

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

LinkedIn Corporation v. Syed Arshad Jilani

Case No. C2013-0001

Also in PDF C2013-0001

1. The Parties

The Complainant is LinkedIn Corporation, located at 2029 Stierlin Court Mountain View, CA 94043, United States of America. The Complaint has been filed with the Domain Name Dispute Resolution Center through Authorized Representatives M/s Irfan & Irfan (Attorneys-At-Law) located at 85, The Mall, Lahore, Pakistan

The Respondents is Syed Arshad Jilani located at R - 1482, Second Floor, Block 14, F.B. Area, Karachi,

2. The Domain Name in Dispute

The disputed domain name is <linkedin.com.pk>, hereinafter referred to as the Disputed Domain Name, registered with the Respondent since 23rd February, 2012 until 23rd February, 2014.

3. Procedural History

The Complaint was filed with the Domain Name Dispute Resolution Center (the “DNDRC”) on 17th May, 2013.

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.

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 20th May, 2013 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 submitted the Response on 29th May, 2013. The proceedings commenced thereafter.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), the DNDRC 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 Arbitrator has sworn Impartiality and Independence, to ensure compliance with the Rules, paragraph 7.

The language of the proceedings is English.

4. Parties' Contentions

A. Complainant

The Complainant has made the following assertions:

*a) The domain name www.linkedin.com.pk (the "Domain Name") is the subject of this Complaint. The present Complaint has been instituted in order to protect the Complainant's rights in the trademark and domain name LINKEDIN and www.linkedin.com respectively which have been unauthorizedly copied by the Respondent and registered as a domain name with PKNIC Registry. A copy of the domain records of the website www.linkedin.com.pk are enclosed as **Exhibit 1**.*

b) The Complainant, LinkedIn Corporation, is a Delaware corporation located in Mountain View, California. Incorporated in Delaware in March 2003 under the name LinkedIn, Ltd., the Complainant changed its name to LinkedIn Corporation in January 2005 and went on to complete its initial public offering in May 2011 and listed itself on the New York Stock Exchange LLC ("NYSE") under the symbol "LNKD".

c) The Complainant is the world's largest professional online networking service with more than 175 million members in over 200 countries and territories as of August 2012. The Complainant through its official website www.linkedin.com offers a platform to provide members with solutions, including applications and tools, to search, connect and communicate with business contacts, learn about attractive career opportunities, join industry groups, research organizations and share information.

d) The Complainant generates revenue from enterprises and professional organizations by selling its hiring solutions and marketing solutions offline through field sales organization or online on its website. Additional revenue is also generated by offering members, acting as individuals or on behalf of their enterprise or professional organization, premium services. The LINKEDIN worldwide revenues for the past five years are as follows:

<i>Year</i>	<i>Sales</i>
2007	\$32,486,000
2008	\$78,773,000
2009	\$120,127,000
2010	\$243,099,000
2011	\$354,448,000 (through September 30, 2011)

Attached hereto as **Exhibit- 3** is the latest annual report of the Complainant to support the above facts and figures.

e) The founders of the Complainant applied to register the LINKEDIN trademark in the United States on May 5, 2003, and registered the <linkedin.com> domain name on December 23, 2003. Since its launch in 2003, the Complainant has continuously and exclusively used the LINKEDIN Mark in interstate commerce in the United States and throughout the world in connection with its services. Therefore, the Complainant is the owner of numerous U.S. and foreign registrations for the LINKEDIN Mark, the earliest of which was filed in 2003. These registrations remain valid and in full force and effect. Attached hereto as **Exhibit 4** are a few copies of the worldwide registration certificates for the LINKEDIN Mark issued in favour of the Complainant.

f) The Complainant has also obtained registrations for its LINKEDIN trademark in Pakistan the details of which are as follows:

<i>Application No.</i>	<i>Trademark</i>	<i>Class</i>	<i>Date</i>
276808	LINKEDIN	42	05/01/2010
276809	LINKEDIN	45	05/01/2010
276804	IN	35	05/01/2010
276805	IN	42	05/01/2010
276806	IN	45	05/01/2010

f-1) Also application for LINKEDIN trademark in class 35 under Application No. 276807 is expected to be registered in a couple of days, effective as of 05/01/2010 as only registration certificate is awaited.

The above Trademark registrations are valid and the copies of the registration certificates are attached hereto as **Exhibit-5**.

g) The Complainant's networking services facilitate the ability of its users to build and maintain relationships within an online community. Each day as a new member joins LINKEDIN approximately every second, millions of individuals access the Complainant's services to find, be introduced to, and collaborate with others. The first Pakistani member joined LINKEDIN on May 7, 2003 and there are just under 1.4 million Pakistani members as of Nov. 5, 2012. Attached hereto as **Exhibit 6** are samples of the press attention LINKEDIN has garnered since its launch.

h) The Complainant has expended considerable effort and expense in developing the LINKEDIN trademark and the services offered in connection with the trademark, both in the United States and internationally. The Complainant under its LINKEDIN trademark and/or domain name has acquired substantial and valuable reputation and goodwill in the marketplace for its high quality networking services. As a result of widespread use, the high degree of consumer recognition, the strong and loyal customer base, among other factors, the LINKEDIN trademark and/ or domain name has become famous and exceptionally reputed and well known. Therefore, the Complainant submits that the overwhelming success of its LINKEDIN services has resulted in the Complainant gaining extensive goodwill and reputation in the trademark LINKEDIN world-wide, and that on account of extensive use and popularity of the domain name www.linkedin.com the trademark LINKEDIN has achieved the status of a 'well-known' mark.

