

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

eBay Inc vs Muhammad Akram

Case No. C2018-0009

Also in PDF C2018-0009

1. The Parties

The Complainant is eBay Inc having its office at 2025 Hamilton Avenue San Jose, California 95125 United States of America. The Complainant has initiated the Complaint vide their authorized representative, Hassan Irfan Khan and S.M Bilal Ahsan United Trademark & Patent Services Intellectual Property Attorneys 85, The Mall Lahore Pakistan.

The Respondent's name is Muhammad Akram with his address at Faisalabad Punjab 38000 Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <ebaypakistan.com.pk>, hereinafter referred to as the Disputed Domain Name. Vide email dated Thursday 26 April 2018, PKNIC has informed DNDRC that the Agent Organization through which the registration was applied is Muhammad Akram, Main Road Faisalabad and its Create Date was 2016-06-15 with an Expire Date of 2018-06-15.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on Tuesday 17 April 2018.

The Respondent was issued notification of the dispute along with a copy of the Complaint and a Response Form on Friday 11 May 2018 informing the Respondent that if a Response was not received within 10 days from the notification, the dispute would be proceeded ex parte. DNDRC awaited the submission by the Complainant of the Complaint as per the prescribed forms also

available at www.dndrc.com/downloads. DNDRC also sent a reminder to the Respondent to file a response on Monday 14 May 2018. The Respondent failed to provide a response within the stipulated period.

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

Factual Background

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

PKNIC has confirmed via their email dated Thursday 26 April 2018 that the Disputed Domain Name has been registered by the Respondent named in the Complaint and that their email address is akrambhatti24@outlook.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

Complainant is a global leader in the field of online commerce and shopping. Since its creation in 1995, eBay has become a powerful marketplace for the sale of goods and services and has constantly grown and acquired notoriety. Since its inception complainant has provided its online marketplace via its main official website at www.eBay.com. This website is the 10th most visited website in the USA and the 36th most visited website globally according to web information company Alexa (Exhibit 3). eBay has 169 million active buyers, 1 billion active listings and in 2016 eBay enabled \$84 billion of gross merchandise volume (see Exhibit 4). In 2016 eBay ranked 32nd in Interbrand's Best Global brands report (see Exhibit 5). Through extensive use and growth for over 20 years, the eBay brand has acquired considerable renown and goodwill worldwide.

Given the exclusive online nature of complainants market place complainants domain names consisting of the term eBay are not only at the heart of its entire business but are also the only way for its millions of users to avail themselves of its services. Reflecting its global reach, Complainants own owns numerous domain names consisting of the term eBay including the domain (eBay.com) which its registered in 1995.

In addition, Complainant has made substantial investment to develop a strong presence online by being active on various social media forums including through dedicated eBay pages on Facebook, Twitter, YouTube, and LinkedIn. eBay's Facebook page has over 10 million Facebook "likes" and its Twitter page has over 658,000 followers. Screen captures of Complainant's social media websites are available in (see Exhibit 6). Due to extensive promotion of the EBAY mark the term EBAY has exclusive associated with complainant. This evidence by the fact that typing the term EBAY into the google search engine results exclusively in website referring to complainant (see Exhibit 7)

The Respondent registered the disputed domain name on June 15, 2016 well after eBay first began using and registered the eBay mark. Respondent registered the disputed domain name without eBay's permission or consent. Respondent is not and has never been associated or affiliated with eBay and eBay has never authorized Respondent to use the eBay mark or any variation of the eBay Mark. Respondent is using the Disputed domain name in connection with an online marketplace, which is identical to the services offered by eBay. The respondent's website allows individuals to buy and sell their own goods. See Exhibits 8. The respondent is attempting to trade on eBay's good will by suggesting an affiliation with or sponsorship by eBay

The fame and goodwill associated with eBay trademark is also made apparent by the number of cyber squatters who have sought to unfairly and illegal exploit the very significant consumer recognition attached to the eBay trademark. Prior domain name dispute panels have recognized the strength and renown of complainant's eBay mark and have ordered infringing respondents to transfer infringing domain names to Complainant. Including in the following decision

- a) eBay Inc. v eBay Motors, FA1705001731822(eBay-online.com) (" Complainant registered the eBay mark as early as 1999 ...which demonstrates its longstanding rights in the mark")*
- b) eBay Inc. v. Jimmy Kao, WIPO Case No D2015-0570(eBayed.com) (" The {T}he Panel considers the eBay service mark to possess an exceedingly high degree of global recognition in connection with a well known provider of online commercial services")*
- c) eBay Inc. v D Pontiac/whois Privacy services Pty Ltd, WIPO Case No D2015 -0490 (www.eBay.com) ("The Complainant's eBay marks are highly distinctive and well known internationally and the complainant has continuously provided its online marketplace services since 1995.")*

