

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Chanel Limited. v. Chanel International

Case No. C2012-0003

Also in PDF C2012-0003

1. The Parties

The Complainant is Chanel Limited, having its principle premise of business at 19-21 Old Bond Street, London W1S 4PX, England.

The Complaint has been instituted by the authorized representative of the Complainant, M/s Vellani & Vellani Advocates & Legal Consultants, located at 148, 18th East Street, Phase I, Defence Officers' Housing Authority, Karachi, Pakistan.

As per the PKNIC Database, The Respondent is Chanel International, located at 26/h Akbar Market Shahalam, Lahore, Pakistan.

2. The Domain Name and Registrar

The disputed domain name is <chanel.net.pk>

(Hereinafter referred to as the "Disputed Domain Name")

3. Procedural History

The Complaint was filed with the Domain Name Dispute Resolution Center (the "DNDRC") on 20th February, 2012.

In accordance with the PKNIC - Internet Domain Registration Policy and the Rules of ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP], DNDRC formally notified the Respondent of the Complaint via email dated 04th March, 2012 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 07 days from the notification, the dispute would proceed *ex parte*.

The Respondent however disregarded this opportunity failed to submit the Response in the form required by section 6(1) of the Supplemental Rules of DNDRC and failed to provide a response in the required manner. Under section 5(e) of the UDRP, the Panel has the authority, in the absence of a proper response, to commence with the proceedings in default and to determine the matter based upon the Complaint.

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

The DNDRC appointed Ms. Fozia Umar as the Sole Arbitrator in this matter who as sworn impartiality.

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

4. Factual Background

The Complainant is the registered proprietor of the trade mark “Chanel” in 50 countries across the globe, including Pakistan, where the Complainant holds trademark registration in several classes.

The Complainant has provided the following Factual Grounds for instituting the Complaint:

FACTUAL GROUNDS:

(i) Chanel and its affiliated companies and authorised users are world famous manufacturers and/or sellers of a diverse range of luxury goods including, perfumery, cosmetics, toiletry products, clothing, footwear, headgear, fashion accessories such as jewellery, watches, purses, wallets, handbags, luggage, eyewear and gift items, all of which are sold under or by reference to the CHANEL Trade Marks.

(ii) Chanel was incorporated in the United Kingdom in 1925 following the great reputation attained by its predecessor in business, Mlle Chanel in France in the field of ladies fashion and perfumery. Since then Chanel has traded on a global basis in a range of perfumery, cosmetics and toiletry products as well as clothing and clothing accessories under and using the CHANEL Trade Marks. Attached hereto and collectively marked Exhibit 8 are copies of pages downloaded from the Internet, including Chanel’s websites, and newspaper articles containing historical background of Chanel’s business worldwide.

(iii) The CHANEL trade mark was first used as early as 1910 and since then has been extensively used in many countries throughout the world, by

Chanel and its affiliated companies. CHANEL branded perfumery, cosmetics, clothing and fashion accessories are sold through Chanel boutiques in the United Kingdom and in many other countries including Ireland, France, Germany, Italy, Switzerland, India, Japan, Singapore, Malaysia, USA, Canada and Australia. The aforesaid products can also be viewed online through the Chanel website www.chanel.com and purchased online through authorized stockists such as www.boots.com.

(iv) For confidentiality reasons the Complainant does not wish to disclose its annual returns, since this is considered proprietary and sensitive information. However, by way of illustration only, the Complainant's global sales and advertising expenditure in relation to fragrance and beauty products alone sold under and or by reference to the CHANEL Trade Marks for the period 2000 – 2010 are attached hereto as Exhibits 9 and 10, respectively.

(v) Far-reaching advertising and promotional efforts by Chanel and associated Chanel companies have further established and enhanced the reputation of the CHANEL brand and trade mark. Over the years various CHANEL branded products have been advertised or featured in various international magazines. These include Vogue, Cosmopolitan, Elle, Marie-Claire, GQ, Vanity Fair, The Times and in flight magazines such as British Airway's High Life magazine. Photocopies of a random selection of such advertisements which were published during 1976 - 2011 are attached hereto as Exhibit 11.