*i) In order to further protect its rights in its trademark LINKEDIN and/ or domain name www.linkedin.com, the Complainant has vigilantly opposed other similar and/or confusingly similar domain names seeking to unduly benefit and profit from the Complainant's goodwill and reputation. Some of these cases include the <linkkedin.com> dispute wherein the Panelist, deciding in the Complainant's favour, held that the respondent demonstrated bad faith registration and use because it was attempting to acquire the personal and financial information of Internet users through a confusingly similar domain name [LinkedIn Corporation v. D-Max Limited]. Attached as **Exhibit- 7** is a compilation of decisions passed by various Domain Name Dispute Resolution Bodies in the Complainant's favor with respect to the LINKEDIN domain name/ trademark.*

*j) As per the PKNIC domain records, the Self Account registered the Domain Name www.linkedin.com.pk on 23th February, 2012. The Domain Name www.linkedin.com.pk wholly incorporates Complainant's well known domain name 'www.linkedin.com' and provides services similar to those of the Complainant's such as job vacancy opening posts, creation of professional profile and contacting other professionals in the network for career advancement which indicates the Respondent's intention to misrepresent to consumers that their services are similar to those of the Complainant. Attached hereto as **Exhibit-8** are screenshots of the Respondent's website www.linkedin.com.pk.*

Based on the above contentions, the Complaint has sought the following Remedy:

In accordance with paragraph 4(1) of the Policy, for the reasons described above, the Complainant requests the Registrar/ Administrative Panel appointed in the administrative proceeding to issue a decision that the Domain name <www.linkedin.com.pk> be cancelled and transferred to the Complainant.

B. Respondent

The Respondent submitted the following:

There are few categories of domain (Top Level Domain – TLD like: hotmail.com, google.com, facebook.com or linkedin.com) , (Country Code Top Level Domain –

ccTLD like: Hotmail.in, google.pk, facebook.pk or linkedin.pk) and (Country Code Second Level Domain – ccSLD like: Hotmail.com.pk, google.com.pk, facebook.com.pk or linkedin.com.pk) So,

www.linkedin.com.pk is a Country Code Second Level Domain

All the domains in the world are technically unique and they all are different with each other like all the email ids are unique and different.

The UDRP for TLDs and ccTLDs can be found at ICANN, IANA, ADNDRC, DNDRC and PKNIC but there is no such rules and policies found for ccSLD at ICANN, IANA, ADNDRC, DNDRC and PKNIC.

We are not using any of the trademark or name of the complainant anywhere in our website i.e. www.linkedin.com.pk which is not similar or matches with www.linkedin.com.

Trademark does not apply on the domain and we are not using any trademark of the complainant.

Based on the above, the Respondent has sought the following:

It is my requests to DNDRC to please remove this complain immediately as the complainant has launched the complaint with no bases. We are not using their trademark neither there is such a UDRP for ccSLD define by ICANN, IANA, ADNDRC, DNDRC and PKNIC.

5. Discussion and Findings

The application for the registration of the Disputed Domain Name 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 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, tortuous interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, or for the purpose of confusing or misleading a person, whether natural or incorporated.”*

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 4.2, a 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 trade name*
- 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, in order to assess whether the application and registration of the Disputed Domain Name is ab initio illegal, the following shall have to be taken into consideration:

- 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 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 Disputed Domain Name infringes upon, or is an obvious derivation of, a registered trade name / trade mark?

The Complainant has contended the following:

*The PKNIC and DomainTools records indicate that the Respondent is the registrant of the domain www.linkedin.com.pk. The printouts from PKNIC and DomainTools indicating information regarding www.linkedin.com.pk are enclosed as **Exhibit-1**.*

*b) The domain name <www.linkedin.com.pk> wholly incorporates the word **LINKEDIN**, which is identical and confusingly similar to the well-known trademark and service mark “**LINKEDIN**” in which the Complainant has worldwide rights as well as common law rights by virtue of long and continuous user whereas in Pakistan its proprietary rights exist by virtue of its prior user and its trademark applications which shall soon be registered dated and effective from January 05, 2010.*

c) The Respondent has no right or legitimate interest in the disputed domain name.

d) The disputed domain name has been registered and is being used in bad faith.

