the Respondent in their Response, the same stands proved and constitutes adequate grounds for the transfer of the Domain Name "<djuice.pk>" to the Complainant.

Any email(s) sent to the email address admin@djuice.pk may not get any reply, nor any failure of delivery notification, hence misleadingly representing to the sender that any emails, reasonably assuming it to be of the Complainant, being the intended recipient, would not get any reply or possibly getting replies or being read by Respondents who are unauthorized in the regard. The email might be of any query that the user needs information upon, or any confidential data that the user might be disclosing in the email. As the email would be going to the Respondent, and the user may not be getting any response back, he might be misled into believing that the Complainant is inefficient, or the provision of the web based services by the Complainant have become ineffective leading to loss to the Complainant's business. This would yield a sufficient amount of confusion and ambiguity for the user, who would be misled into believing that he sent the email(s) to the Complainant, but instead it would be the Respondent who would be getting them. In addition to the confusion that this would cause to the user, the Complainant would also be adversely affected by this, as the Complainant, might lose its clientele or goodwill.

Another matter to be taken into consideration is whether the application and/or registration of the Domain Name "<djuice.pk>" contravene the Pakistan Penal Code or any applicable criminal law?

Before proceeding with this analysis the Panel feels compelled to clarify the basis and effect of this sub-issue. It is clarified that although Pakistani law does not apply by force of law over the PKNIC Jurisdiction it does apply as a contractual term to the Contract between the Respondent and PKNIC and defines the scope and terms of use of the domain name under The PKNIC - Internet Domain Registration Policy Aug

07, 2007 version 4.2. As such it is clarified for future disputes, Appeals and Complaints that the illegality and examination of Pakistani law in this context does not imply that Pakistani law has applicability or jurisdiction over PKNIC or the dispute. Instead the fact that Pakistani law is included as part of the terms of the PKNIC- Internet Domain Registration Policy Aug 07, 2007 version 4.2, the terms and conditions apply to PKNIC and all parties by virtue of contractual and representative clauses and the examination of Pakistani law is thus undertaken to examine whether any of these terms and conditions have been breached, violated and/or there is non-conformity by the applicant or PKNIC.

In this spirit and for this purpose alone the following provisions of Pakistani law are being analyzed. The ordinances, and the sections mentioned herein below, have been discussed at length in the landmark decision of the DNDRC in the case of standardchartered.pk, available on the DNDRC website.

Electronic Transaction Ordinance 2002.section 3.

Pakistan Penal Code 1860, sections 467, 470, 471, 473, 476, 479, 480, 481, 482, 483, 485,

Trade Marks Ordinance 2001, section 40, 4(1), and 74.

The above mentioned ordinances provide that the use of a registered trade name or a registered trade mark, by a third party, is illegal, and severely punishable, as stated in the respective statute. Hence any body, or any firm/corporation, involved in utilizing a trade name or a trade mark that is already registered by another party, is deemed to be liable to criminal prosecution, and maybe incurred with fine, as described in the particular ordinance.

B. Identical or Confusingly Similar

The contested domain name <djuice.pk> contains as its distinctive part the designation "djuice", which is identical to Complainant's distinctive trademark Djuice (see *Toyota Motor Sales USA v. Rafi Hamid dba ABD Automobile Buyer*, [WIPO Case No. D2001-0032](#)). The inclusion of the ccTLD denomination ".pk" shall be disregarded for the purpose of these proceedings. Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. Respondent has the burden of refuting this assumption. See, e.g., *EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.*, ICANN Case No. D2000-0047.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled.