- d) *eBay Inc. v Paypal . inc. Rene Rene/Wuxi Yilian LLC WIPO case No. D2015 - 0010(<eBay aktualisieren.com>et.al.) (The Complainant's marks are very well known world wide. As noted above, the complainant's websites are among the most visited in the world.)*
- e) *eBay Inc. v . Du Hongxia/Lia Yujiao/WHOIS AGENT DOMAIN WHOIS PROTECTION SERVICES WIPO Case No . D 2014-2015 (eBay000.com) <eBay002.com>et al . – over 1000 domain names) ({T}he Complainants has demonstrated by its evidence that well before the dates of registration of the domain names it was well known for its online marketplace service under by reference to its eBay trademark “)*
- f) *eBay Inc and Facebook Inc. V Santosh Ghimire, Do surf In P. Ltd and Babin Manandhar, WIPO Case No. D-2014-1629 (<eBayuklogin.com>et.al) (“{eBay's } Trademark are very prominent on the web and represents functions and operational capabilities on the internet and that most users would be familiar with”)*
- g) *eBay. Inc v. Shangli Liang WIPO Case No. D-2014-0037 (<eBaynow.com>) (recognizing “ the complainant's prominence on the internet and of the well known character of the trademark eBay)*
- h) *eBay. Inc v. David Sach WIPO Case No. D-2009-1083(<eBay-cz.com>) (“Given the fame of complainant's eBay mark, its invented nature and inherent distinctiveness, the panel considers it extremely unlikely that Respondent has registered the disputed domain name without knowledge of complainants business under the eBay brand “)*
- i) *eBay Inc .v. rel enterprises ,WIPO Case No. D2008-1068 (<eBayip.com>and <eBayofip.com>) (“Given the fame of the eBay mark, it is clear that respondent registered the domain names in an effort to take advantage of the goodwill complainant has built up in the mark”*
- j) *) eBay Inc v. FUZHI Yong , WIPO Case No . D2007-0865(<eBaysoho.com> and eBaysohos.com>) ({T}he Panel finds that the complainant enjoys a worldwide reputation in its highly distinctive eBay trademark with regard to its very successful online market place services since 1995”)*

Therefore, the Complainant seeks the following remedy:

Complaint requests a decision to be issued so that the disputed domain name be transferred to Complainant. (UDRP Rule 3(b)(x) : UDRP policy 4(i).

In accordance with Paragraph 4(1) of the Policy, the Complainant requests that the Administrative Panel appointed in this administrative proceeding transfer the Domain Name (www.eBaypakistan.com.pk) to the Complainant.

B. Respondent

The Respondent has not submitted any response to DNDRC. Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint.

5. Jurisdiction

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

The Respondent applied for and was granted registration of the Disputed Domain Name on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

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

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

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

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

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

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

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

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

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company

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

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

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

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

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

The Complainant has submitted that the Complainant has trade mark registrations in the mark EBAY in different jurisdictions, including Pakistan.

The Complainant has annexed an extensive list of registrations of the trademarks issued in a number of countries, which includes a trademark issued by the Trade Mark Registry Government of Pakistan dated 19 April 2004 under Class 35 and another trademark issued by the Trade Mark Registry Government of Pakistan dated 12 September 2012 which demonstrate that the Complainant has a trade mark registration of the mark EBAY in Pakistan. The Complainant has also annexed copies of the certificates of registrations under Exhibit 2.

The Respondent has not provided any information whatsoever with respect to the Disputed Domain Name and as such; no data is available to the Panel to consider on the part of the Respondent.

The Panel therefore finds that the Disputed Domain Name incorporates the registered trade mark of the Complainant EBAY in its entirety, and that such an infringement constitutes an

infringement of the trademark registrations of the word eBAY. The Respondent has not provided any information whatsoever with respect to the Disputed Domain Name and as such; no data is available to the Panel to consider on the part of the Respondent.

The Panel therefore finds that the Disputed Domain Name incorporates the registered trade mark of the Complainant eBay in its entirety, and that such an infringement constitutes an infringement of the trademark registrations of the word eBay that are held by the Complainant.

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.

Hence, the Panel may well determine, on this criteria alone, that the Disputed Domain Name should be transferred to the Complainant. However, for the purpose of 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 sub-issues as identified above.