(vi) As a result of its marketing and advertising efforts, Chanel has created enormous monetary value, reputation, and goodwill in the CHANEL Trade Marks. The CHANEL Trade Marks are symbols of Chanel's high-quality reputation and valuable goodwill, and have become, through extensive use and advertising, famous and well-known marks throughout the world, including Pakistan, and represent assets of incalculable value to Chanel.

(vii) Apart from the common law rights enjoyed by Chanel in the CHANEL Trade Marks, Chanel has actively obtained registrations of CHANEL Trade Marks in various countries around the world [see Exhibits 4 and 5]. The earliest registration of the CHANEL trade mark which is still in force in the United Kingdom was obtained under number 602372 in 1938 in respect of "perfumes, toilet preparations (not medicated) and toilet soaps". In Pakistan, the earliest registration for the CHANEL word mark dates back to 13 March 1943. The CHANEL Trade Marks clearly antedate any apparent use or registration of the disputed domain name and are in full force and effect.

Chanel therefore has the prima facie exclusive prior right to use the CHANEL Trade Marks throughout the world and at the very least throughout Pakistan, in connection with its products and/or services and in connection with associated marketing and promotional activities such

as in internet domain names and its websites.

(viii) Each of the CHANEL Trade Marks contains the word “CHANEL” as the principal element of the mark. Furthermore, the word “CHANEL” forms an essential part of the trade name of Chanel and of a number of other related companies of Chanel, including, Chanel Inc.

(ix) In addition, Chanel and its associated companies own numerous domain names containing the word “chanel”, including but not limited to ‘chanel.com’, ‘chanel.com.pk’, chanel.co.za, chanel.co.in, and chanel.co.uk which clearly evidences Chanel’s international presence. Ownership details of these domain names as downloaded from the Internet are attached hereto as Exhibit 12.

(x) Chanel is thus the exclusive proprietor of the valuable rights enjoyed by it in respect of the CHANEL Trade Marks, in a number of countries around the world, including Pakistan, and as such any use of the CHANEL Trade Marks or any of them or any variation thereof (such as ‘Chanel International’ or ‘chanel.net.pk’) by any company or person in those countries, including a Pakistani company or person, without the permission, consent or license of Chanel is bound to be dishonest and only motivated by an attempt to deceive or confuse the public into believing that such company or person’s business and the associated services and/or products are related to or associated with Chanel in some or the other manner. Further, such use will constitute infringement of the exclusive rights vested in Chanel as aforesaid.

(xi) Respondent, without permission or authorisation from Chanel, has on 7 March 2006 secured a domain name registration for “chanel.net.pk” (“Domain Name”) [see Exhibit 1], which consists of nothing more than the Complainant’s CHANEL trade mark in its entirety.

(xii) Chanel, via an independent investigator, conducted inquiries into the business activities of the Respondent (and as per the inquiries, the Respondent is engaged in the business of retailing perfumery, cosmetic products and toiletries) and based on the results of such inquiries, on 24 December 2010, Chanel sent a cease and desist letter to the Respondent requesting inter alia that the Respondent voluntarily transfer to Chanel the Domain Name, remove the CHANEL Trade Marks and any other infringing material from the website ‘chanel.net.pk’ until the said transfer has been effected and undertake to immediately cease and permanently refrain from posting or linking to such website any webpage, text images or any material comprising or consisting of the CHANEL Trade Marks or any of them or any variation thereof. Photocopy of the above-mentioned cease and desist letter is attached hereto as Exhibit 13. In response to Chanel’s cease and desist letter, Respondent agreed to change its trade name from “Chanel International” to “Bin Baker International” and provided the Complainant’s counsel with documentary proof of such change of name in the form of revised company letterhead and business

cards. However, Respondent refused to cancel or transfer the Domain Name to the Complainant. Photocopies of the letters sent to and received from the Respondent are attached hereto as Exhibit 14.

