

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

SNGPL v. Syed Haider

Case No. C2010-0001

Also in PDF C2010-0001

1. The Parties

The Complainant is Sui Northern Gas Pipe Lines, located at 21-Kashmir Road, Lahore, Pakistan.

The Respondent is Syed Haider, located at Kashmir Park, Khokharki, Sialkot Road Gujranwala, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <sngpl.pk> is registered with PKNIC by an individual named Mr. Syed Haider located at Gujranwala, Pakistan. The disputed domain name has been registered by the Respondent since 30th April, 2008 valid upto 30th April, 2010.

3. Procedural History

Under the Supplemental Rules of DNDRC which override the ICANN Rules for Uniform Domain Name Dispute Resolution Policy in terms of paragraph 2 of the PKNIC - Internet Domain Registration Policy v 4.1, which states that “*DNDRC may consider and issue a recommendation in the matter in accordance with its own rules for such disputes or in default of such rules apply the Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999) and/or the Rules for Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999).*” As such DNDRC applies its Supplemental Rules to these proceedings as well as the UDRP and in case of any conflict the DNDRC Supplemental Rules to the ICANN Rules for the UDRP and UDRP apply.

The Complaint was filed with the Domain Name Dispute Resolution Center (the “DNDRC”) on 30th March, 2010.

In accordance with the PKNIC - Internet Domain Registration Policy and the Rules of ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP], paragraphs 2(a) and 4(a), DNDRC formally notified the Respondent of the Complaint via email dated Friday, 14th May, 2010 and the Respondent was asked to provide DNDRC with the Response in the format provided. The Respondent was informed that if a Response was not received within 7 days from the notification, the dispute would proceed *ex parte*.

The Respondent failed to submit the Response. Under section 5(e) of the UDRP, the Panel has the authority, in the absence of a proper response, to commence with the proceedings in default and to determine the matter *ex parte* based upon the Complaint. The proceedings commenced on 21st May, 2010.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), the Center appointed Mr. Mustafa Syed as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, to ensure compliance with the Rules, paragraph 7.

The language of the proceedings is English, being the language of the registration agreement.

4. Factual Background

The Complainant is Sui Northern Gas Pipe Lines, a leading natural gas provider in Pakistan. The Complainant posted pre-tax profit of PKR 3,981 million for the year ended June 30, 2008. The balance sheet of the Complainant indicated total assets of PKR 97,648 million representing increase of 16.69% over the previous year. The Complainant has maintained a steady and consistent pace of its growth throughout and provided a record number of gas connections to industrial, commercial and domestic consumers by expanding its distribution and transmission network through the four provinces in Pakistan. The gross profit ratio and interest coverage ratios have been increased considerably, whereas the debt equity ratio has reduced. These factors improved due to optimum utilization of the Complainant's resources and stringent financial controls of the Complainant. The Complainant envisages to be the leading integrated natural gas provider, seeking to improve the quality life of its customers and achieve maximum benefit of its stakeholders by providing an uninterrupted and environment friendly energy resource. The Complainant's mission is a commitment to deliver natural gas to all doorsteps through continuous expansion of its network, by optimally employing technological, human and organizational resources, best practices and high ethical standards.

The Complainant is the largest integrated gas company serving more than 3.4 million consumers in North Central Pakistan through an extensive network in Punjab and NWFP. The Company has over 46 years of experience in operation and maintenance of high-pressure gas transmission and distribution systems. It has also expanded its activities to undertake the planning, designing and construction of pipelines, both for itself and other organizations. SNGPL operates in a region of the nation that has a rapidly growing demand for natural gas and power generation due to significant industrial development.

The Complainant was incorporated as a private limited Company in 1963 and converted into a public limited company in January 1964 under the Companies Act 1913, now Companies Ordinance 1984, and is listed on all the three Stock Exchanges of the Country. The Complainant's transmission system extends from Sui in Baluchistan to Peshawar in North West Frontier Province (NWFP) comprising over 7,347 KM of Transmission System (Main lines & Loop lines). The distribution activities covering 1,624 main towns along with adjoining villages in Punjab & NWFP are organized through 8 regional offices. Distribution system consists of 67,449 KM of pipeline.

The Complainant has 3,451,142 consumers comprising Commercial, Domestic, General Industry, Fertilizer, and Power & Cement Sectors. Annual gas sales to these consumers were 584,895 MMCF worth Rs. 168,933 million during Jul 08 - Jun 09.

The Complainant is very well known in the Gas and natural resources sector. The trade name Sui Northern Gas Pipe Line is very closely associated with the well established repute and market share of the Complainant.

The Complainant has not authorized and/or granted any affiliation and/or association to the Respondent at any point in time to use/employ the trade name of the Complainant.

The Respondent is an individual named Syed Haider. No other information is available of the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to Complainant's trade name SNGPL, that Respondent has no rights or legitimate interests in respect of the disputed domain name and that Respondent has registered and is using the disputed domain name in bad faith.

The Complainant asserts that the SNGPL is the trademark/name of Sui Northern Gas Pipe Lines Limited, which is a government owned organisation and hence no other organisation can use the SNGPL name to sell his business/services. The Respondent has not only registered the trade name SNGPL but has also published natural gas related business on the domain name in dispute and is also using the same platform to sell the non natural gas related business, for example natural science oriented information and links to websites etc.

The Complainant contends that the word SNGPL, which is the essential component of the unregistered trade name, has been reproduced and incorporated into the domain name in dispute. The thrust of the trade name is convey to the user/read/consumer the name SNGPL and it is this concept that makes up the domain name and causes confusion to the user/consumer/reader.

Further, the Complainant alleges that the domain name in dispute is completely identical to the trade name of the Complainant, being SNGPL that is associated with the Complainant throughout Pakistan.

The Complainant stresses that the Respondent has no rights or interests in the domain name in dispute neither does it have any legitimate interests to use the trade name SNGPL in the domain name. The Respondent's name is Syed Haider and does not resemble the domain name at all. Neither has the Respondent been known by the domain name in dispute at all at any point.

The Complainant alleges that the Respondent is not making a legitimate non commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade n of the Complainant.

There is no linkage between the Complainant and the Respondent, nor between the Respondent and the domain name in dispute. There is also no relationship in any way, either by way of affiliation or association between the Respondent and the Complainant.

The domain name in dispute is being used for procurement of services very similar to that of the Complainant. Since the Complainant is a government owned organisation, it holds monopoly in the market/industry of natural gas and natural resources.

The Respondent's act of registering the domain name in dispute is actually and in effect diluting the trade name of the Complainant and preventing the Complainant from registering the domain name for the provision of their own services, being bona fide, since it is the Complainant who asserts legitimate rights and interests in the domain name in dispute. The domain name in dispute is being used to offer services relating to gas, gas pipe lines, natural resources, and other non-gas/natural resources related services, for example natural science oriented information and

links to websites etc.

The Complainant has in no way, authorized or permitted the Respondent to use the trade name SNGPL or use the domain name in dispute for any purpose.

Hence the Complainant wishes to get the domain name in dispute <sngpl.pk> to itself.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

The application for the registration of the domain name in dispute <[sngpl.pk](#)> on behalf of the Complainant is regulated by both, the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 as well as the UDRP Rules.

The Respondent applied for registration of the disputed domain name <sngpl.pk> on the basis of these regulations and was allowed registration subject to the same.

The PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 paragraph 6 states that:

“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:

- 1. Applicant's statements in the application are true and Applicant has the right to use the Domain Name as requested in the Application;*
- 2. Applicant has a bona fide intention to use the Domain Name on a regular basis on the Internet;*
- 3. 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;*
- 4. 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.”*

Additionally the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 paragraph 4 states that:

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 of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, agitates 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.

ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) lays down three basic requirements under paragraph 4(a) on the basis of which a domain name Complaint shall be decided:

- (i) Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and*
- (ii) Respondent has no rights or legitimate interests in respect of the domain name; and*
- (iii) Respondent's domain name has been registered and is being used in bad faith.*

Therefore the Panel shall determine the Complainant subject to the following issues:

- 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).

Illegality, unlawfulness or otherwise invalidity of the Application & Registration

In terms of the PKNIC - Internet Domain Registration Policy Aug 7, 2007 . ver 4.2a registration of a domain name is allowed subject to inter alia paragraph 1 & 4 which state:

“with the exception of any applications/cases for registration that attempt to register a 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,*
- 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.*

Under the head of Illegality, unlawfulness or otherwise invalidity of the Application & Registration to assess whether the application and registration of the Domain Name in

dispute “<[sngpl.pk](#)>”, is ab initio illegal the following aspects in the context of this dispute are to be assessed:

- i. Whether the Domain Name in dispute “<[sngpl.pk](#)>” infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the Domain Name in dispute “<[sngpl.pk](#)>” is bona fide?
- iii. Whether the application and/or registration of the Domain Name in dispute “<[sngpl.pk](#)>” contravenes the Pakistan Penal Code or any applicable criminal law?

In the seminal case of *Standard Chartered PLC v. Hosting Campus Domain Case No. C2007-0001* the DNDRC used for the first time the conditions for deciding the issue of Illegality, unlawfulness or otherwise invalidity of the Application & Registration as laid out in the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 and made use of the same in rendering the landmark decision related to the disputed domain name <standardchartered.pk>, whereby it was held that:

In this context the following aspects of the dispute will be addressed in this decision:

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 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 Panel therefore, concludes that the registration of the domain name “<[standardchartered.pk](#)>” would be illegal, unlawful and otherwise invalid in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 not to mention that the Respondent’s registration and/or use of the domain name “<[standardchartered.pk](#)>” could possibly give the impression that PKNIC (though PKNIC under International best practice would not have any liability if it had no knowledge but once it would have notice would have a duty to act) by allowing the maintenance of such registration would be committing a contravention of the Pakistani criminal law and a breach of its own Internet Domain Registration Policy June 20, 2006 version 4.1.

It is once again reiterated and 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 June 20, 2006 version 4.1, 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.

The Panel, taking into account the discussions and findings in the case of <standardchartered.pk> will now apply those onto the facts of this case and will deal with each of the sub-issues sequentially below:

- i. **Whether the Domain Name in dispute “<[sngpl.pk](#)>” infringes upon, or is an obvious derivation of, a registered trade name / trade mark?**

The Complainant is a utility organization offering services in the following areas:

- Construction of transmission and distribution pipeline networks
- Compressor station design / planning and installation
- Route / site feasibility studies
- Project planning and permissions
- Preliminary cost and design estimates
- Surveying
- Mapping
- Right of way acquisition
- Engineering & design, network planning
- Station automation & control, SCADA
- Construction of gas pressure reduction and custody transfer meter stations
- CAD / G.I.S
- Pipeline / facility design
- Pipeline coating
- Construction management
- Pipeline integrity management
- Corrosion control systems
- High definition surveying
- Code compliance reviews

The primary issue is whether the Complainant has protectable rights in the mark/name to which it contends Respondent's Domain Name is confusingly similar. In this case, the Complainant has not registered the name Sui Northern Gas Pipe Lines as a trademark/tradename, therefore the questions arise as to (i) whether the Policy applies to unregistered trademarks and (ii) whether the mark at issue has acquired sufficient distinctiveness through use and promotion to identify the source of this particular service with Complainant.

With regard to the first aspect, it is undisputed and accepted practice, that paragraph 4(a)(i) of the Policy refers merely to a "trademark or service mark" in which the complainant has rights, and does not expressly limit the application of the Policy to a registered trademark or service mark. Further, the WIPO Final Report on the Internet Domain Name Process (*The Management of Internet Names and Address: Intellectual Property Issues*, April 1999), from which the Policy is derived, does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names. It is therefore open to conclude that the Policy is applicable to unregistered trademarks and service marks.

It is pertinent to note that the disputed domain name is not a generic/literate word. It is an abbreviation denoting the full trade name of the Complainant. It is the commonly used short form when referring to the Complainant. Bearing in mind the large customer base that the Complainant has built and is providing the above mentioned services to, it can be reasonably inferred by the Panel that the tradename is not only important to the Complainant, but is in fact closely associated with recognition customer loyalty and provision of services via internet (online services). The Complainant is currently providing a multitude of services online via its official website. Thus, the registration under a similar/confusingly similar domain name by the Respondent may not only confuse the existing customer(s) of the Complainant looking for the Complainant's website but may also cause new customers being misled into believing that the disputed domain name is the disputed domain name is also being operated by the Complainant.

The fact that in this case, the Complainant has not registered trademark/tradename or service mark for itself does not preclude a finding that it has established trademark or service mark rights in that name for the purpose of the Rules. Indeed, a fundamental principle of trademark law is that rights in a trademark can be acquired through use, and such rights exist even though the trademark may not be registered.

With regard to the second aspect (whether the Complainant has common law trademark rights in its trade name), the Panel notices that common law trademark and service mark rights exist

when a party proves that there is enough goodwill and reputation in and to a name and sufficient association of the same with the party itself, no matter how strong or weak those trademark and service mark rights may be.

The Panel notes that the Complainant has bona fide rights to the disputed domain name since the same is closely associated with its recognition in the market and is used as a commonly known abbreviation of the Complainant by its massive customer base. Next, the Panel notes that the Domain Name incorporates the Complainant's trade name in its entirety. Numerous panel decisions under the Policy have regarded that as a compelling indicator that the domain name at issue is confusingly similar to the complainant's mark.

The issue under consideration here is whether or not the disputed Domain Name is confusingly similar to the Complainant's tradename. In coming to a conclusion in this aspect, the Panel first notes the approach to the confusing similarity issue which was adopted by the panel in *Research in Motion Limited v. One Star Global LLC*, [WIPO Case No. D2009-0227](#), where the domain name <unofficialblackberrystore.com> was held to be confusingly similar to the complainant's BLACKBERRY mark. The panel in *Research in Motion Limited* took the view that the confusing similarity requirement in paragraph 4(a)(i) of the Policy sets a fairly low threshold test, which is concerned only to establish that the complainant has sufficient rights to give it *standing* to bring the complaint (citing *Aubert International SAS and Aubert France SA v. Tucows.com Co.*, [WIPO Case No. D2008-1986](#)). This Panel respectfully agrees with that approach.

It is clear from the discussions above that the Domain Name in dispute "<sngpl.pk>" is not just similar but is in fact identical to the trade name of the Complainant who have Common law rights in the trade name which has been reproduced in entirety into the disputed domain name.

A fundamental principle of trademark law is that rights in a trademark can be acquired through use, and such rights exist even though the trademark may not be registered. Therefore, given that the Complainant has been using its trade name in association with its business for a number of years, in fact since 1964, decades prior to the disputed domain name being registered leads to the Complainant having rights in the trade name even though the same is not officially registered.

The Complainant has been using its trade name Sui Northern Gas Pipe Lines (SNGPL) since its establishment in 1964. Since the Complainant has never changed/altereD/modified its trade name is clear indication of the fact that the Complainant is widely recognized and well renowned with its trade name. This is further strengthened by the humungous sale/revenue the Complainant generates and the massive consumer base that it has. More importantly, since the Complainant is a government owned organization and is the sole provider of gas/natural resources services throughout the province of Punjab, Pakistan, it is highly likely that a large amount of people residing in the area/locality are well versed with the Complainant's trade name, and whenever/wherever the term SNGPL is used, they associate the same with the Complainant.