In *Zwiesel Kristallglas AG v WWW Enterprise Inc.* Case No. D2005-1223, the Panel held that "for the purposes of assessing whether a domain name is identical or confusingly similar to a trade mark or service mark, the suffix ".com" must be disregarded as being simply a necessary component of a generic top level domain name".(see also *VAT Holding AG v Vat.com* Case No.D2000-0607;*LG Chemical Ltd v Changhwam, OH* Case No. D2000-0889;

In *LG Chemical Ltd v Changhwam, OH* Case No. D2000-0889 it was held that, "Having ignored the generic top-level domain (gTLD) ".com" of the domain name, the Panel finds that the domain name at issue is identical with the Complainant's trade name LG Chemical Ltd. and, also, with the Complainant's trademark and service mark "LG CHEMICAL" and the word portion of the "LG Chemical & Device" mark. As to the insignificance of the generic top-level domain, see *VAT Holding AG v Vat.com*, Case No. D2000-0607. Nor does it matter to the identicalness between the domain name and trademarks whether "lg" in "lgchemical" is an acronym of "lonely gate," the name of Respondent's proposed search engine, or derived from "Lucky Goldstar," the previous trade name of the Complainant.

Other cases to be taken into consideration include:

(*Rosemary Conley Diet and Fitness Clubs Limited v Nikolina Bartels-King* Case No.D2006-1401)

(Asset Loan Co. Ply Ltd v Gregory Rogers Case No. D2006-0300) available at www.wipo.int/amc/en/domains/decisions/word/2006/d2006-0300.doc clarifies the position with regard to the discussion under this head:

The Panel concludes, however, that the domain name is similar to the trademark and confusingly so. That is so for the following reasons. First, the test to be used is to assess how a reasonable bystander would construe the wording of the domain name compared with the trademark. In the opinion of the Panel, the dominant thrust of the trademark is to convey to the reader the name Asset Loan Co and it is this concept that makes up the entirety of the domain name. The fact that the trademark adds that the Asset Loan Co provides alternative financing with discretion is clearly secondary and subsidiary to the name itself and simply qualifies it.

See; (Post AG v. NJ Domains, [WIPO Case No. D2006-001](#))

In any event, as the unchallenged evidence is that 'the Complainant has established a well known reputation', it clearly has an unregistered trademark in that name and the domain name incorporates its entire name.

Similarly, it is established that the suffix ".pk" must be disregarded as simply being a necessary component of a country's Top Level Domain and the Panel is to assess the disputed domain name without the suffix or TLD ".pk". In comparing the disputed domain name with the Djuce Domain Names, the Panel would again disregard the suffixes such as ".com.pk", ".org.pk" and ".net.pk".

Complainant further alleges that Respondent's use of the Djuce name in the Domain Name at issue erroneously leads the Complainant's customers and customers of Complainant's authorized Djuce dealers into believing that the Domain Name is somehow in alliance with, endorsed by or sponsored by Complainant and/or its authorized Djuce dealers. Administrative panels and arbitrators have found domain names, which incorporate well-known or famous marks to be confusingly similar in that the offending domain name is misleading. See, *Nike, Inc.*, WIPO Case No. D2000-0167.

Complainant's mark and its services are famous. Complainant has been using its trademark as a web address and domain name for about a decade now. Acts and services are likely to conclude that the Domain Names are simply an extension of Complainant's business. Persons encountering Respondent's site will be misled into believing that the Complainant is beginning another business, which could be detrimental to Complainant. In view of the fame of Complainant's marks and the lack of distinctiveness afforded by the simple addition of non-distinctive or descriptive material, the Domain Name is misleading, along with causing acute confusion amongst the regular users of the Complainant, hence massively disrupting the business of the Complainant. Another factor to be taken into account here is the fact that the Djuce is an extension of the Complainant, that caters specifically to the youth of today, and hence, the juvenile minds being ignorant, and indifferent, are even more prone to be misled into believing that the domain name in dispute <djuice.pk> belongs to the Complainant.

Therefore, the Sole Panelist finds that the Domain Name is confusingly similar to the Djuce mark pursuant to the Policy paragraph 4(a)(i).

C. Rights or Legitimate Interests

According to the Complaint, it has not licensed or otherwise permitted Respondent to use its trademark or to apply for any domain name incorporating the mark.