(xiii) Thus, the Respondent continues to unauthorisedly hold in its name the domain name registration for ‘chanel.net.pk’ and the corresponding email addresses, such as ‘fahd@chanel.net.pk’ [see Exhibit 1], all of which infringe the exclusive rights vested in Chanel in respect of the CHANEL Trade Marks and further mislead the general public, including the Internet users in Pakistan and elsewhere, and cause them into believing that the Respondent’s Domain Name and the email address mentioned above are authorised or controlled by Chanel or persons having a business connection with Chanel, which is not the case.

The Respondent registered the Disputed Domain Name on 07th March, 2012 with validity upto 07th March, 2014.

Additionally the Respondent has failed to provide DNDRC with a Response to the Complaint initiated against them in the required form by under section 6(1) of the Supplemental Rules of DNDRC despite a Notification of the same being sent by DNDRC to the Respondent providing the same with an opportunity to submit a Response.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

Complainant, Chanel Limited (“Chanel”), owns extensive rights in the trade name and trade mark CHANEL, including marks incorporating CHANEL and associated logos and get-ups (hereinafter collectively referred to as the “CHANEL Trade Marks”).

Chanel is the proprietor in Pakistan and elsewhere of the CHANEL Trade Marks, in respect of a variety of goods and services, including those falling in classes 3, 9, 14, 18 25, 35 and 44 of the International Classification of Goods and Services, such as perfumery, cosmetics, toiletry products, clothing and fashion accessories. Chanel owns registrations and/or pending applications for a variety of CHANEL Trade Marks in over 50 countries around the world, including Pakistan. A list of countries in which Chanel maintains CHANEL trade mark registrations and/or pending applications is attached

hereto as Exhibit 4. Also attached hereto as Exhibit 5 are photocopies of certificates of a selection of those registrations.

Complete particulars of the Complainant's registrations incorporating CHANEL (the earliest of which date back to 1943) and the sole pending application in Pakistan are set out below.

Mark	Mark No. & Effective Date	Class	Goods/Services	Status
CHANEL	5495 13 March 1943	3	Perfumes, toilet preparations (not medicated) and toilet soaps.	Registered and renewed up to 30 June 2011
CHANEL	47320 27 April 1967	25	Clothing, including boots, shoes and slippers included in Class 25	Registered and renewed up to 27 April 2014
No. 5 CHANEL	54292 24 Sept. 1970	3	Perfumes, eade cologne, toilet rouge, lipstick and toilet soap; and toilet water, face powder and talcum powder, all being non-medicated preparations	Registered and renewed up to 24 September 2017
CHANEL No. 19	57935 4 Oct. 1972	3	Perfumes, eade cologne, toilet rouge, lipstick and toilet soap; and toilet water, face powder and talcum powder, all being non-medicated preparations	Registered and renewed up to 4 October 2019
CHANEL	69885 8 July 1979	18	Handbags, pocket wallets, umbrellas, parasols, vanity cases (not fitted), briefcases, articles of luggage	Registered and renewed up to 8 July 2016
CHANEL	83344 27 June 1984	14	Costume jewellery	Registered and renewed up to 27 June 2016
CHANEL	100658 7 Dec. 1988	3	Bleaching preparations and other substances for Laundry use; cleaning, polishing, scouring and abrasive preparations.	Registered and renewed up to 7 December 2020
CHANEL	190027 21 Nov. 2003	9	Electronic hair appliances for personal use; spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacle and sunglasses frames and lenses; anti-glare glasses and visors; clothing and gloves for protection against accidents; helmets; goggles; person safety alarms; optical apparatus and instruments; automatic vending machines for vending perfumes of cosmetics; fitted cases for spectacles; fascias, cases, covers and carry bags for telephones and telecommunications apparatus and instruments; mobile telephone cards; downloadable ring tones and icons; machine readable mobile airtime vouchers; electronic publications relating to fashion or beauty	Registered and renewed up to 21 November 2020
CHANEL	198399 7 July 2004	44	Beauty skin services; hairdressing salon services; flower arranging services; information and advice, all relating to personal grooming, the selection and use of skin care, toiletry, fragrance and cosmetic products	Pending
CHANEL	198400 7 July 2004	35	The bringing together, for the benefit of others, of a variety of goods, including perfumes, toiletries, cosmetics, sunglasses, jewellery, watches, handbags, leather goods, clothing, footwear and accessories,	Registered up to 7 July 2014

			<p>enabling customers to conveniently view and purchase those goods in a fashion retail store; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a department store; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a wholesale outlet; sales promotion services; information and advisory services relating to aforesaid; advertising and promotion services relating to these goods</p>	
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Attached hereto as Exhibit 6 are the duly certified copies of the entries in the Register of Trade Marks in respect of the above-mentioned Pakistani registrations and pending application.