Furthermore it is established law to disregard the ccTLD when considering the matter of confusing similarity or obvious derivation, as the addition of the suffix ".pk" does not create any distinctive distinction that may eliminate the possibility of confusion by the Complainant's customers (see *Nokia Corporation v. Firdaus Adinegoro/Beli Hosting*, [WIPO Case No. D 20040814](#)). Therefore the Panel determines the domain name in dispute <sngpl.pk> to be an obvious derivation of the Complainant's trade name.

As per paragraph 1 of The PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2, if a Complainant simply establishes this one criterion of infringement upon a registered trade

mark/name, the registration would be deemed illegal and unlawful and for all purposes invalid. In addition to this, the fact that the Respondent has failed to submit a Response to the DNDRC even when an opportunity to do so was provided to him, the Panel is required to decide the matter based upon the Complaint on an ex parte basis. Therefore subject to the above stated discussion, the Panel may well determine the domain name in dispute to be transferred to the Complainant. However for the sake of brevity, clarity and completeness (but not to create any binding precedent requiring the same to be followed in the future), the Panel will also assess and determine the remaining issues as listed above.

ii. Whether the application and/or registration of the Domain Name in dispute “<[sngpl.pk](#)>” is bona fide?

The Complainant has made use of its trade name SNGPL, which has been reproduced and incorporated in entirety into the disputed domain name, since its foundation in 1964. Furthermore, the Complainant has used the same trade name to offer its multitude services throughout Pakistan, especially in the region of Punjab, where the Complainant holds monopoly in the sector of gas/natural resources. It is thus apparent and reiterated by the facts provided by the Complainant its trade name is widely recognized and that it is closely associated with the Complainant. The Complainant does not only offer physical services, but also uses the internet to offer online services vide its domain name [www.sngpl.com.pk](#). Thus, in order to safeguard its trade name on the ccTLD of .pk as well, the Complainant sought to register the domain name sngpl.pk, it was unable to do so since the same is being passively held by the Respondent. The Respondent has failed to show any bona fide intent/purpose on his part which could be taken into consideration. Furthermore, the Respondent’s omission of a Response is further evidence of mala fide on his part and in registering the disputed domain name, thus obstructing the Complainant from doing so for its own purposes, especially when it has been using the same trade name for well over four decades now.

Furthermore, since the Respondent is also residing in the same jurisdiction as that of the Complainant, it is highly unlikely that the Respondent was not aware of the Complainant, its distinctive nature of being the sole provider of gas/natural resources. So much so, it is highly probable that the Respondent is himself a consumer of the Complainant. The Panel concludes that the Respondent must therefore have known of the Complainant’s name and business, and that it is not reasonably credible that the Respondent’s purpose would be of a bona fide nature, as appropriation of a well known trade name of which a Respondent must have been aware, for the purposes of a domain name without authorization, is commonly a sufficient basis for a finding lack of bona fide.

It is the opinion of the Panel that in order to determine this sub-issue an analysis of the actual and possible intention of the Respondent behind registration of the Domain Name in dispute “<[sngpl.pk](#)>” is relevant to assist the Respondent in inter alia establishing the bona fide nature of the registration and countering the argument that the registration is not illegal nor intended to deprive the Complainant from use of their domain name and creating the possibility of confusion proliferating in the users and customers due to similarity and identical nature of the domain name to their other domain names and trade marks and trade names.

In this respect, it can be reasonably opined that the Respondent is aware of the famous nature and large customer base of the Complainant at the time when the Respondent registered the Domain Name in dispute “<[sngpl.pk](#)>” is relevant. This is so because both the Complainant and the Respondent are located in the same province, Punjab, where the Complainant is a utility service provider and it can reasonably be inferred that the Respondent is himself a customer of the Complainant. Thus, it can be safely said that the Respondent was well aware of the Complainant’s existence and use of the tradename at the time of registering the domain name in dispute. Furthermore, the Respondent has not submitted any response indicating any/all facts,

contentions and/or any other information that could assist in inferring his factual position in this case and that could be taken into account while rendering this Decision.

In the present case the fact that both parties are present in the same geographic location i.e. the province of Punjab and the Respondent may, in high probability be well aware of the existence and value of the Complainant's trademark, trade name, existing domain names and customer base and might be a customer himself, is indicative of the Complainant's contention that the Respondent's registration of the Domain Name in dispute "<[sngpl.pk](#)>" lacks bona fide.

Moreover, the fact that the Respondent chose specifically to register a domain name not just similar but identical to the Complainant's trade name is also relevant.

Most importantly the failure of the Respondent to provide any facts and details as to the alleged non-commercial purpose have failed to assist them in discharging the burden of their allegation that there is a legitimate and non-commercial purpose in conformity with the PKNIC-Internet Domain Registration Policy Aug 7, 2007 . ver 4.2 for which the Respondents initially registered the Domain Name in dispute "<[sngpl.pk](#)>". Moreover, the deliberate nature to conceal the purpose of the registration by the Respondents and their intentions for use in connection with the Domain Name in dispute "<[sngpl.pk](#)>" brings into doubt the bona fide of the Respondent.

From the discussion under this second sub-issue it can be seen that there are requisite and adequate facts; failure to prove otherwise; deliberate refusal to mention or establish and in fact concealment of the purpose or legitimate interest over the Domain Name in dispute "<[sngpl.pk](#)>".

Taking into account all of the above, it would not be probable to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate and constitute evidence of bona fide on the part of the Respondent. Thus the Panel finds the second criteria of paragraph 1 of The PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 to be established as well thus the registration of the domain name in dispute is held to be deemed illegal and unlawful and for all purposes invalid.

iii. Whether the application and/or registration of the Domain Name in dispute "<[sngpl.pk](#)>" contravene the Pakistan Penal Code or any applicable criminal law?

Although Pakistani law does not apply by force of law over PKNIC's jurisdiction, conformity with it is a contractual term of the agreement executed between the Respondent and PKNIC, therefore any illegality pertaining to the Application and Registration of the domain name in dispute would render the registration of the domain name in dispute to be void.

In this spirit and for this purpose alone the following provisions of Pakistani law are being analyzed.

The relevant laws pertaining to registration of the domain name in dispute includes the Trade Marks Ordinance, 2001 section 4 and 40, The Electronic Transactions Ordinance, 2002 section 3, subject to which infringements of Trade Marks and Trade Names is equated with the infringement of domain names hence the Pakistan Penal Code section 478(1), that deal with infringement of Trade Marks, could possibly also cover domain names.

Additionally under the Pakistan Penal Code, 1860 sections 464, 470, 471, 473, 476, 479, 480, 481, 482, 483 and 485 the continuing registration of the domain name in dispute "<[sngpl.pk](#)>" by a person other than the owner/rightful holder/authorized user of the trade marks/names could be construed to be an offence on multiple accounts, and by operation, would not only give the impression to the Respondent that PKNIC (though PKNIC under International best practice would not have any liability if it had no knowledge but once it would have notice would have a duty to act) was allowing aiding, abetting, encouraging and conspiring with the Respondent and would also be liable to criminal offences under the above mentioned legislations.

Lastly by operation of the Electronic Transactions Ordinance 2002 section 3 and the Prevention of Electronic Crimes Ordinance 2009 section 15 (although, the same is not in effect at the moment, but it was at the time of registering the disputed domain name by the Respondent) it can be construed that in any event where a Respondent has established or is using a website or a domain for any purpose, in which he does not hold legitimate interests, is entitled to be charged with the offence of spoofing under s.15 of the PECO 2008. The punishment under this legislation is not simply limited to fines and could also amount to imprisonment.

The above mentioned factors could increase the likelihood of giving rise to liability under the above mentioned legislations, which in turn could raise significant doubt regarding the legitimacy and bona fide of the Respondent's registration of the domain name in dispute.