Furthermore, that:

*The Complainant is the registered proprietor of the trademark **LINKEDIN** in various*

*countries including Argentina, Australia, Brazil, Canada, Chili, Hong Kong, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Korea, Turkey, Saudi Arabia and U.S.A. etc. A list illustrating the countries where the LINKEDIN mark is registered in favour of the Complainant are enclosed herein as **Exhibit-2***

The Respondent has neither countered the Complainant's contentions with respect to its trademark LinkedIn nor provided any information with respect to holding any intellectual property rights in the trade name LinkedIn.

The Complainant has been using the trade mark/trade name LinkedIn for the purposes of providing its services for a considerable period of time and the same is attached with goodwill and repute which serve as profit making factors for any business.

The Panel reasonably infers 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 entity for its business. In addition to this, the Panel notes that the Disputed 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.

It is an 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 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 Disputed Domain Name 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. 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 Disputed Domain Name is bona fide?

The Complainant has made use of its trade name "LinkedIn" in order to register its trade mark, and for the purposes of its business.

As far as the registration of the Disputed Domain Name and the bona fide nature of such registration/acquisition is concerned, since the same has been made by the Respondent, it would be for the Respondent to assert its bona fide and support the same with evidence. However, in this matter, even though the Respondent has submitted a Response to the Complaint and has made assertions, no evidence to of any kind has been annexed. As such, the Panel is unable to reasonably assume/infer bona fide on part of the Respondent, based on any documentary evidence of any kind, even more so in absence of any coherent information with respect to the Respondent's intentions/reasons for using the word LinkedIn to register a domain name.

Taking into account the massive consumer base of the Complainant and the fame associated with

the same, it is highly unlikely that the Respondent was not aware of the Complainant, its distinctive nature of being in business and using the trade mark LinkedIn for rendering services. The Panel opines that the Respondent must have reasonably known of the Complainant's trade 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 Disputed Domain Name is relevant to assist the Panel in, inter alia, inferring 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 trade mark/ trade 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 trade mark and trade name.

Failure of the Respondent to provide any documentary facts and details as to the purpose for registering the Disputed Domain Name has rendered the Panel unable to determine a legitimate and non-commercial purpose in conformity with the PKNIC- Internet Domain Registration Policy Aug 7, 2007. ver 4.2 for which the Respondent initially registered the Disputed Domain Name. Moreover, omission to provide purpose of registration and use of the Disputed Domain Name by the Respondent renders the Panel unable to identify any bona fide with respect to same.

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 Disputed Domain Name.

Furthermore, the Complainant has not authorized, allowed, permitted and/or consented to the use of its trade mark by the Respondent in corresponding domain name(s), nor has the Complainant conceded to the Respondent registering domain name(s) identical and confusingly similar to those of the Complainant. This sheds light on the Complainant's securing its trade mark exclusively for its own purposes in order to avoid its users being misled and/or confused into believing that the Respondent and/or anybody else using the Complainant's trade mark, bears any kind of assistance, affiliation, collaboration, partnership, subsidiary, or the kind with the Complainant. This demonstrates the bona fide on part of the Complainant to protect itself against any third party associations. This leads the Panel to reasonably infer that the Complainant is not incorrect in asserting that the Respondent's registering the Disputed Domain Name lacks bona fide.

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 Disputed Domain Name 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 Disputed Domain Name 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 2009. 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 Disputed Domain Name 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. This is the aspect related to emails being sent onto the email address(es) corresponding to the Disputed Domain Name, whereby a user might be unaware that the Disputed Domain Name is not currently with the Complainant and that a third party, independent to that of the Complainant and not bearing any affiliation with the Complainant has access to such emails, wherein the user might have disclosed confidential information and/or personal details of a sensitive nature which would then fall into the hands of the Respondent, who is not the intended recipient. In this way, the user's trust that he has in the Complainant would not only be blatantly breached, but would also affect the loyalty the user has towards the Complainant. Also, 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 Disputed Domain Name by the Respondent 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 Respondent 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

Pursuant to paragraph 4(a) (i) of the Policy, a complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

In line with such provision, the Complainant must prove two limbs, i.e., that it holds the trademark or service mark rights; and that the Disputed Domain Name is identical with or confusingly similar to its trademark or service mark. The test of identity or confusing similarity under the Policy is confined to a comparison of the domain name and the trademark alone, independent of the domain name's use or other marketing factors, usually considered in trademark infringement (see, for example, *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107).