The Complainant is also the registered owner of the domain name “chanel.com.pk” in Pakistan. A print-out of the PKNIC domain record which has been downloaded from PKNIC’s website www.pknict.net.pk, is attached hereto as Exhibit 7.

For all the above mentioned contentions, the Complaint seeks the following Remedies:

In accordance with ICANN Policy, paragraph 4(i), and PKNIC - Internet Domain Registration Policy, paragraph 4, for the reasons described in paragraph 8 above, Complainant requests the Administrative Panel appointed in this administrative proceeding to issue a decision that the Domain Name “chanel.net.pk” be transferred to Complainant.

B. Respondent

The Respondent failed to submit the Response in the form required by section 6(1) of the Supplemental Rules of DNDRC

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

7. Jurisdiction

The Panel’s jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the 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, 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.

8. Discussion and Findings

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 Complaint and will deal with each of the sub-issues sequentially below.

The application for the registration of the Disputed Domain Name on behalf of the Complainant is regulated by the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 and the UDRP Rules. The PKNIC Policy states:

“You, the applicant who wants to register a domain name under .PK is presumed to have read and agreed to this PKNIC Internet Domain Registration Policy”.

The Respondent applied for registration of the Disputed Domain Name on the basis of these regulations and was allowed registration subject to the same. Hence the relationship between the Respondent and PKNIC with respect to PKNIC’s domain name registration service is governed by the PKNIC - Internet Domain Registration Policy Aug 7, 2007.ver 4.2 and the UDRP Rules, as such the Respondent’s registration must be legitimate and in accordance with the requirements of these regulations and Rules.

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.**”*

Correspondingly the 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 in the present context the decision of the dispute shall be addressed with respect to the following aspect:

- 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).

It is imperative to note that the Respondent has not submitted any Response to this Complaint even though an opportunity to do the same was afforded to the Respondent by the DNDRC. Under the Policy, the Panel is empowered to proceed with the Complaint on an ex parte basis. However, relying on the WIPO Overview of WIPO Panel Views, it has been determined as to what the WIPO opines in situations where the Respondent does not submit a Response. Does it automatically grant the Complainant the Remedies it has sought in the Complaint or whether it is still obligatory for the Panel to take into account every contention put forth by the Complainant and determine whether it satisfies the Procedural matters. In this regard, the Panel has considered the WIPO view on this matter and has found that:

4.6 Does the failure of the respondent to respond to the complaint (respondent default) automatically result in the complainant being granted the requested remedy?

Consensus view: The respondent's default does not automatically result in a decision in favor of the complainant. Subject to the principles described in 2.1 above with regard to the second UDRP element, the complainant must establish each of the three elements required by paragraph 4(a) of the UDRP. While a panel may draw negative inferences from the respondent's default, paragraph 4 of the UDRP requires the complainant to support its assertions with actual evidence in order to succeed in a UDRP proceeding.

Relevant decisions:

The Vanguard Group, Inc. v. Lorna Kang [D2002-1064](#),

Berlitz Investment Corp. v. Stefan Tinculescu [D2003-0465](#)

The above mentioned WIPO view makes it clear that even though the Respondent has omitted submission of a Response to rebut and/or counter the contentions of the Complainant that the latter has made against the Respondent, the same has not sought to put forth any defence and/or counterclaim, this does not imply that this omission results in an automatic transfer of the

Disputed Domain Name to the Complainant. The matter has to be decided on the basis of merits and evidence submitted by the Complainant (if any) needs to be taken into account and consideration while rendering the Decision. As such, this Panel has reviewed, assessed and evaluated the Complaint and the Complainant's contentions based on the Facts provided along with the supporting documentation/evidence annexed thereto.

I. Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration of the domain name

In terms of the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2, a domain name is registered subject to inter alia paragraph 1 & 4 and is held invalid if it:

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

The PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 paragraph 4 also states that:

If a party claims that a domain name already registered with PKNIC violates their registered trade name, an obvious derivation of their registered company name, is not bona fide as recognized by international best practice, is a contravention 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.

Hence, any registration of a domain name, in contravention of paragraph 1 of The PKNIC - Internet Domain Registration Policy Aug 7, 2007. ver 4.2, would be ab initio void and as well as voidable under the requirements of paragraph 4 of The PKNIC - Internet Domain Registration Policy Aug 07, 2007 version 4.2.

For the assessment of illegality, unlawfulness or otherwise invalidity of the Application & Registration in order to determine whether the application and registration of the Disputed

Domain Name is ab initio illegal with respect to the following aspects in the context of which this dispute shall be assessed:

- 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?

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

i. Whether the Disputed Domain Name infringes a registered trade name / trade mark?

The Complainant has alleged that:

D. The disputed domain name vis-à-vis Respondent contravenes the provisions of the Policy Agreement [which is a part of the domain registration form] and the PKNIC - Internet Domain Registration Policy, as amended lately on 7 August 2007, ver. 4.2 [which is incorporated by reference into the PKNIC Policy Agreement].

(xxiv) The unauthorised adoption, use and registration by the Respondent of the Domain Name (which consists of the Complainant's registered and well known CHANEL trade mark) constitute inter alia the actionable wrongs of infringement, passing-off and unfair competition. By such adoption and use the Respondent infringes the exclusive rights vested in the Complainant in respect of the CHANEL Trade Marks or any of them in Pakistan, and also passes off its respective business, website, domain name and/or email address as and for the business, website, domain name and/or email address of Complainant or its affiliated companies and further unfairly competes with Chanel's business and/or the CHANEL Trade Marks or any of them. Moreover, through such registration or use of the Domain Name, the

Respondent intends to mislead the general public, including the Internet users in Pakistan and elsewhere, and to cause them into believing that the Respondent's Domain Name, (potential) website, email address and/or business is authorised or controlled by Complainant or persons having a business connection with Complainant, which is not the case.

(xxv) The unauthorised adoption, registration and/or use by the Respondent of the Domain Name further falls within the prohibition of the provisions of the Trade Marks Ordinance 2001 and the Pakistan Penal Code 1860, including, in particular, sub-section (6) of section 40 of the Trade Marks Ordinance 2001; clause (1) of paragraph 4 of Third Schedule to the Trade Marks Ordinance 2001; and sections 480, 481, 482,

483, 485 and/or 486 of the Pakistan Penal Code 1860. Text of these provisions is attached hereto as Exhibit 21.

Furthermore, in this regard, Complainant relies on the analysis and findings of the DNDRC Panel in *Standard Chartered PLC v. Hosting Campus Domain* (Case No. C2007-0001, dated 30 August 2007 – copy attached as Exhibit 22). (xxvi) In view of the above, there is no doubt that the Domain Name and/or the Respondent contravene the provisions of the Policy Agreement and the PKNIC - Internet Domain Registration Policy (attached hereto as Exhibits 23 and 24 respectively), which provide *inter alia* that:

(a) The applicant for registration of a domain name at the time of making the application expressly represents, agrees and warrants as follows:

- applicant's statements in the application are true and the applicant has the right to use the domain name as requested in the application;

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

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

- applicant is not seeking to use the domain name for any unlawful purpose, including, without limitation, tortious interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, or for the purpose of confusing or misleading a person, whether natural or incorporated.

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

(xxvii) It will be noted that the DNDRC Panel in the above-mentioned case (see Exhibit 22) has found that if a complainant simply establishes that the respondent's domain name infringes upon the complainant's registered trade name or trade mark, this renders the respondent's domain name to be illegal, unlawful and invalid and further constitutes an adequate ground for the transfer of the domain name to the complainant.