The Complainants have established a *prima facie* case that the Respondent has no rights or legitimate interests in the domain name. The Respondent has not rebutted this and the way the Respondent has been using and is still using the contested domain name (djuice.pk) does not support a finding of rights or legitimate interests.

Consequently the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy, with reference to paragraph 4(c) of the Policy, are also fulfilled.

In *De Agostini S.p.A v Marco Cialone* Case No. DTV2002-0005, the Administrative Panel held that:

“...satisfying the burden of proving a lack of the Respondent rights or legitimate interests in respect of a domain name ... is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, and in line with other prior decisions, the Panel holds that it is sufficient that the Complainant shows a prima facie evidence in order to shift the burden of proof on the Respondent”.

Accordingly, once a complainant has made out a prima facie case that a respondent has no rights or interests in the domain name, the burden of proof shifts to the respondent to offer evidence of his rights or legitimate interests in the disputed domain name. (See also *Intocast AG v Lee Daeyoon* Case No. D2000-1467.

The Complainant submits that the Respondent is diluting the Registered Trade Marks and Trade Mark Applications. The Respondent is, in effect, preventing the Complainants from reflecting the Registered Trade Marks and Trade Mark Applications in a domain name that is meaningful to the conduct of their business. In *CSA International (a.k.a Canadian Standards Association) v John O.Shannon and Care Tech Industries, Inc.* Case No. D2000-007 I, the Administrative Panel held that *“the adoption by the Respondents of an Internet address substantially identical or confusingly similar to that of the name, Internet address and trade marks of the Complainant must inevitably and misleadingly divert consumers to that address and have the effect of tarnishing the trade marks”.*

According to paragraph 4(c) of the Policy the Complainant should prove that the Respondent has no right or legitimate interest in the Domain Name. According to the consensus view among panels, this condition is met if the Complainant makes a *prima facie* case that the Respondent has no rights or legitimate interests, and the Respondent fails to show one of the three circumstances mentioned in paragraph 4(c) of the Policy.

The Complainant contended that it did not authorize the Respondent to use the Djuce trademark in any way. Nor could the Panel establish any indications that the Respondent was previously known under the Domain Name or is using the Domain Name for *bona fide* offering of goods or services, or for non-commercial or fair use. For these reasons, the Panel finds that the Respondent has no rights or legitimate interest in the Domain Name.

The Respondent has no relationship with, license from or specific permission from the Complainant to utilize the ‘djuice’ trade mark or trade name, nor is the Respondent an authorized dealer, franchisee of the Complainant.

The Policy paragraph 4(c) allows three nonexclusive methods for the Sole Panelist to conclude that it has rights or a legitimate interest in the Domain Name:

(i) evidence of use of, or demonstrable preparations to utilize , the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services

In the present case, the Sole Panelist cannot confer any such activity by the Respondent. Even though the domain name in dispute is being used by the Respondent, it is not being done so for a bona fide provision of services. This is evidenced by the fact that the Respondent is using the domain name in dispute to transfer the user to other links, to various other domains that offer various web based cellular services.

(ii) the Respondent has been commonly known by the domain name, even if there has been no acquisition of the trademark or service mark rights.

The Respondent fails in entirety in satisfying this criterion. This is so as the Respondent has failed to provide the DNDRC with any supporting evidence, in order to show his creditability. So much so, the Respondent has not even provided any response to the DNDRC. Hence, the Sole Panelist cannot confer that the Respondent has been known by the domain name in the past, or hold any legitimate rights or bona fide interests in the domain name in dispute.