In the opinion of the Panel this criteria has been sufficiently satisfied by the Complainant and no evidence to the contrary has been tendered by the Respondent. However 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.

The Panel in addition to the above would also make mention of another way in which the use of the Domain Name under Dispute "<sngpl.pk>" would cause confusion and would be contrary both the letter and spirit and public policy of the ICANN UDRP as well as the PKNIC - Internet Domain Registration Policy Aug 07 2007 version 4.2. DNDRC had sent emails to the following addresses:

contact@sngpl.pk sent on Friday 14th May, 2010 12:09

administration@sngpl.pk sent on Friday 14th May, 2010 12:09

support@sngpl.pk sent on Friday 14th May, 2010 12:09

hostmaster@sngpl.pk sent on Friday 14th May, 2010 12:09

admin@sngpl.pk sent on Friday 14th May, 2010 12:09

webmaster@sngpl.pk sent on Friday 14th May, 2010 12:09

This demonstrates that in case any "a reasonable bystander" or "reasonable user" may be misled and confused when sending emails to this domain name that the domain name may be that of the Complainant. A customer, seeking any of the online services being provided by the Complainant, seeking any information, providing his own confidential information etc may be misled into sending an email to any of the above email addressed considering either/all of them to be that of the Complainant. In such a fashion, not receiving a response, or his confidential information being misused, or any other confusion being created in a customer's mind would not only affect the customer loyalty that forms an asset for the Complainant but might also endanger the Complainant's sales/profits/revenue that the Complainant earns from its customer base. The confusing similarity and in fact identical natures of the domain name would lead to confidential 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 "<[sngpl.pk](#)>" by the Respondents would also constitute passing-off and a contravention of the criteria (i), (ii) and (iii) of paragraph 1 of the PKNIC - Internet Domain Registration Policy Aug 07 2007 version 4.2.

In order to succeed in their claim, Complainant must demonstrate that all of the elements enumerated in Paragraph 4(a) of the Policy have been satisfied. The Panel shall continue to deal sequentially with the next three issues:

- (i) the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant have rights; and
- (ii) the Respondents have no rights or legitimate interests with respect to the domain name; and
- (iii) the domain name has been registered and used in bad faith.

A. Identical or Confusingly Similar

The basic element to be taken into account while discussing this head is whether the Complainant has protectable rights in the tradename to which it contends that the disputed domain name is confusingly similar.

The Complainant has not registered the name Sui Northern Gas Pipe Lines (SNGPL) as a trademark/tradename, therefore the questions arise as to (i) whether the Policy applies to unregistered trademarks and (ii) whether the mark at issue has acquired sufficient distinctiveness through use and promotion to identify the source of this particular service with Complainant.

As far as the first question is concerned, it is undisputed and accepted practice, that paragraph 4(a)(i) of the Policy refers merely to a “trademark or service mark” in which the complainant has rights, and does not expressly limit the application of the Policy to a registered trademark or service mark. Further, the WIPO Final Report on the Internet Domain Name Process (The Management of Internet Names and Address: Intellectual Property Issues, April 1999), from which the Policy is derived, does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names. It is therefore open to conclude that the Policy is applicable to unregistered trademarks and service marks.

Therefore, in the Panel’s view, the fact that in this case Complainant has no registered trademark or service mark for its trade name Sui Northern Gas Pipe Lines (SNGPL) does not bar a finding that it has established trademark or service mark rights in that name for the purpose of the Rules. So much so, one of the fundamental principle of trademark law is that rights in a trademark can be acquired through use, and such rights exist even though the trademark may not be registered. This is made out in this case, since, as reflected by the facts submitted by the Complainant, the same has been using the trade name SNGPL since its establishment back in 1964.

With regard to the second question (whether Complainant has common law trademark rights in the name Sui Northern Gas Pipe Lines), the Panel notices that common law trademark and service mark rights exist when a party proves that there is enough goodwill and reputation in and to a name and sufficient association of the same with the party itself, no matter how strong or weak those trademark and service mark rights may be (Action Sports Videos v. Jeff Reynolds, WIPO Case No. D2001-1239).

On the other hand, even if Complainant’s trade name acquired goodwill and reputation only in a limited capacity, this would still be sufficient to establish common law trademark rights within the meaning of paragraph 1(a)(i) of the Policy. The Panel endorses the following observation of the Administrative Panel in Funkskool (India) Ltd. v. funskool.com Corporation, WIPO Case No. D2000-0796, wherein it was stated as follows:

“The Policy places no limitation on the operative extent of a trademark, which the Complainant must show the disputed domain name to be identical or confusingly similar to.”

In the light of the above, the Panel accepts that Complainant has provided adequate grounds for a finding that it holds common law trademark and service mark rights in the name Sui Northern Gas Pipe Lines (SNGPL).

In the WIPO Decision *MatchNet plc. v. MAC Trading Case No. D 2000 – 0205* it was held that:

Does the reference to “trademark or service mark” in paragraph 4(a)(i) of the Uniform Policy include a reference to unregistered marks?

In The British Broadcasting Corporation v. Jaime Renteria ([WIPO Case D2000- 0050](#), March 23, 2000) the Administrative Panel addressed the question of unregistered trade marks and stated at page 6 of the decision: “This Administrative Panel acknowledges that the Uniform Policy in paragraph 4(a)(i) refers merely to a ‘trademark or service mark’ in which the Complainant has rights, and in particular does not expressly limit the application of the Uniform Policy to a registered trademark or service mark of the Complainant”.

In WIPO Case D2000-0131, April 13, 2000, *SeekAmerica Networks Inc. v. Tariq Masood and Solo Signs*, the Administrative Panel accepted that the Rules do not require that the

Complainant's trade mark or service mark be registered by a government authority or agency for such rights to exist and held that:

This Administrative Panel accepts the reasoning of the above decisions and in the absence of any submissions from the Respondent relating to distinctiveness, concludes that AmericanSingles is a service mark for the purposes of paragraph 4(a)(i) of the Rules. In the absence of any contrary or rebuttal evidence from the Respondent the Administrative Panel accepts the Complainant's claim that it has rights in said common law service mark.

Common law trademark rights exist when a party can establish goodwill and reputation in and to a name. The Panel has considered the Discussions and Findings in the WIPO Decision in *David Gilmour a.o v. Ermanno Cenicolla* ([WIPO Case No. D2000-1459](#)).

The Panel opines that Paragraph 4(a)(i) of the Policy does not focus on how strong or weak those trademark rights may happen to be. The Panel has taken into account the Discussions and Findings in the WIPO Authority *Action Sports Videos v. Jeff Reynolds* ([WIPO Case No. D2001-1239](#)). The *Action Sports Videos* decision, also mentioned earlier, is relevant because it demonstrates that rights under the Policy can exist in marks which are descriptive and which have no secondary meaning.

The Complainant has used the "sngpl" mark to advertise and promote its services since 1964 and has been using the same name without any hiatus whatsoever. The Complainant has been using this trade name for a considerable period of time, both persistently and consistently and is well recognised and associated with the same. This indicates that the Complainant has acquired sufficient goodwill and reputation in the "sngpl" name.

In Emmanuel Vincent Seal trading as Complete Sports Betting v. Ron Basset Case No. D2002-1058, it was held:

A. Identical or Confusingly Similar

it is clear from many, many prior decisions that the reference to "rights" in Paragraph 4(a)(i) of the Policy includes both registered and unregistered trademark rights.

Complainant has demonstrated sufficiently that they hold bona fide and legitimate interests in the trade name SNGPL and it is this act of incorporating the words SNGPL, and that this trade name is incorporated in its entirety in the domain name in dispute. The suffix ".pk" should be disregarded for the purpose of comparison under this criterion of the Policy.

The Panel also notes that the Respondent has not challenged/countered the Complainant's assertion that the Respondent has been using the domain name, <sngpl.pk>, for its website since registering that domain name back in 2008.