The Respondent's failure to submit a Response, any information, data or the like has rendered the Panel unable to determine anything on part of the Respondent. However, taking into account the information and documentation (annexures) provided by the Complainant, it comes to light that the Trademark "CHANEL" has been registered by the Complainant in over 50 countries, including Pakistan. In Pakistan only, the Complainant has secured several trademark registrations in various classes. So much so, these trademark registrations are not recent or newly found. In fact, the first trademark registered obtained by the Complainant dates back to 1943 and

1967. This shows that neither the Complainant nor their goodwill associated with their mark CHANEL is novel. It has been there for over four (04 decades).

The Respondent has, by incorporating the Complainant's registered trademark into a corresponding domain name has, in effect, committed an obvious infringement of the trademark CHANEL, rights to which vest with the Complainant.

The Panel has taken into account and determined the Annexures submitted by the Complainant along with the Complaint. The Complainant indeed has the trade mark "CHANEL" registered in its name. This registration has been granted to the Complainant by the Trade Marks Registry, Government of Pakistan.

The trademark registrations applied for and obtained by the Complainant in over 50 jurisdictions clearly illustrates that the trade mark "CHANEL" is secured by the Complainant for its exclusive use and to avail all the rights conferred upon a trade mark owner.

The Disputed Domain Name incorporates and reproduces the name "CHANEL" in entirety. The above mentioned trade mark registrations in favor of the Complainant illustrate that by virtue of reproducing the trade mark "CHANEL" into the Disputed Domain Name, the same is infringing the trade mark registrations.

As such, taking all of the trademarks as mentioned above, it can be reasonably inferred that the trademark "CHANEL" has been registered by the Complainant. Hence, the Respondent's act of incorporating the trade mark "CHANEL" in the Disputed Domain Name paves way for infringement of trade mark that has already been registered by a party other than the Respondent.

It is important to note and take into account that the trademark registration rights pertaining to CHANEL vest with the Complainant, who has not authorized, assigned or licensed any rights to CHANEL in favor of the Respondent. Furthermore, the Respondent is in no way associated with the Complainant, including but not limited to by way of association, affiliation, partnership, distributorship, licensing, liaison, etc.

It is imperative to determine if being the owner of registered trade mark(s) affords the same automatic rights to a disputed domain name. In this regard, the Panel has also taken into account the Consensus View taken by WIPO in cases where there a registered trade mark is infringed:

1.1 Does ownership of a registered trademark to which the domain name is confusingly similar automatically satisfy the requirements under paragraph 4(a)(i) of the UDRP?

Consensus view: If the complainant owns a registered trademark then it satisfies the threshold requirement of having trademark rights. The location of the registered trademark and the goods and/or services it is registered for are irrelevant when finding rights in a mark.

Relevant decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services [D2000-0503](#),

Thaigem Global Marketing Limited v. Sanchai Aree D2002-0358,
Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic
Adriano D2003-0661

It is one of the foremost and vital elements of the Policy that a domain name should not infringe a registered trade mark. The Respondent's express and implied breach of the Policy is sufficient to result in cancellation of its registration of the Disputed Domain Name. Nonetheless 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 issues as listed above.

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

In order to determine bona fide on part of the Respondent and to decide on the same, the Panel is unable to come to any finding depicting bona fide on the Respondent's part as it does not have any information, data, record, documentation or anything of the like provided to it by the Respondent even though an opportunity to do the same was afforded.

Prima facie, it would be helpful to look at what bona fide means. A simple literate translation of bona fide means *good faith*. Taking this and applying it while finding bona fide nature of a domain name registration, a Panel would have to look at several factors. For example, why the domain name was registered, whether the Respondent has rights to the Disputed Domain Name, whether the Respondent is using the Disputed Domain Name for itself, etc.

However, in this case, the Panel is unable to determine anything on part of the Respondent which would lend any assistance in considering bona fide nature of the Domain Name Registration on part of the Respondent as the same has not submitted any Response. The Panel does not have any information whatsoever at all which could be looked into while considering bona fide nature of the registration made by the Respondent of the Disputed Domain Name.