(iii) the Respondent is 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 burden of proof, under this head, is on the Respondent, to satisfy the Sole Panelist with his bona fide intent and bona fide provision of services. This is not the case here. The provision of services by the Respondent, or use of the domain name in dispute by the Respondent, cannot be considered to be a legitimate noncommercial or fair use of the domain name. This is so because the domain name in dispute is being used to divert the users onto other links. Furthermore, the services provided on the domain name in dispute are very similar to the ones provided by the Complainant, and hence the users are very likely to be misled into believing that the domain name in dispute is a subsidiary of the Complainant, or is affiliated with the Complainant. This would have an adverse effect on the Complainant's creditability and mass appeal. This is so because if the user is not satisfied with the services provided on the domain name in dispute, he would automatically blame the Complainant of the inefficiency and lack of proficiency suffered by him while browsing on the domain name in dispute. One other point to be noted and of considerable significance is the fact that the domain name in dispute mentions the email address of the Respondent, hence any emails that the user wishes to send to the Complainant, regarding the web based cellular services of the Complainant, or regarding any other enquiry of seeking information, will be sent to the Respondent, and hence the Complainant will lose its customer loyalty, along with causing utmost confusion to the users. If the Respondent replies to the email(s) in any way that is not in proportionality or in accordance with the Complainant's way of conducting business or provision of services, the Complainant will lose the trust and the creditability that the user(s) have in the Complainant.

Complainant alleges that Respondent has offered no bona fide good or services using the Domain Names, is not commonly known by any of the Domain Names at issue in this proceeding and cannot claim that it is making a noncommercial or fair use of the Domain Names. This has been discussed at length above and the Sole Panelist is satisfied that the Complainant is correct in its allegations against the Respondent.

The Respondent has provided no response to the allegations of the Complainant, even though an invitation to submit a response was sent to them, as per the Rules.

The file contains no evidence that the use of the Domain Names meets the elements for any of the nonexclusive methods provided for in the Policy paragraph 4(c). Therefore, the Sole Panelist finds that Respondent has no rights or legitimate interest in the Domain Names pursuant to the Policy paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy further provides that Complainant must prove the Respondent's registration and use of the domain names in bad faith. Paragraph 4(b) of the Policy sets out, by way of example, the kind of evidence that may be put forward.

The Complainant's trademark was registered and used well in advance of the date of registration of the disputed domain name. The mark is registered in various countries across the world, but has also been applied for registration in and used in Pakistan. Given the notoriety use of the Complainant's trademark and the distinctive nature of the mark, in particular through the combination of letters Djuce, it is inconceivable to the Panel in the circumstances that the Respondent registered the domain name without prior knowledge of the Complainant and the Complainant's mark.

This is strengthened by the fact that the disputed domain name is used for a website/blog that contains information on and links to other sites that offer products or services, some of which are similar to those offered by the Complainant, and some of which are not related to those of the Complainant. The Panel therefore finds that the Respondent by registering and using the domain name, intentionally created a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the domain name in dispute with the purpose of attracting Internet users to the website for commercial gain.

Considering all the facts and evidence, the Panel therefore finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

In *Telstra Corporation Limited v Nuclear Marshmallows* Case No. D2000-003 (“Telstra Case”), the Administrative Panel held that inactivity by a respondent may amount to the domain name being used in bad faith in the certain circumstances. Amongst others, the following two (2) circumstances were mentioned by the Administrative Panel in finding that passive bad faith use existed. These circumstances are where:

- (1) The complainant’s trade mark has a strong reputation and is widely known, as evidenced by its substantial use in the country of registration of the domain name as well as in other countries; and
- (2) There is no evidence whatsoever of any actual or contemplated good faith use by a respondent of the domain name.

See also; *ACCOR v. Tigertail Partners*, [WIPO Case No. D2002-0625](#)

For this finding it is irrelevant from where the Respondent has acquired the Domain Name or if it is the same entity, since for the purposes of the Policy, the acquisition of the domain name at issue constitutes registration. (See *MC Enterprises v. Mark Segal (Namegiant.com)*, [WIPO Case No. D2005-1270](#)).

The Domain Name is therefore so obviously connected with such a well-known name that its very use by someone with no connection with the industry suggests opportunistic bad faith (see *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v The Polygenix Group Co.* Case No. D2000-0 163).