The Complainant has made the following submissions:

- i. The Complainant has used the LINKEDIN trademark/domain name continuously since 2003 well prior to February 23, 2012, the registration date for the disputed Domain Name. The Complainant owns many registrations for the mark LINKEDIN as contained in **Exhibit 4** issued prior to, or resulting from applications filed prior to February 23, 2012 including its applications in Pakistan. Each remains valid and in full force. Thus, the Complainant has rights in the LINKEDIN mark that predate the registration date of the Domain Name. See, e.g., *Pirelli & C. S.p.A. v. Parisa Tabriz*, FA921798 (Nat. Arb. Forum April 12, 2007); *FDNY Fire Safety Education Fund, Inc. v. Roger Miller*, FA 145235 (Nat. Arb. Forum March 26, 2003) (“[T]he FDNY’s successful registration of its mark on the Principal Register is evidence of its rights in the mark.”).*
- ii. A domain name is “identical or confusingly similar” to a Complainant’s mark when it “fully incorporate[s] said mark.” *PepsiCo. Inc. v. PEPSI SRL*, D2003-0696 (WIPO Oct. 28, 2003) (holding *pepsiadventure.net*, *pepsitennis.com*, and others confusingly similar to complainant’s PEPSI mark since they “incorporate[ed the] trademark in its entirety”). Here, the Domain Name *www.linkedin.com.pk* incorporates the famous LINKEDIN mark in its entirety, and is identical to it. Further there have been awards in the Complainant’s favor with regards to disputes over the domain names containing word identical and/ or confusingly similar to LINKEDIN. See, e.g., *LinkedIn Corporation v. Domain Tech Enterprises / Domain Administrator*, FA1110001413146 (Nat’l Arb Forum Dec 14, 2011) (Where the <linedin.com>, <linnkedin.com>, and <lonkedin.com> domain names were found to be in bad faith and confusingly similar to the complainants domain name linkedin.com). See also *LinkedIn**

Corporation v. D-Max Limited, FA1111001413956 (Nat'l Arb Forum Dec 10, 2011).

- iii. *The Complainant owns the Domain Name www.linkedin.com and the Respondent's domain name 'www.linkedin.com.pk is derived by incorporating the Complainant's trademark LINKEDIN in its entirety to attract internet users and consumers for commercial gain. Therefore, there is a likelihood of confusion and this in fact suggests that the disputed domain name refers to the Complainant or that the Respondent is associated with the Complainant, which is not the case.*
- iv. *The Complainant further submits that it has not licensed or otherwise permitted the Respondent to apply for or use the LINKEDIN trademark and/ or domain name incorporating the LINKEDIN mark.*

The Complainant has appended to the Complaint a list of registered trademarks for the mark LinkedIn. It is quite clear that the Complainant is the owner of a number of trademarks that simply comprise LinkedIn in several jurisdictions, including but not limited to Pakistan. The Respondent's registration consisting of the Complainant's LinkedIn trademark in its entirety reflect the Disputed Domain Name as being identical and confusingly similar to the Complainant's registered mark.

Given this, the Panel has little difficulty in concluding that the Disputed Domain name is confusingly similar to a number of trademarks in which the Complainant has rights.

In the circumstances, the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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.”

As has been previously cited in DNDRC Decisions and has been adopted by the Discussions and Findings in WIPO Authorities, it is for the Respondent to rebut the allegations put forth by the Complainant. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be almost impossible, if not stark difficult for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the Disputed Domain Name, the Respondent was obliged to submit evidence with respect to the same. In this matter, even though the Respondent has availed the opportunity of submitting a Response it has not submitted any kind of information, data, record, or the like either in its own favour or in order to counter the contentions levied against it by the Complainant, the Panel is left with no other option but to draw reasonable inferences out of the information, data, record available with it along with its own initiatives to assess the facts.

The Respondent has not submitted any kind of information, nor has provided any kind of material to be used as supporting documentation/evidence. As such, the Panel is unable to decipher the true picture on part of the Respondent.

The Complainant has made out a persuasive case and has alleged the following:

As an initial matter, the LINKEDIN mark is so well known throughout the world and in Pakistan that it is difficult to conceive of any purported rights or legitimate interests Respondent may claim in the Domain Name.

- ii. The Complainant submits that there is no credible legitimate reason for the Respondent to have chosen to acquire the disputed Domain Name. ‘LINKEDIN’ is not a natural word nor a common name, nor one which is a common or natural descriptor for the use which is being made of the Domain Name. The Respondent’s purpose in selecting the disputed Domain Name was plainly to use the fame of the LINKEDIN mark to generate web-traffic and to confuse internet users visiting the Respondent’s site when looking for the Complainant and their famous suite of services.*
- iii. The Respondent is not and has never been known by the LINKEDIN name or by any similar name.*
- iv. Registration and use of the domain www.linkedin.com.pk by the Respondent is neither bonafide nor a legitimate non-commercial or fair use of the Domain Name especially because it is using the disputed domain name to provide same services for which the Complainant uses the LINKEDIN platform for and infringes Complainant’s rights in the LINKEDIN mark. The goodwill in the LINKEDIN name rightfully belongs to the Complainant and has been improperly appropriated by the Respondent. Such conduct of Respondent can never constitute a legitimate interest.*
- v. The Complainant submits that when the Respondent registered the domain name, it was aware of the Complainant's activities, its Trademark LINKEDIN and its domain name “www.linkedin.com” and these facts establish a prima facie case that the Respondent has no right or legitimate interest in the disputed domain name and that*

pursuant to the Policy the burden shifts to the Respondent to show it does have a right or legitimate interests. See Rediff.com India Ltd. v. Daniyal Waseem DNDRC (Case No. C2009-0005) where it was held that “Both under past UDRP decisions (see for instance Nike, Inc. v. B.B. de Boer, WIPO Case No. D2000-1397; and Carolina Herrera, Ltd. v. Alberto Rincon Garcia, WIPO Case No. D2002-0806) and under the Policy, a well-established principle is that when someone registers a domain name, it represents and warrants to the registrar that, to its knowledge, the registration of the domain name will not infringe the rights of any third party. In the case at issue, the Panel reasonably finds that since the Complainant’s marks are widely known, it is unlikely that the Respondent, at the time of registration of the disputed domain name or thereafter, was not aware that it was infringing the Complainant’s marks.”