In assessing identity and confusing similarity for the purposes of paragraph 4(a)(i) of the Policy it is acceptable for the generic domain suffix to be ignored.

The Panel finds that the Domain Name is identical or confusingly similar to a trade mark in which the Complainant has common law rights.

In *Farouk Systems, Inc. v. Chen Guoqiang, Case No. D2010-0005* it was held that:

A. Identical or Confusingly Similar

Based on the documents submitted by the Complainant, the Panel is satisfied that the Complainant has proven that it is the owner of the trademark CHI.

The distinctive part of the disputed domain names <chiflatirononline.com> and <chiflatironstore.com> is the word “chi”, which is identical to the Complainant’s distinctive trademark CHI. As numerous prior UDRP panels have held, the fact that a domain name wholly incorporates a complainant’s registered mark may be sufficient to establish identity or confusing similarity for purposes of the Policy, despite the addition of other words to such marks, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademark CHI, in which the Complainant has rights.

Also taken into consideration is the WIPO Authority *Oki Data Americas, Inc. v. ASD, Inc.*, [WIPO Case No. D2001-0903](#); *Lilly ICOS LLC v. The Counsel Group, LLC*, [WIPO Case No. D2005-0042](#).

In *Banco Bradesco S.A. v. Marciano Martins*, Case No. D2010-0201, it was held that:

A. Identical or Confusingly Similar

For all of the foregoing reasons, the Panel rules that the domain names <bradescoalteras.biz> and <bradescointerbanking.biz> are confusingly similar to the Complainant’s name and mark BRADESCO.

It was held in *Cath Kidston Limited v. Value-Domain Com*, Case No. D2010-0203 that:

A. Identical or Confusingly Similar

The disputed domain name includes “cathkidston,” which consists of the two parts “cath” and “kidston.” Connecting the two distinctive parts of “Cath Kidston” does not dispel the confusing similarity between the domain name and the trademark. Neither does the use of lower case, especially as capital letters are not permitted in domain names. The Panel finds that the disputed domain name is therefore confusingly similar to the Complainant’s trademark. It is well-established that domain name suffixes, in this case “.net,” are disregarded for the purpose of this comparison.

The Panel concludes that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

In the DNDRC Decision *Standard Chartered PLC v. Hosting Campus Domain Case No. C2007-0001* it was held that:

As such the operative part of the disputed domain name would simply be “standardchartered” which when compared with the Standard Chartered Domain Names and the Standard Chartered Registered Trade Marks and Trade Mark Applications the Domain Name under dispute “<[standardchartered.pk](#)>” is not only confusingly similar but also identical.

As discussed above the registration of the domain name would in addition to confusing reasonable users of web browsers would also confuse users of email who could easily be confused by sending and receiving emails to and from the Domain Name under dispute “<[standardchartered.pk](#)>”.

As such the Panel finds that paragraph 4(a)(i) of the Policy is established.

In the DNDRC Decision Case No. C2008-0004 *Telenor v. Pakpoint Network* it was held that:

B. Identical or Confusingly Similar

The contested domain name <djuice.pk> contains as its distinctive part the designation “djuice”, which is identical to Complainants distinctive trademark Dj Juice The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled.

In the DNDRC Decision *Case No. C2009-0003 RED BULL GmbH v. PakSys Software LLC* it was held that:

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

Therefore the use of this domain name by any other party than the Complainant would not only cause confusion to the user(s) and customer(s) of the Complainant but would also hinder the Complainant from registering the domain name in dispute in furtherance to its business thus causes substantial and irredeemable harm to the Complainant. Consequently, the Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

From the above discussed precedents and the requirements laid out in the Policy, it appears that the Respondent has incorporated the Complainant's tradename in entirety. It is even more apparent that the tradename is not a generic/literate word, but is in fact an abbreviation of the Complainant's name, being Sui Northern Gas Pipe Lines. The Panel's analysis of whether the disputed domain name is confusingly similar to Complainant's tradename includes but is not limited to its comparison of the appearance, spelling, sound, and other objective characteristics of the domain name and mark, without regard to the content of the site. Accordingly, the Complainant has succeeded in establishing the confusing similarity. Furthermore, since the disputed domain name is not a literate word nor does it hold a dictionary meaning that could be used for a purpose. The domain name in dispute reasonably creates likelihood that individuals will be confused into thinking that the domain name or the related site is owned, endorsed, licensed, sponsored, or maintained by the Complainant to promote their services which is not the case at all.

Facts, as submitted by the Complainant demonstrate that the Complainant has been using its name since its incorporation in 1963. Furthermore, since it's the sole supplier of gas and natural resources services in the region of North Pakistan. The facts as alleged by the Complainant about its growth give a clear illustration of its expansion, large customer base and recognition with the massive multitude of people in the region. Another important point is that a colossal number of people associate the name Sui Northern Gas Pipe Line (SNGPL) with the Complainant. Any alteration in the ownership/association to the same would not only disrupt the large customer/consumer base of the Complainant, but could also cause widespread confusion, floodgates of complaints/queries and the Respondent being considered an affiliate/subsidiary of the Complainant, which is not the case. Hence, the Complainant's trade name is not only significantly well associated with its business, but is also well recognized throughout Pakistan. This paves way to the Complainant's being eligible for common law rights to the trade name, even though the same is unregistered. Relying on the above discussed WIPO authorities on situations where common law rights arise to a trade name/mark even when the same is not registered, and applying the same to the facts of this case, the Panel accepts that Complainant has rights in the (unregistered) word mark "sngpl" and that the domain name "sngpl.pk" of the Respondent must be considered to be identical. Applying the similarity test, the suffix ".com", which indicates the gTLD in which the domain name is registered cannot be taken into consideration since otherwise a domain name would practically never be identical to a protected trademark. As such, the Panel finds confusing similarity between the disputed domain name and the Complainant's tradename under paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

Respondent is not affiliated or related to Complainant in any way, nor is the Respondent licensed by Complainant or otherwise authorized to use the SNGPL trade name.

Respondent is not generally known by the domain name and has not acquired any trade name, trademark or service mark rights in the domain name.

Respondent is not using the domain name in a *bona fide* manner. The domain name resolves to a click-through-revenue or “pay per click” website. The links on Respondents’ website include domain names for Complainant’ competitors, providing similar classes of products and services, relating to that of natural gas, gas pipe lines, natural resources, and also including other science oriented information and links to other educational websites.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of what shall demonstrate rights or legitimate interests for the purposes of paragraph 4(a)(ii) of the Policy. It is addressed to registrants of domain names and reads:

“How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint: When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (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 non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”*

The Respondent is not known by the Domain Name and is not making any non-commercial use of the Domain Name, so of the examples set out in paragraph 4(c) of the Policy, the only one which might be applicable is the fact (if it be a fact) that when the Respondent was first contacted by the Complainant he was making “demonstrable preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods and services.”

The Complainant has made out a persuasive case. The Complainant’s name has been in continuous use in Pakistan since 1963. The Respondent is Pakistani citizen and might reasonably be expected to have known of the Complainant. ‘SNGPL’ is, on its face, an unusual combination of words to select for a domain name unless it was to be used to refer to the Complainant or, perhaps a particular establishment of which it was an abbreviation of the full form.

The Respondent has not submitted any response to the Complaint and hence there are no counter allegations and/or submissions by the Respondent that the Panel could take into account while rendering this Decision.

The simplest thing, of course, for the Respondent to have done was to produce some evidence of his business plan in relation to the Domain Name. If he has any bona fide interest in the disputed domain name, one would have expected him to have something to show for it (*e.g.* his business plan), but he has submitted nothing which is evidence of lack of bona fide on his part.