The Panel finds it very well possible that the Complainant is correct in alleging that the Respondent is engaged in a pattern of ‘cyber squatting’ as contented in the case of *Fry’s Electronics, Inc v. Whois ID Theft Protection*, [WIPO Case No. D2006-1435](#); *The Hartz Mountain Corporation v. Whois ID Theft Protection*, [WIPO Case No. D2006-1319](#); *Charlotte Russe Holding, Inc. v. Whois ID Theft Protection*, [WIPO Case No. D2007-0371](#), and *Swarovski AG v. Whois ID Theft Protection*, [WIPO Case No. D2007-0225](#). However, it is not necessary to make a finding in this respect, since the Panelist has already concluded that the Respondent registered and is using the Domain Name in bad faith.

The Domain Name comprises of the term “djuice”, which is identical to the Complainant’s Djuice trade name. The Panel considers that the Djuice trademark has a well established reputation and is well known throughout the world. In accordance with *ACCOR v. Tigertail Partners*, [WIPO Case No. D2002-0625](#), the Panelist finds it is reasonable to conclude that only someone who was familiar with the Djuice trademark could have registered the Domain Name. Therefore the Panelist finds that the Domain Name was registered in bad faith.

For this finding it is irrelevant from where the Respondent has acquired the Domain Name or if it is the same entity, since for the purposes of the Policy, the acquisition of the domain name at issue constitutes registration. (See *MC Enterprises v. Mark Segal (Namegiant.com)*, [WIPO Case No. D2005-1270](#)).

The Complainant must also prove that the Respondent is using the Domain Name in bad faith.

According to paragraph 4(b) of the Policy an indication for use in bad faith is if the Respondent is intentionally attempting to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on his website.

The Respondent generates traffic to the website linked to the Domain Name by creating a likelihood of confusion with the Djuce trademark. The website is a so called "click through" website with links (e.g. an ad for on-line web based cellular services) to other websites and companies, none of them associated with the Complainant or its authorized dealers. Such use is considered to be commercial. Therefore, in view of paragraph 4(b) of the Policy, the Panel finds that the Domain Name is also being used in bad faith.

The Panel finds it very well possible that the Complainant is correct in alleging that the Respondent is engaged in a pattern of 'cyber squatting' as contented in the case of *Fry's Electronics, Inc v. Whois ID Theft Protection*, [WIPO Case No. D2006-1435](#); *The Hartz Mountain Corporation v. Whois ID Theft Protection*, [WIPO Case No. D2006-1319](#); *Charlotte Russe Holding, Inc. v. Whois ID Theft Protection*, [WIPO Case No. D2007-0371](#), and *Swarovski AG v. Whois ID Theft Protection*, [WIPO Case No. D2007-0225](#). However, it is not necessary to make a finding in this respect, since the Panelist has already concluded that the Respondent registered and is using the Domain Name in bad faith.

The Panel finds that the recent seminal decision in the case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), dated 30 Aug 2007, rendered through the DNDRC is of much use in analyzing the facts in this case and applying the various aspects of the PKNIC - Internet Domain Registration Policy Aug 07 2007, version 4.2 and the UDRP. As such much of the intricate legal analysis with regard to applicability of the PKNIC - Internet Domain Registration Policy Aug 07 2007, version 4.2 and the Rules and the UDRP can be avoided in this discussion and hence, much reference may be made to that decision here. The decision is available on the DNDRC website www.dndrc.com.

The Complainant contends that the Respondent registered and is using the Domain Names in bad faith in violation of the Policy paragraph 4(a)(iii).