- vi. *On information and belief, Registrant is not commonly known by the name or nickname of the Domain Name, or any name containing Complainant’s LINKEDIN Mark. Registrant’s information on the domain records in connection with the Domain Name makes no mention of the Domain Name or the Mark as Registrant’s name or nickname. See, Popular Enterprises, LLC v. Sung-a Jang, FA0610000811921 (Nat. Arb. Forum Nov. 16, 2006) (“[r]espondent’s WHOIS information does not suggest that [r]espondent is commonly known by the <ntester.com> domain name”). As the Domain name is plainly registered for commercial purposes, it cannot constitute a legitimate non-commercial or fair use of the Domain Name. The adoption by the Respondent of the ‘LINKEDIN’ domain name is plainly designed to assist it in impersonating the Complainant.*

As such, Respondent’s use of the Domain Name cannot constitute a bona fide offering of goods or services or a bonafide company name or trading name and such conduct can never constitute a legitimate interest.

Since the Respondent was made aware of the Complainant’s contentions and submissions and he was also provided an opportunity to submit additional information and annexures along with the Response, the Respondent failed to provide any information in form of annexures, documents, evidence and the like. Furthermore, the Respondent failed to counter the allegations and submissions put forth by the Complainant. In such an event, when the Respondent has not provided any information with respect to its rights to the trade mark LinkedIn, nor provided any information as to why he chose to register a domain name with the trade mark LinkedIn which upon visiting directs to another domain name, the Panel is unable to infer and opine anything on part of the Respondent.

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 it had any bona fide interest in the Disputed Domain Name, one would have expected it to have something to show for it (e.g. a business plan), but in this matter, he has submitted nothing which is evidence 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 evidence, documentary or any kind for the matter, the Panel does not have any information, documentary evidence, etc., with respect to the Respondent’s rights or

legitimate interests in respect of the Domain Name.

The Panel accepts that the Complainant has satisfied it in the Complaint that the Respondent does not use the Disputed Domain Name in connection with a bona fide offering of goods or services. At the heart of the Complaint is the Complainant's contention that the Respondent has taken the trademark of the Complainant with a view to attracting Internet users for commercial gain.

According to paragraph 4(a) (ii) of the Policy, the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the Disputed Domain Name. However, it is the prevailing view among UDRP panels that where a complainant makes a prima facie case that the respondent has no rights or legitimate interests in the Disputed Domain Name, and the respondent fails to show, inter alia, one of the three circumstances under paragraph 4(c) of the Policy, then the respondent may lack a right or legitimate interest in the Disputed Domain Name.

As previously held by other UDRP panels, "rights or legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the Complainant". (See *eBay Inc. v. Akram Mehmood*, WIPO Case No. DAE2007-0001).

As has been held in the WIPO Panel, in the case of *Consitex S.A., Lanificio Ermenegildo Zegna & Figli S.p.A., Ermenegildo Zegna Corporation v. Varentinuo inc. reg by sopao.com*, WIPO Case No. D2008-0186, if a Respondent wants to argue that it has a right or legitimate interest in a domain name on this basis, it is then for the Respondent to positively advance that case and to bring forward evidence in support.

The Respondent, in this case, has not provided evidence of circumstances of the type specified in paragraph 4(c) of the Policy, or any other circumstances giving rise to rights or legitimate interests in the Disputed Domain Name. There is no evidence on the record of this proceeding to suggest that the Respondent has been commonly known by the Disputed Domain Name, or that the Respondent has made noncommercial or fair use of the Disputed Domain Name. The Respondent has also not used the Disputed Domain Name in connection with a bona fide offering of goods or services. The Panel thus finds that the Complainant has made a prima facie case showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name which are confusingly similar to the Complainant's mark.

Under these circumstances, the Panel takes the view that the Respondents has no rights or legitimate interests in the Disputed Domain Name and that the requirement of paragraph 4(a) (ii) of the Policy is also satisfied.

The file contains no evidence that the use of the Domain Name meets the elements for any of the nonexclusive methods provided for in the Policy paragraph 4(c) and therefore the Panel is unable to observe that the Respondent has rights or legitimate interest in the Domain Name pursuant to the Policy paragraph 4(a) (ii).