While it is for the Complainant to prove the three elements of paragraph 4(a) of the Policy, it is now well-established that in relation to the second element (paragraph 4(a)(ii) of the Policy), once the Complainant has made out a *prima facie* case (*i.e.* a case to answer) it is for the Respondent to answer that case. The rationale behind this policy is that whether or not the Respondent has rights or legitimate interests is a question, which the Respondent is best-placed

to answer.. In the absence of an answer, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

It was held in *Western Digital Technologies Inc. v. Chyy, jakexiao, Case No. D2010-0205* that:

B. Rights or Legitimate Interests

The Respondent has failed to show that it has acquired any legitimate trade mark rights in respect of the disputed domain name or that the disputed domain name is used, or intended to be used, in connection with a bona fide offering of goods or services.

The Respondent does not have any registered trade mark rights in China or elsewhere in respect of the wording WESTERN DIGITAL.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

It was held in *Harry Winston Inc. and Harry Winston, S.A. v. Harry Pluviose, Case No. D2010-0210* that:

B. Rights or Legitimate Interests

6.8 The Complainants contend, and the Panel accepts, that the Complainants have never authorised the Respondent to use the name Harry Winston in the Domain Name. Although it appears the Respondent's first name is Harry, there appears to be no obvious legitimate reason why the Respondent has adopted and is using the Harry Winston name, even if there is some form of genuine photographic business operating through the website under the Domain Name.

6.9 Indeed, for the reasons that the Panel sets out in greater detail under the heading of bad faith below, the Panel is satisfied that the Respondent is likely to have been aware of the HARRY WINSTON mark at the time that the Domain Name was registered and (in the absence of any evidence to the contrary) that it is more likely than not that he has deliberately sought to rely upon the fame of the HARRY WINSTON mark to increase the amount of traffic to his website.

6.10 It has long been clear that such use of a mark, even if it is in connection with an otherwise legitimate business, does not provide a right or legitimate interest for the purposes of the Policy. It is not, for example, activity that satisfies paragraph 4(c)(i) of the Policy, since the deliberate offering of goods and services under the mark of another with the intention of benefiting from confusion with that mark does not constitute a "bona fide offering of goods or services".

6.11 The Complainants have therefore made out the requirements of paragraph 4(a)(ii) of the Policy.

It was held in *Starwood Hotels & Resorts Worldwide Inc., The Sheraton LLC, Sheraton International Inc., Societe des Hotels Meridien, Westin Hotel Management L.P. v. Media Insight a/k/a Media Insights, Case No. D2010-0211* that:

C. Rights or Legitimate Interests

The Panel concludes from the circumstances reflected in the record of this case that the Respondent is not using the disputed domain names in connection with a bona fide offering

of goods or services within the meaning of paragraph 4(c)(i) of the Policy, and that the Respondent otherwise has not established rights or legitimate interests in the disputed domain names.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

It was held in ***The American Automobile Association Inc. v. Private Who is For cbelprip1702, Private Who is For yelprip1706, Case No. D2010-0212*** that:

B. Rights or Legitimate Interests

The Respondent has not replied to the Complainant's contentions so as to displace the assertion on the part of the Complainant that the Respondent does not and cannot have any rights or legitimate interests in the Domain Names. The Respondent is not authorized to use the Complainant's name or AAA marks and there is no evidence that the Respondent is known by the Domain Names. The Domain Names resolve to pay-per-click websites featuring commercial links for products and services that compete with the Complainant. The Panel finds that the Respondent has no rights or legitimate interests in the Domain Names.

Also taken into account, amongst others, is the WIPO Authority *Carolina Herrera, Ltd. v. Alberto Rincon Garcia*, [WIPO Case No. D2002-0806](#); *International Hospitality Management – IHM S.p.A. v. Enrico Callegari Ecostudio*, [WIPO Case No. D2002-0683](#).

In the DNDRC Decision in ***Standard Chartered PLC v. Hosting Campus Domain Case No. C2007-0001*** it was held that:

(Para 4(a)(ii) and Para 4(c) of the UDRP Policy read with Para 3(b)(ix)(2) of the Rules for the UDRP)

Paragraph 4(c) of the UDRP (Policy) provides that evidence of one or more of the following shall demonstrate a respondent's rights or legitimate interests to a domain name:

- a. Before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or*
- b. The respondent (as an individual, business, or other organization) had been commonly known by the domain name; or*
- c. 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 trade mark or service mark at issue.*

Hence, in all respects, inter alia from the contents of the Complaint, the Response and the facts disclosed before this Panel, as well as the discussion above, the Complainants' assertion that the Respondent has no rights or legitimate interest in the domain name stands satisfied.

In the DNDRC Decision ***Case No. C2008-0004 Telenor v. Pakpoint Network*** it was held that:

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.

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 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.

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).

In the DNDRC Decision Case No. C2009-0003 RED BULL GmbH v. PakSys Software LLC it was held that:

III. 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)."

The Respondent has not submitted any evidence that establishes its rights or legitimate interests based upon any of the above requirements. While failure to respond does not present conclusive evidence against the Respondent and the burden of proof lies upon the Complainant to prove mala fide on the part of the Respondent, the Panel did consider the Respondent's lack of response indicative of the Respondent's lack of rights or legitimate interests in the disputed domain name (See Nokia Corporation v. Firdaus Adinegoro/Beli Hosting, WIPO Case No. D 2004-0814). In the Panel's opinion, the use of the expression "bona fide" in Paragraph 4(c)(i) is sufficient to prevent a respondent who knowingly adopted another's well known mark as a domain name from claiming the benefit of mere use of or demonstrable preparations to use the domain name in connection with the offering of goods or services prior to notice of a dispute.

Therefore the Panel cannot determine the Respondent to be making legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks/names of the Complainant. It is the view of the Panel that similar reasoning applies to the case at hand and based on all of the above factors, the Panel finds the Respondent to have no rights or legitimate interest in the disputed domain name. Accordingly, the Panel finds that Paragraph 4(a) (ii) of the Policy is satisfied.

In pursuance to the Policy paragraph 4(c) there are three nonexclusive methods for any arbitrary body to conclude that a respondent has rights or a legitimate interest in the disputed Domain Name being that there is:

(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. And is in fact offering similar services to that of the Complainant. There does not appear to be any activity that could be construed as a bona fide one since the Respondent is using and in all likelihood encashing on the Complainant's tradename. It can also not be reasonably opined that the Respondent is offering bona fide services and is using the internet medium to offer the services/commodities online. Since the Complainant is a government owned organisation and is the sole provider for gas/natural resources in the province of Punjab, Pakistan, it is highly unlikely that the monopoly that the Complainant has, and legitimately so is in any way disrupted by the Respondent. The Respondent can also not be considered to be a competitor of the Complainant since again, it is reiterated that the Complainant is the sole provider of gas/natural resources, duly authorised, endorsed and operated by the Government of Pakistan. Thus the Respondent's act of registering a domain name identical in entirety with that of the Complainant's tradename and also using the same to offer services similar to that of the Complainant online forms sufficient evidence of lack of bona fide on the Respondent's part

(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 holds any legitimate rights or bona fide interests in the domain name in dispute. Furthermore, the Panel can reasonably infer that the Respondent does not hold any legitimate interest in the disputed domain name since the same is being used to offer services very similar to those offered by the Complainant, and over which the Complainant has monopoly, by means of it being a government owned organisation which has not been privatised in whole or in part. Since the Complainant has the sole rights to providing gas/natural resources throughout the jurisdiction of Punjab, Pakistan, it is highly unlikely that any other organisation/individual could be doing so with the realm of law. It is highly unlikely that the Respondent was not aware of the Complainant and especially it being the sole proprietor of gas/natural resources within Punjab since the Respondent is also based in the same geographical region, i.e. the province of Punjab. It is also highly improbable that the Respondent has been known commonly by the disputed domain name or an identical or confusingly similar tradename. This is so since the Complainant has been providing services in the region since 1964, which is well over almost 04 (four) decades whereas the Respondent has been using the disputed domain name since 2008. As such, the popularity and the time over which the Complainant has been using the tradename which is identical to the disputed domain name is literally nowhere even near to be comparable to the time span over which the Respondent has been using the disputed domain name, over which it has no rights since the same would have to be either delegated, conveyed, authorised or consented to by the Complainant or the Government of Pakistan. Since neither has been alleged or contended by the Respondent, the Panel can reasonably infer that the same is not in fact the case. As such, it can be reasonably concluded that the Respondent is not commonly known nor is in any way entitled to use the disputed domain name.