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

The Complaint has submitted:

Respondent's actions are not a bona fide offering of goods or services nor is Respondent engaged in a legitimate noncommercial or fair use of the disputed domain name. To the Contrary Respondent is using the disputed domain name to deceive consumers into believing it is affiliated or sponsored by eBay. Respondent is not only unduly exploiting Complainant's goodwill for Respondents own financial, but also attempting to deceive and mislead internet users into thinking that they are dealing with Complainant or legitimate affiliate of Complainant. See BBY Solutions Inc V White Harris /Smith Patel /lee Ryan , FA 1704001728566(Forum May 24. 2017) (" International use of confusingly similar domain name to divert internet users to competing WebPages does not amount to a bona fide offering of goods or services or a legitimate noncommercial fair use pursuant to policy 4(c) (i) &(iii) See also indeed Inc. V Ankit Bhardwaj/Recruiter FA 1707001739470 (Forum Aug. 3 2017) (" Respondent's use of the at issue domain in the manner { to offer services identical to complainants services } shows neither a bona fide offering of goods or services ... nor a legitimate noncommercial fair use ..") General Motors LLC v Mike LEE FA 1602001659965(Forum Mar. 10 2016) (Finding that use of a domain to sell products and or\services that compete directly complainants business does not constitute a bona fide offering of

goods or services pursuant to policy 4(C) (I) or a legitimate noncommercial or fair use pursuant to policy 4 (c) (iii)”) .

On the other hand, the Respondent has not provided any information, and has not refuted the contention put forth by the Complainant.

The Panel finds the Complainant has submitted evidence that the highly recognizable and the same is commonly associated with the Complainant who holds the intellectual property rights.” The Complainant is entitled to use of the mark in all of its forms and use of the trade mark by the registrant does not appear to be not bona fide. As submitted, it appears that eBay has spent considerable amounts of time and money advertising and marketing the eBay Mark and has been widely-recognized for over two decades. The Respondent is using the entire eBay mark in connection with goods and services identical to those of Complainant’s goods and services. Because of eBay’s extensive goodwill, which Respondent is clearly trying to benefit from the registration of the Disputed Domain Name is not bona fide.

Thus, the Panel finds that the registration of the Disputed Domain Name by the Respondent was not bona fide.

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

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

Trade Marks Ordinance, 2001

40. Infringement of registered trade mark.-

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

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

Electronic Transactions Ordinance, 2002 (“ETO”)

3. Legal recognition of electronic forms.—

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

Penal Code

Of Trade, Property and Other Marks

478. Trade mark.

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

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

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

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

479. Property mark.

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

480. Using a false trade mark.

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

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

481. Using a false property mark.

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

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

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

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

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

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

The Complainant has contended the following:

The Disputed Domain Name includes the famous eBay Mark in its entirety. The Domain Name is only different from the eBay Mark by the addition of the term “Pakistan”, which designates the region where the online marketplace operates, the generic term “.com” and the country code top-level domain .PK. Because Respondent is offering online marketplace services to Pakistani customers, and in light of eBay’s worldwide online marketplace, the addition to the geographic term “Pakistan” is insufficient to distinguish the Disputed Domain Name from the eBay Mark under policy 4(a)(i). See interflora, Inc./Interflora British Unit geographic term does not avoid confusing similarity pursuant to policy 4(a)(i).

Additionally, the addition of the generic term “.com” and the country code top-level Domain “.pk” are also insufficient to distinguish the Disputed Domain Name eBay Mark. See Morgan Stanley v. sundown/James Moore. FA 1606001677620 (from July 1, 2016)(“Respondent’s <morganstanleyonline.us> domain name adds the term ‘online’ and the ‘.us’ ccTLD to a fully incorporated MORGAN STANLEY mark, less the space. The Panel finds that this is inadequate to distinguish the dispute domain name from such a famous trademark. The Neiman-Marcus Group Inc v. North star Futon Factory, FA0110000100237 (forum Nov. 9, 2001) (finding <neimanmarcusonline.com> confusingly similar to <neimanmarcus.com>, particularly because “Complainant markets and sell its goods via the internet or online, [and internet users who are familiar with the goods offered by Complainant under its Neiman-Marcus mark are highly likely to think that there is an affiliation between Respondent’s website and Complainant”]).

Furthermore the addition of a country code top-level domain like “.pk” is irrelevant for purpose of ascertaining confusing similarity. See The Toronto-Dominion Bank v. xiquan lin, FA1701001712847 (forum feb. 23, 2017) (“A TLD (whether a gTLD , sTLD or ccTLD) is disregarded under a policy 4(A)(i) analysis because domain name syntax requires TLDs.”)): Morgan Stanley, FA1606001677620.

Finally given the international promotion, fame and success of eBay’s eBay Mark. Respondent’s misappropriation of the eBay Mark in the disputed domain Name is likely to cause confusion. See AT&T Corp. v. Alamuddin, WIPO case no .D2000-0249 (WIPO May 18, 2000) (when a trademark is well known internationally, there is a high

likelihood that a domain name is incorporating the trademark will create confusion). Because the Disputed Domain Name incorporates the famous eBay Mark in its entirety, the disputed domain Name is confusingly similar to eBay's eBay Mark.

On the other hand, the Respondent by failing to submit a response has not provided any information nor refuted the contention put forth by the Complainant.