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.*

The Complainant has made the following submissions:

- i. The nature of services being provided by the Respondent overwhelmingly supports the conclusion that the Respondent registered and is using the Domain Name in bad faith. The Respondent's bad faith is further exemplified by the fact that it has registered the disputed Domain Name www.linkedin.com.pk on February 23, 2012, which is subsequent to the adoption and use of the mark LINKEDIN and the domain name www.linkedin.com by the Complainant in 2003. The fame and unique qualities of the LINKEDIN mark makes it extremely unlikely that the Respondent created the disputed Domain Name independently. See, e.g., *The J. Jill Group, Inc. v. John Zuccarini d/b/a RaveClub Berlin*, FA0205000112627 (Nat. Arb. Forum July 1, 2002) ("Because of the famous and distinct nature of Complainant's mark and Complainant's J. JILL listing on the Principal Register of the USPTO, [r]espondent is thought to have been on notice as to the existence of Complainant's mark at the time [r]espondent registered the infringing <jjill.com> domain name. Thus, [r]espondent's registration despite this notice is evidence of bad faith registration").*
- ii. Moreover, even constructive knowledge of a famous mark like LINKEDIN is sufficient to establish registration in bad faith. *Google v. Abercrombie I*, FA0111000101579 (Nat. Arb. Forum Dec. 10, 2001) ("because of the famous and distinctive nature of Complainant's GOOGLE Mark, [r]espondent is thought to have been on notice of the existence of Complainant's mark at the time [r]espondent registered the infringing [domain name]") (re googld.com domain name).*
- iii. The Respondent has registered the disputed Domain Name which is identical to the Complainant's well known mark and domain name. In so doing, the Respondent has intentionally attempted to attract commercial gain by misleading the Internet users of the web site and creating a likelihood of*

confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website (Policy, paragraph 4(b)(iv)). The commercial gain is evidenced from the fact that besides providing similar services to those of the Complainant, the domain www.linkedin.com.pk contains third party advertisements which is likely aimed at commercial gain for the Respondent.

iv. *The Respondent's choice of domain name is not accidental and has clearly been made to derive unfair monetary advantage. In support of this submission, the Complainant contends:*

a. At the time of registration of the domain name by the Respondent i.e., on February 23, 2012, the mark and domain name "LINKEDIN" was well-known and registered in several countries of the world. Therefore, the popularity and registration of "LINKEDIN" mark and domain name was a constructive notice to the Respondent on Complainant's rights in the "LINKEDIN" mark and name. Thus, the adoption of an identical mark/domain name by the Respondent is in bad faith.

b. The word LINKEDIN is a unique coined word, which is exclusively referable to the Complainant and the suite of services provided by the Complainant. Thus, use of words and domain name www.linkedin.com.pk by the Respondent is clearly to align its business/services with that of the Complainant. The Complainant has made extensive use of the LINKEDIN mark for a considerable time, such that the LINKEDIN mark has acquired goodwill and reputation globally as it has contents that cater to many different age groups, languages and cultures.

c. The Complainant has made extensive use of the LINKEDIN mark for a considerable time, such that the LINKEDIN mark has acquired goodwill even in jurisdictions where it has not been registered by the Complainant as a trademark.

d. As previously set out, the Respondent has adopted an identical mark LINKEDIN as part of the Domain Name. The entire business activity of the Respondent is to deceive the innocent trade and public by misrepresenting themselves as part of the Complainant's company or to misrepresent that their activities have been authorised, approved or sponsored by the Complainant. The Respondent has wrongfully registered the Domain Name to deceive consumers. Thus, from the circumstances, it is plain to see that the adoption of the LINKEDIN domain name was not independent but parasitic and made in bad faith.

v. Therefore, based on the foregoing, the Respondent has registered and is using the disputed domain name in bad faith.

As has been mentioned repeatedly above herein, the Panel has no information, record, data and/or material to take into account on part of the Respondent. However, basing its findings on reasonable inferences that could be drawn, the Panel is unable to decide upon this aspect of the

issue. Furthermore, the Panel is entirely oblivious to the purpose(s) of registering the Disputed Domain Name by the Respondent.

The Respondent has not provided any information, data, record and/or material at all or as evidence to demonstrate lack of bad faith. It is reiterated for the sake of brevity and clarity that the Complainant, in order to provide online services on a .com.pk ccTLD is unable to do so since the domain name with the .com.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 .com.pk ccTLD for itself even though it has registered the trade mark LinkedIn for its own use. Furthermore, the exact nature of the business that the Respondent is involved in is unknown to the Panel. In absence of information available to take into account, the Panel cannot disregard the similar nature of services being provided by the Respondent on the Disputed Domain Name. This leads the Panel to reasonably believe that the Respondent is either attempting to disrupt the Complainant's business and/or create competition for the same, if the Respondent is not already a competitor.

Accordingly, it is the Panel's view that, on the balance of probabilities, the Respondent had actual knowledge of the trade name of the Complainant and the products/services in connection with which the trade name is used by the Complainant.