The Policy paragraph 4(b) sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of domain names:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name;

The burden of proof, here, is on the Complainant to show that the Respondent is engaged in a mala fide provision of services, or mode of business. The Complainant, has, hereby, duly satisfied the Sole Panelist on this point, as the domain name in dispute is being used as link through web site to various other links, which may have paid the Respondent for this. Also, it may be a pay per click web site, whereby, every time a user visits the domain name in dispute, the Respondent gets a monetary value for it. The Sole Panelist is led to conceive these notions based on common sense and the logic that is derived out of the way the domain name in dispute is being utilized. The Respondent has failed to provide any response to the contentions made out against him by the Complainant, and hence the Sole Panelist could not be satisfied by the Respondent in order to change his views.

(ii) you have 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 you have engaged in a pattern of such conduct;

The domain name in dispute uses the Complainant's trade name in its entirety. The Complainant is a very widely and well established cellular service provider, and is commonly known by the trade name 'Djuice' all over the world. The Respondent has registered the domain name in dispute 'djuice.pk', and hence

prevented the Complainant from getting it registered and using it for their own purposes, or provision of services. The Complainant has other domain names, registered, which also use the trade name 'Djuice', which the Complainant uses for their business purposes. But as the domain name in dispute 'djuice.pk' has been registered by the Respondent, the Complainant, is prevented from using it for its own trade purposes.

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor;

This can be seen by the fact that the domain name in dispute has been registered, and is being used by the Respondent, for provision of various web based cellular services. The domain name in dispute diverts the user to various other links that provide similar services. Hence, affecting the business of the Complainant in an adverse fashion, and causing confusion to the Complainant's users. The Respondent, by registering the domain name in dispute, has prevented the Complainant from doing so, and hence affected their business. The creditability that is an asset for the Complainant has been greatly threatened by the Respondent's acts associated with the domain name in dispute.

(iv) 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 of your website or location or of a product

This is a very significant factor, and the Sole Panelist is content on the point that the Respondent is using the domain name in dispute for mala fide purposes. This is evidenced by the fact that the Respondent is utilizing the domain name in dispute for mala fide provision of services. This is so, because the domain name in dispute 'djuice.pk' uses the trade name of the Complainant 'Djuice', in entirety. Hence any user looking for the Complainant's online services will be misled into believing that the domain name in dispute belongs to the Complainant. And may think that the Respondent is an affiliate or authorized dealer of the Complainant, when this is not the case at all. Any mal services or inefficiency experienced by the user on the domain name in dispute would automatically be associated with the Complainant being considered inefficient, and hence the Complainant's goodwill and repute would be tainted.

The Complainant alleges that the Respondent has registered the Domain Name in order to prevent the Complainant from reflecting the trademark in the corresponding Domain Name and has engaged in a pattern of such conduct, thus meeting the criteria for subparagraph 4(b) (ii).

The Complainant alleges that the Respondent is using the domain name in dispute for the provision of web based cellular services, that is of the same nature as the services provided by the Complainant and this is being done without the permission of the Complainant. Complainant further alleges that Respondent registered and is using the Domain Names in bad faith. The Respondent's intent to prevent Complainant from using the Domain Names is further evidenced by his failure and refusal to provide a response to DNDRC despite an attempt to contact DNDRC and to counter the allegations incurred by the Complainant. The Sole Panelist additionally finds that this evidence is sufficient to establish the necessary elements of bad faith under the Policy paragraph 4(b)(ii).

The four criteria set forth in the Policy paragraph 4(b) are nonexclusive. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

Additional to the above mentioned and discussed elements; another factor found to support a finding of bad faith is the Respondent's knowledge of the Complainant's mark. The Complainant's trade name 'Djuice' is well established and is associated with reputable success and familiarity, especially in the niche of the market that caters to the young generation. Hence it is unlikely that the Respondent was not aware of the use of the 'djuice' mark by the Complainant. The 'djuice' trade name is not a generalized or literate word, however it is exclusively associated and connected with the business of the Complainant and hence forms the unique selling point for the Complainant.