(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.

The 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.

Furthermore, it is important to bear in consideration the fact that the Complainant is not owned by private individual(s) with authority to delegate powers, confer subsidising authority or the like. Infact, the Complainant is a government owned organisation and as such the power(s) to delegate, confer, transfer or in any way allow the Respondent or anybody else to use the disputed domain name or an identical tradename, or more importantly, offer similar services vests with the Government of Pakistan only and as such anybody interested in offering similar services or wanting a share in the organisation would have to obtain permission, consent, authority from the Government, without which, any/all attempts to provide similar services to that of the Complainant would not amount to being bona fide, legitimate or in accordance with spirit of fair business practice. It can be reasonably inferred that the Respondent is well aware of the Complainant's nature of being government owned, having monopoly in the sector of providing gas/natural resources and also it being the sole provider of such services in the region of Punjab, Pakistan since the Respondent is himself located in the province of Punjab and it is highly probable that the Respondent is himself a consumer of the Complainant.

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). As such, based on the detailed discussions above and point by point analysis of the requirements under this head, the Panel finds that the Respondent has no rights or legitimate interest in the Domain Names pursuant to the Policy paragraph 4(a) (ii).

Based on the present record, the above noted discussions and the applicability of the above mentioned precedents to the facts of this case, the Panel finds that Respondent has no rights or legitimate interests with regard to the domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states circumstances which, if found, shall be evidence of the registration and use of the domain name in bad faith:

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

(ii) Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's 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 Respondent's website or location of a product or service on Respondent's website or location.

Complainant has shown that the domain name is being used for commercial gain to attract Internet users to Respondent's website based on a likelihood of confusion with Complainant's trade name SNGPL. Without any indication to the contrary, Complainant's prior use and continuing use of the same trade name leads to the inevitable conclusion that Respondent has registered and is using the domain name with actual knowledge of Complainant's common law rights in the trade name.

On the same basis the Panel finds that the Domain Name was registered and is being used in bad faith. The Domain Name is identical or confusingly similar to the Complainant's common law trade mark, which has been in use in Pakistan for over many years and. In the absence of a credible explanation for having selected the Domain Name, the Panel is driven to conclude that it was registered with the Complainant in mind. It is to be noted that nowhere does the Respondent deny knowledge of the Complainant at the relevant time by submitting a Response to the Complaint especially when a notification of the same was issued upon him with an opportunity to submit a response to the same.

Why did the Respondent register the Domain Name? Why would one register as a domain name the name of another entity, knowing it to be the name under and by reference to which that entity carries on business?

In the absence of an explanation, the Panel is entitled to infer that the Respondent's intent was abusive. Where, as here, there is an explanation, but the Panel does not believe it, the Panel has no hesitation in holding that the Respondent's intention was abusive and lacks bona fide.

The Panel believes that the objective may well have been to sell the Domain Name to the Complainant at a profit (paragraph 4(b)(i) of the Policy), or it may have been to exploit the Complainant's trade mark in some other way.

Either way, the Panel finds that the Domain Name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

It was held in *Old Republic Home Protection Co. Inc. v. Lena Hawkins, Case No. D2010-*

0213 that:

C. Registered and Used in Bad Faith

This Panel finds that Respondent has registered and used the disputed domain name in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy and that Complainant meets the third criterion of paragraph 4(a) of the Policy.

It was held in ***Hardee's Food Systems Inc. v. Transure Enterprise Ltd., Above.com Domain Privacy, Case No. D2010-0214*** that:

C. Registered and Used in Bad Faith

Considering the above, the Panel finds that the Complainant has presented sufficient evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that the Policy, paragraph 4(a)(iii) has been satisfied.

It was held in ***Tony Barnhart, CSTV Networks, Inc. d/b/a CBS College Sports Network v. Jaomadesigns, Case No. D2010-0219*** that:

C. Registered and Used in Bad Faith

Bad faith may be found where the Respondent registered and used the disputed domain name to take unfair advantage of the Complainant's rights in some way. See e.g. Your Golf Travel Limited v. Hardelet Holidays Limited, [WIPO Case No. D2007-1058](#).

The Panel considers that the disputed domain name was registered and used for the purpose of unfairly exploiting the value of the Complainant's mark. It is self-evident that the Respondent's website relates directly to the Complainant's field of business, as well as providing commercial links to the commercial services of third parties. As evidenced by the Complainant, the registration of the disputed domain name coincided with the announcement that it planned to air "The Tony Barnhart Show". The timing of the registration therefore also supports a finding that the Respondent was motivated to "cash in" on the Complainant's television program.

The Panel therefore finds that the Complainant has established its case under paragraph 4(a) (iii) of the Policy.

In the DNDRC Decision in ***Standard Chartered PLC v. Hosting Campus Domain Case No. C2007-0001*** it was held that:

Hence, in case any of the elements above are satisfied before the Panel, it would constitute evidence of bad faith on part of the Respondent. It may also be noted that these elements are not exclusive and are "without limitation" and further elements evidencing or demonstrating bad faith may be satisfactory for a finding of Registration in bad faith by a Respondent.

As such the Panel finds that on multiple counts the Respondent has been found to have registered the domain name in dispute under bad faith therefore satisfying also the third requirement under the UDRP.

In the DNDRC Decision ***Case No. C2008-0004 Telenor v. Pakpoint Network*** it was held that:

D. Registered and Used in Bad Faith

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.

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. 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. The Panelist finds it is reasonable to conclude that only someone who was familiar with the Djuice trademark could have registered the Domain Name.

*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). Therefore the Panelist finds that the Domain Name was registered in bad faith.*

In the DNDRC Decision Case No. C2009-0003 *RED BULL GmbH v. PakSys Software LLC* it was held that:

IV. Registration and use of the domain name in bad faith

Therefore, given the Complainant’s numerous trademark/name rights for “REDBULL” or “RED BULL” and its wide reputation, it is difficult to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name in dispute. Thus the Panel finds that the third test under paragraph 4(a) has been established successfully by the Complainant.

The Respondent has failed to submit any response to the Complainant’s allegations nor has provided the DNDRC with any other fact(s) or issue(s) which could be taken into account while rendering this decision. The Respondent has neither justified his registration/using the disputed domain name nor has countered the allegations put forth against him by the Complainant even though an opportunity to do so was provided to him by the DNDRC.

In coming to a conclusion under this head, the above mentioned elements are hereby discussed and analyzed:

(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; or

Since the Respondent has not provided any response to the DNDRC, the Panel does not have any fact(s) from the Respondent’s side while taking into the account the purpose(s), reason(s) and/or justification(s) behind the Respondent’s registration of the disputed domain name.