In the current proceedings, the Complainant has contended that no authorization, permission, consent or the like was ever granted/ given to the Respondent at any point in time with respect to the registration and/or use of the Disputed Domain Name. Without any form of substantial evidence to indicate that the Complainant approved of or authorised the Respondent's use of their trade name 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).

Having gone through the materials that have been provided by the Complainant, the Panel accepts that the Complainant's trademark LinkedIn is very well-known throughout the world and does indeed appear to be immensely successful as such the same helps in establishing a link and support the Complainant's submission that it seems obvious to them that the Respondent knew or must have known Complainant's trademarks at the time of the registration of the Disputed Domain Name.

Based on the facts and the supporting documentation provided by the Complainant, the Panel has no choice but to accept that the Respondent registered the Disputed Domain Name with the likely knowledge of the Complainant's business and its use of the trademark LinkedIn and is using the Disputed Domain Name to intentionally gain commercially by attracting Internet users to websites, by creating a likelihood of confusion with the Complainant's mark.

Paragraph 4(b) of the Policy provides a list of examples of evidence of bad faith registration and use. Paragraph 4(b)(iv) refers to use of a domain name to intentionally attempt to attract for commercial gain Internet users to a website by creating a likelihood of confusion with the Complainant's mark as to the source of a website.

Given that the Respondent has failed to demonstrate that he is using the Disputed Domain Name genuinely for his own goods or services and that it has also failed to disclose the true relationship between himself and the Complainant, the Panel opines that the Respondent in this case did intentionally attract for commercial gain Internet users to his website by creating a

likelihood of confusion with the Complainant's mark. The activities of the Respondent, therefore, fall within the scope of paragraph 4(b)(iv) of the Policy.

As has already been found, the Respondent has registered domain name that incorporate the trade mark of the Complainant in entirety and is identical and confusingly similar to the trade mark of the Complainant. Furthermore, the Complainant is a well known, well recognized and functioning organization whereby one of its key assets is the recognition and the customer loyalty that fuels the Complainant's business. However, the Complainant is unable to register a domain name with its corresponding Trade Mark "LinkedIn", as the same has already been registered by the Respondent, thereby preventing the Complainant from availing one of the benefits/uses enjoyed by holder of a registered trade mark (i.e. domain name registration). The Panel finds it likely that 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. 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 trade name as the domain name 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 .com.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.

The Panel comes to the inference that the Respondents most likely registered the Disputed Domain Name in order to prevent the Complainant from adopting the trademark in corresponding domain name(s). This has been done in bad faith.

In the circumstances, the Complainant has made out the requirements of paragraph 4(a)(iii) of the Policy. This is sufficient to dispose of this matter in favour of the Complainant. The Panel has been unable to conclude that the Respondent did not register and is not using the Disputed Domain Name in bad faith.

Respondent's Response:

Even though the Respondent has not submitted any information and supporting documentation in form of evidence, data, files, records or anything of the like to support his claim, nor has he countered any/all of the allegations put forth against him by the Complainant, the Panel, for the sake of transparency, completeness and fairness, has taken into account the Response submitted by the Respondent. In the Response submitted, the Respondent has alleged the following:

There are few categories of domain (Top Level Domain – TLD like: hotmail.com, google.com, facebook.com or linkedin.com) , (Country Code Top Level Domain – ccTLD like: Hotmail.in, google.pk, facebook.pk or linkedin.pk) and (Country Code Second Level Domain – ccSLD like: Hotmail.com.pk, google.com.pk, facebook.com.pk or linkedin.com.pk) So,

www.linkedin.com.pk is a Country Code Second Level Domain

All the domains in the world are technically unique and they all are different with each other like all the email ids are unique and different.

The UDRP for TLDs and ccTLDs can be found at ICANN, IANA, ADNDRC, DNDRC and PKNIC but there is no such rules and policies found for ccSLD at ICANN, IANA, ADNDRC, DNDRC and PKNIC.

We are not using any of the trademark or name of the complainant anywhere in our website i.e. www.linkedin.com.pk which is not similar or matches with www.linkedin.com.

Trademark does not apply on the domain and we are not using any trademark of the complainant.

In the above mentioned Response, the Respondent has made two important submissions:

- 1) that the Respondent is not using the trademark of the Complainant anywhere on the website and that the Disputed Domain Name does not match www.linkedin.com, being the Complainant's domain name. In this regard, the Panel, having considered and deliberated upon the annexures provided by the Complainant, reasonably opines that the Disputed Domain Name wholly and entirely incorporates the trademark of the Complainant, the trademark in which the Complainant holds all intellectual property rights associated thereto, including but not limited to using the same for registering a domain name. Furthermore, as has already been discussed, it is highly unlikely that the Respondent was not aware of the Complainant's trademark, since, as has been alleged by the Complainant and the Panel opines reasonably, the word LinkedIn is not a commonly known term nor does it hold any literate and/or book meaning when written in the form that the Complainant uses it. It is a unique name associated with the services being rendered by the Complainant and in order to protect its intellectual property rights in the same, the Complainant has registered the trade marks in various jurisdictions, including but not limited to Pakistan. Furthermore, even if the Respondent was unaware of the trademark LinkedIn being registered intellectual property of the Complainant, the Respondent has not put forth any submissions and/or assertions of having any intellectual property rights in the Disputed Domain Name, nor has the Respondent provided any information with respect to his association with respect to the term LinkedIn which would illustrate any link and/or reasons/purposes for the Respondent using the same to register a domain name.