In the view of the information provided by the Complainant, it is clear that the Complainant has trademark rights to the mark "EBAY". It also appears to the Panel that the Disputed Domain Name incorporates this mark of the Complainant with only the word "Pakistan" and the ccTLD "com.pk" added. The Panel finds that the use of a geographic indicator and the ccTLD within a domain name does not in itself avoid confusing similarity.

Thus, the Panel finds that the Disputed Domain Name is confusingly similar to a registered trademark in which the Complainant has rights.

III. Legitimate interests in a domain name

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

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

Paragraph 4(a)(ii) states that:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Complainant has contended:

Respondent lacks rights and legitimate interests in the Disputed Domain Name because Respondent is not affiliated with eBay in any way nor is respondent licensed to use the eBay Mark. Respondent is not an authorized vendor, supplier, distributor or customer relations agent for eBay's Services. Respondent's WHOIS information does not indicate Respondent is commonly known by the Disputed Domain Name and Respondent cannot conceivably assert that the Respondent is known by the Disputed Domain Name given the fame and notoriety surrounding Complainant's eBay mark. See eBay's Inc. V Diego Mondelo, WIPO Case No . DCO2011-0050 (WIPO Nov. 17 2011) ("In the Panel's opinion given the notoriety of complaint's mark it does not seem Plausible that the respondent has come to be commonly known by or has been trading under the name eBayanuncious") see also Capital one Financial Corp. V Ajay Kishan, FA 1708001742880 (Forum Aug. 30 .2017) (citing Reese V Morgan , FA 0702000917029) Forum Apr. 5 2007) (Finding respondent was not commonly known by the disputed domain name where no evidence on the record showed that respondent was commonly known by that name including the WHOIS information and Complainant's statement that it had not authorized respondent's use of its marks')

On the other hand, the Respondent has not provided any response to the contentions of the Complainant.

In the absence of any information provided by the Respondent in support of his legitimate interest in the Disputed Domain Name, the Panel based on the information provided by the Complainant finds that the Respondent does not have rights or a legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

Respondent registered and is using the Disputed Domain Name in Bad Faith And with fully Knowledge of complainants and its registered eBay's Mark, Which have Acquired substantial renown and repute worldwide. Given the fame of the eBay Mark, Disputed Domain name Could not have been chosen for any reason other than to unduly profit from the considerable goodwill and reputation attached to complainants trademark, See eBay Inc. V SGR Enterprises and Joyce Ayers. WIPO Case No D2001-0259(

<eBaylive.com>) and (<eBaystores.com>) (“ No Plausible explanation exists as to why SGR and Ayers selected the name eBay as part of the disputed domain names other than to trade on the goodwill of eBay”)

Furthermore, Panels regularly find bad faith when a Respondent registered and uses the domain name to disrupt the Complainant’s business. See *eBay Inc V eBay Motors*, FA 1705001731822 (Forum June 26, 2017). Here the Respondent is interfering with complainant’s customer relationships by suggesting an affiliation between complainant and disputed domain name while providing Competing goods and services through a confusingly similar domain name.

Additionally, Respondent had actual knowledge of complainants eBay Mark when registering the disputed domain name which is sufficient to constitute a bad faith . See *Victoria’s secret stores Brand Mgml.. Inc V. Michael Bach* FA 1201001426668(Forum March.2.2012) (“Although Complainant has not submitted any evidence indicating actual knowledge by Respondent of its right in the trademark, the panel finds that due to the fame of complainant’s { VICTORIA ‘S SECRET} mark. Respondent had actual notice at the time of the domain name registration and therefore registered the domain name in bad faith under the Policy 4(a) (iii) “) : *Bloomberg L.P v Xuebao Wang* , FA 0012000096305 (Forum Feb 12. 2001) (citing *Kraft foods (Norway) v Wide* WIPO case No. D2000-0911(WIPO Sep 23 .2000) (Finding the fact “ that the Respondent chose to register a well known mark to which he has no connections or right indicates that he was in bad faith when registering the domain name at-issue). Therefore Respondent had actual notice of eBay Mark and choice to use it to capitalize on the eBays good will and reputation.

The Respondent has not provided any information or evidence to demonstrate lack of bad faith with respect to registration and use of the Domain Name.

Based on the overwhelming popularity of the Complainant's mark, the use of said mark within the Disputed Domain Name by the Respondent, and in the absence of any response from the Respondent, the Panel infers that both the registration and use of the Disputed Domain Name by the Respondent is in bad faith.

WIPO Authorities:

The Panel, for the purpose of assessing the matter and this Decision, has taken into account, reviewed and made use of the Discussions & Findings in the WIPO Authorities mentioned and relied upon by the Complainant.

7. Decision

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

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

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

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

Arbitrator: Malik Muhammad Ehsan

Sole Panelist

Date: 4 July 2018