(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;

It is very important to note that both the Respondent and the Complainant are based in the same geographical region of Punjab, Pakistan. As such, it is highly unlikely that the Respondent was not aware of the Complainant or its nature of business, provision of services etc at the time of registering the disputed domain name. Furthermore, even the Complainant uses the medium of internet to provide online services, as such it is pertinent for the Complainant to have any/all domain names identical/similar to its tradename. As such, since the disputed domain name has been registered by the Respondent, the Complainant has been obstructed from registering/using it for its own use/provision of online services. Furthermore, the Respondent is also using the

disputed domain name to offer services similar to those of the Complainant on the internet. Since the Complainant is the sole provider of gas/natural resources services in the region of Punjab, Pakistan, by means of it being a government owned organization, it is very likely that the Respondent is actually himself a consumer of the Complainant and as such is very well conversant with the nature of the Complainant and its tradename. Also, the disputed domain name is not a literate word, nor holds a generic/dictionary meaning, but is infact an abbreviation of the Complainant's tradename. As such, the Panel is sufficiently satisfied that the Respondent has registered the disputed domain name to prevent the Complainant from registering it for their own purposes.

Both Complainant and Respondent operate in the same country. This is suggestive of the fact that the Respondent was aware of the existence and of the business of the Complainant. The fact that the tradename of the Complainant has persistently and consistently been in use by the Complainant long before the registration of the disputed domain name is suggestive of bad faith on the Respondent's part. Based on the facts provided by the Complainant, the Panel opines that the tradename of the Complainant is well entrenched with the Complainant's entity and is used unstintingly, both in actual as well as online. The facts therefore indicate conclusively that the Complainant is a relatively well-known enterprise and that its trade mark would hence be recognized publicly and the Respondent could not help but be aware of this trade mark being associated with the Complainant as well as have knowledge of the services offered by the Complainant. Therefore, the Complainant's registering the disputed domain name indicates mala fide on his part as well as indication of hindering/obstructing the Complainant from registering the disputed domain name themselves.

As discussed earlier also, the Panel has determined that the Respondent uses the disputed domain name for offering services similar to the Complainant and also for advertising purposes. Thus the services offered by the Respondent on the disputed domain name are deemed to be in direct competition with the Complainant thereby providing substantial proof of the Respondent's bad faith with respect to the registration and use of the dispute domain name at the cost of the Complainant, especially when the Complainant holds monopoly in the sector of providing gas/natural resources services in the same geographical region as that where the Respondent is located.

The Respondent vide the domain name in dispute provides services similar those provided by the Complainant in the course of its long standing business and it is therefore most likely that the Respondent deliberately used the trade mark of the Complainant within their registered domain name <sngpl.pk> to create confusion and divert customers of the Complainant to itself.

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

The Respondents have provided no evidence to demonstrate lack of bad faith. As discussed earlier, it is again reiterated for the sake of brevity and clarity that the Complainant, in order to provide online services on a .pk ccTLD is unable to do so since the domain name with the .pk ccTLD is unavailable for registering because the same has been registered by the Respondent. As such, the Complainant is unable to register the domain name on the .pk ccTLD for itself even though it has been using the tradename SNGPL since 1964.

Accordingly, it is the Panel's view that, on the balance of probabilities, the Respondent had actual knowledge of the tradename of the Complainant and the products/services in connection with which the tradename is used by the Complainant. As it was noted in *Herbalife International, Inc v. Surinder S. Farmaha*, WIPO Case No. D2005-0765:

“the registration of a domain name with the knowledge of the complainant's trademark

registration amounts to bad faith.”

In the current proceedings, no indication of any correspondence between the Complainant and/or any representative of Complainant, on one side, with Respondent, on the other, or similar evidence, have been determined to suggest or imply that the Complainant may have approved of or authorised the Respondent's use of their trade mark in which they hold common law rights. Without any form of substantial evidence to indicate that the Complainant approved of or authorised the Respondent's use of their tradename in the disputed domain name, the Panel cannot infer that such a relationship of association/affiliation existed between the Respondent and the Complainant. (See *Tom Cruise v. Network Operations Center / Alberta Hot Rods*, WIPO Case No. D 2006-0560).

As such, the Complaint is unable to register the disputed domain name for its own purpose(s) since a similar domain name on a same ccTLD cannot be registered by two people at the same time. In conclusion, the Panel finds that the test under this head has been established successfully by the Complainant and the Respondent has failed to provide any fact(s)/reason(s)/justification(s) to the contrary.

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location.”

Taking the facts at their face value, the Panel reasonably holds that the disputed domain name reproduces/incorporates the Complainant's tradename in entirety. As such, the Complainant's consumer(s) might be misled into believing that the services being provided by the Respondent on the disputed domain name are in any way connected to or in fact actually those being provided by the Complainant. Also, since the Complainant is a government owned organization, holding monopoly in the region of Punjab, Pakistan as far as services related to provision of gas/natural resources is concerned, it is highly likely that the Complainant's consumers are confused by the Respondent's presence online. This would be even more the case if the Complainant's consumer(s) falsely believe that there is another entity existing which provides similar services to that of the Complainant for a lesser price maybe. This would cause the Complainant's business being severely disrupted, the consumers being falsely led into believing something that is not true and furthermore, the Respondent gaining on the expense of the Complainant. Also important to bear into account is the fact that the Complainant has not in any way authorized, sponsored, sourced, delegated, consented, and/or conveyed any affiliation, association, subsidiary, co ownership or the like with the Respondent. However the consumers seeing an online website with the same tradename as the domain name and providing similar services might be misled and confused into believing that there is a relationship of affiliation, sponsorship, source, endorsement, association, subsidiary, partnership, co ownership or the like between the Complainant and the Respondent which is obviously not the case. Any user searching for the Complainant's online site might be misled into believing that the .pk ccTLD is also being used by the Complainant and hence would falsely believe that the disputed domain name is that of the Complainant or that there exists a relationship of affiliation, sponsorship, source, endorsement, association, subsidiary, partnership, co ownership or the like between the Complainant and the Respondent which is in fact not the case since the Complainant has expressly conveyed in the Complaint that at no point in time have they ever authorized the Respondent's registration/use of the disputed domain name. Since the Respondent has not countered/justified the Complainant's allegations(s) nor has it provided the DNDRC with any fact(s), reason(s), justification(s) of to support his position, the Panel can reasonably infer that the Respondent by registering/using the disputed domain name has intentionally attempted to attract, for commercial gain, internet users to the disputed domain name by creating a likelihood

of confusion with the Complainant's tradename as to the source, sponsorship, affiliation, or endorsement of his web site or location and the services being provided online. Based on the above discussions under this head as well as the applicability of the above mentioned precedents and the applicability of those to the facts of this case, the Panel finds the disputed domain name to be registered and used in bad faith.

7. Conclusion:

The following decision is based on the findings in the above mentioned complaints. 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 finds that the SNGPL name is well-recognized and highly acclaimed, both, domestically, and globally, hence the Complainant reserves crucial interest in them. The Respondent's utilizing the trade name 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. Furthermore, the Complainant is a public sector utility providing organization rendering multiple services to its stakeholders and customers. The uniqueness of the Complainant also lies in the fact that it is a government owned organization is the only organization providing natural resources to the customers in the region of Punjab, Pakistan. Thus the customers have no other choice but to seek services from the Complainant. This also gives rise to another important point, being that the Respondent, also residing in the province of Punjab, is most likely to be a customer of the Complainant.

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 <sngpl.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 and market leaders in establishing global and cross-border gas and natural resources 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 use the domain name in dispute <sngpl.pk>, which is identical to that of the Complainants trade name, 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 <sngpl.pk>

8. Decision

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

1. The Respondent's registration of the domain name in dispute is in violation of the PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2.
2. The Respondents have no legitimate interest in the Complainant's Domain name
3. The domain names are confusingly similar/identical.
4. The Respondents are making mala fide use of the Complainant's Domain name.

Pursuant to Paragraphs 4 of the PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2, and Paragraph (i) of the UDRP the Panel therefore recommend to the PKNIC that PKNIC to transfer the registration of the domain name at issue <snopl.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.

Dated: 07th July, 2010
Sole Panelist: Mr. Mustafa Syed