Furthermore, even though the Respondent has registered the Disputed Domain Name depicting the Complainant's trademark, the Disputed Domain Name gets redirected to another domain name. The Respondent has not provided any information with respect to its intentions for registering the Disputed Domain Name. In such a case, the Panel is unable to decipher any bona fide on part of the Respondent registering the Disputed Domain Name nor is the Panel able to infer why the Respondent has registered the Disputed Domain Name when the same is being used to redirect to another domain name. Redirection: take advantage of the Name and demonstrate legitimate interest in the name and demonstrate bona fide of redirection and use of the name. It is important to note that the services being rendered by the Respondent are remarkably similar to those of the Complainant. It is either a coincidence or goes towards lack of bona fide as to why the Respondent has picked this name (linkedin) for his jobs' website. The Panel reasonably infers that its either a coincidence or a deliberate attempt on part of the Respondent to attract traffic to his website.

The Respondent has submitted that he is not using the Complainant's trademark anywhere on the website, but has failed to negate the allegation put forth by the Complainant with respect to using the trademark of the Complainant in the Disputed Domain Name itself. Nor has the Respondent shown and/or alleged to have any intellectual property rights to the name LinkedIn which would shed light on him using the same to register the Disputed Domain Name when the same is being used to redirect to another domain name.

The Respondent has further submitted that *There are few categories of domain (Top Level Domain – TLD like: hotmail.com, google.com, facebook.com or linkedin.com) , (Country Code Top Level Domain – ccTLD like: Hotmail.in, google.pk, facebook.pk or linkedin.pk) and (Country Code Second Level Domain – ccSLD like: Hotmail.com.pk, google.com.pk, facebook.com.pk or linkedin.com.pk)*. This is falsification of facts as the ccTLDs mentioned by the Respondent are trademark registrations of the respective entities and have secured ccTLD registrations. And in case there's been a dispute, they have sought resolution of the same and succeeded.

- 2) the Respondent has further submitted that trademark does not apply to the domain name and that he is not using any trademark of the Complainant. With respect to this, the Panel has sought aid of the Trade Mark Ordinance, 2001, which, in section 40 concerning infringement of registered trade mark in subsection (6) expressly provides that 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. As such, it is quite clear that the Trade Mark Ordinance extends to domain names as well and affords protection to trade mark holders with respect to domain names. In this case, the intentions of the Respondent in using the registered trade mark of the Complainant are unclear as no information with respect to the same has been provided by the Respondent. Furthermore, the submission that the trademark does not apply to domain name lacks creditability in light of the Ordinance, as

mentioned above herein. The Panel reasonably opines that the Respondent is apparently in breach of the Trade Mark Ordinance, 2001 as the he is registered a domain name bearing the registered trade mark of the Complainant and the same has been done without the consent of the Complainant. With respect to the Respondent's claim that it is not using any trademark of the Complainant, as has been discussed earlier, the Disputed Domain Name depicts and uses the Complainant's trademark in entirety.

6. WIPO Authorities:

For the purposes of rendering this Decision and seeking guidance, the Panel has relied on various WIPO Panel Authorities and the Discussions & Findings contained therein. The following are some of those:

- Giorgio Armani S.p.A. Milan, Swiss Branch Mendrisio v. Min Zhi, Case No. D2013-0020
- Guccio Gucci S.p.A v. Guangzhou saichi shoes co., ltd, Case No. D2013-0024
- Delta Air Lines, Inc. v. Anatoliy Yerokhin, Case No. D2013-0028
- Virgin Enterprises Limited v. Domains By Proxy, LLC / Rodney Dunlap, Case No. D2013-0034
- Expedia, Inc. v. M D Lawrence, Case No. D2013-0061
- Twitter, Inc. v. Moniker Privacy Services/ accueil des solutions inc, Case No. D2013-0062
- SmithKline Beecham Limited, Glaxo Group Limited v. GSKline Limited, Lloyd Hamilton, Case No. D2013-0072
- WIPRO Limited v. Igarashi, Katsuhisa, Case No. D2013-0073

7. Decision

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

1. The Respondent's registration of the Disputed Domain Name is in violation of the PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2.
2. The Respondent has no legitimate interest in the Complainant's trade name.
3. The Disputed Domain Name is confusingly similar/ identical.
4. The Respondent is making mala fide use of the Complainant's trade 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 Disputed Domain Name 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: 10th August, 2013

Sole Panelist: Mustafa Syed