The Complainant has had the right to use and has used the mark Djuce in various countries all over the world, including Pakistan, both substantially and continuously for about a decade now. The significant goodwill and value of the Djuce mark must have been clearly acknowledged and in the awareness of the Respondent. Given the fame of the trade name Djuce, it is clear that Respondent registered the Domain Names with full knowledge of Complainant's rights in the trademark and service mark Djuce. The Respondent's conduct prevents Complainant and its authorized dealers from promoting its own products and services and prevents Complainant from using these domain names. The result is that Internet traffic intended for Complainant or its authorized dealers can be diverted to the Respondent. The Respondent's use of the Domain Names creates a likelihood of confusion with Complainant's marks. Since the Respondent is not licensed to use the mark Djuce in this manner, the Complainant is harmed because Djuce's valuable trademarks and reputation are being placed into the hands of the Respondent over which the Complainant has no control. The fame and the goodwill attached to the Djuce mark is a source of profit to the Complainant, as the trade name 'djuice' is an asset for the Complainant. The public is harmed because it is likely to be confused as to the source of the goods and services that may be offered at sites operated under the Domain Names. Hence the Complainant's reputation is being adversely affected in the market and might lead to its popularity being tarnished, and its market share to deteriorate and hence cause a loss to the Complainant.

Actual or constructive knowledge of the Complainant's rights in the Trademarks is a factor supporting bad faith. See *Expedia, Inc. v. European Travel Network*, D2000-0137 (WIPO April 18, 2000).

Conclusion

The Panel finds it of utmost help and a source of guidance, in deciding the outcome of this case, to take in consideration, the cases, points and illustrations set forth in the recent decision of the case *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), dated 30 Aug 2007 and hence the following decision is based on the findings in this case.

Moreover, the Panel also recognizes and appreciates the efforts of the Complainants in assisting this Panel through a thoroughly professional and comprehensive drafting of the Complaint with adequate supporting evidence allowing this Panel to determine the various issues in this case.

Analyzing the details provided by the Complainant, the Panel perceives that the Djuce name and the Registered Trade Marks are well-recognized and highly acclaimed, both, domestically, and globally, hence the Complainant reserves crucial interest in them. The Respondent's utilizing the Djuce marks is most likely to endanger the creditability of the Complainant, hence causing its reputation to be adversely affected, and its customers being confused and misled.

In accordance with all the evidence provided, and taking the aid of all the case law mentioned, the Panel is of the opinion that the Respondents registered the domain name in dispute <djuice.pk> with mala fide intent, as at the time of the registration of the domain name. The Complainant's reputation and renowned proprietary rights and interest in the domain name were well-known and apparent since the Complainants have been one of the pioneers in establishing global and cross-border cellular based services and have well established goodwill in their Trademark/name and domain names, both, domestically and globally. Hence, on a balance of probabilities and based upon the substantial evidence placed before this Panel, it is unlikely that the Respondents were unaware of this fact. Furthermore, the fact that the Respondents have purported to offer the same services as the Complainant by using the domain name in dispute <djuice.pk>, which is identical to that of the Complainants Registered Trade Marks, has and is likely to cause substantial confusion and diversion of the loyal customers of the Complainant. In view of all contentions stated and discussion above, the Panel finds that the Respondent is in contravention of the provisions of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2, and UDRP, and hence, the Complainants are entitled to transfer of the domain name in dispute <djuice.pk>

7. Decision

For the foregoing reasons, the Panel therefore concludes and decides that

1. The Respondent's registration of the Domain Name is in violation of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2
2. The Respondent has no legitimate interest in the Domain Name.
3. The Domain Name is confusingly similar/ identical to Complainant's Trade Marks.
4. The Respondent is making mala fide use of the Domain Name.

Pursuant to Paragraphs 4 of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2, and Paragraph (i) of the UDRP the Panel therefore recommends to the PKNIC to transfer the registration of the domain name at issue <djuice.pk> to the Complainant, as prayed within 48 hours of receipt of this decision by email or it 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.