The Panel, in determining this sub issue (ii), dwelled upon the reason(s) the Respondent could have had in registering the Disputed Domain Name. These (possibly) could have been to advertise its products/services, provide an online portal for sale/publication/solicitation/facilitation/rendition of the Respondent's goods and/or services. The Panel based its opinion on the grounds that a common man employs while registering a domain name. Furthermore, the Respondent could have registered the Disputed Domain Name in order to have an online presence, make itself and its goods and/or services available to the consumer(s)/customer(s), have an online trading mechanism, etc. However, the Panel assesses why the Respondent chose this particular name "CHANEL" for registering the Disputed Domain Name.

Since the Respondent has failed to submit any Response in this matter, the Panel has no information, data, evidence or anything of the like at its disposal to take into consideration while determining this Complaint. As such, the Panel is unable to determine any reason(s), the

Respondent could have had in using the word “CHANEL” while registering the Disputed Domain Name.

Furthermore, the word “CHANEL” has already been registered by the Complainant. The Complainant is not a newly formed entity and has secured trademark registrations in Pakistan for over four (04) decades.

In this respect, it is a pertinent fact that the Respondent could not fail to be reasonably aware of the reputable nature and large customer base of the Complainant at the time when the Respondent registered the Disputed Domain Name. The Panel takes into account the WIPO decision of **Hollywood Foreign Press Association v. F.M.I. Case No. D2008-1610**, whereby it was noted that:

“The Complainant contends that the Respondent registered the Domain Names knowing of the existence of the Complainant’s trade mark, GOLDEN GLOBE, and with a view to exploiting the Complainant’s trade mark rights, a primary claim being that the Respondent registered the Domain Names with a view to selling them at a profit. If the Complainant’s allegations are made out, such a registration could not conceivably give rise to rights or legitimate interests in respect of the Domain Names. The Panel accepts the Complainant’s unchallenged contention that it is inconceivable that the Respondent was unaware of the Complainant’s mark, GOLDEN GLOBE, when the Domain Names were registered. The Complainant has undertaken various enquiries and has found no basis upon which the Respondent could be said to have rights or legitimate interests in respect of the Domain Names. Moreover, the Respondent’s name has no obvious connection with the Domain Names and the Complainant has granted the Respondent no license in respect of the GOLDEN GLOBE trade mark. The Complainant has made out a prima facie case under this head, a case calling for an answer from the Respondent. The Respondent has not responded to the Complaint; nor did the Respondent respond to letters from the Complainant’s representative. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.”

The above mentioned precedent reaffirms and reiterates the view taken by the Panel that there isn’t anything on record for the Panel to determine as bona fide on part of the Respondent while registering the Disputed Domain Name. The Respondent has no linkage to the trade name “CHANEL”, it is neither a licensee, nor an affiliate of the Complainant, nor has it been awarded any license, authorization, assignment or anything whatsoever at all to use their trademark CHANEL, and including but not limited to the above, the Respondent has not provided any information whatsoever at all to demonstrate any bona fide in its favor. As such, the Panel has nothing on record to determine any bona fide on part of the Respondent with respect to the Disputed Domain Name.

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

Before discussing this sub issue, it is imperative to clarify the grounds and consequences of the same. It is clarified that although Pakistani law does not apply by force of law over PKNIC’s Jurisdiction it does however apply as a contractual term to the contract executed between the

Respondent and PKNIC thus defines the scope and terms of use of the domain name under the PKNIC - Internet Domain Registration Policy Aug 07 2007 version 4.2. As such it is clarified for future disputes, Appeals and Complaints that illegality with respect to the Application and Registration and examination of Pakistani law in this context does not imply that Pakistani law has applicability or jurisdiction over PKNIC or the dispute in question. Conversely the fact that Pakistani law is included as part of the terms of the PKNIC- Internet Domain Registration Policy Aug 07, 2007, version 4.2, these terms therefore apply to PKNIC and all relevant parties by virtue of the contractual and representative clauses thus the examination of Pakistani law is undertaken to determine whether any and/or all of these terms and conditions have been breached, violated and/or if there exists any non-conformity by the applicant or PKNIC.

The relevant Pakistani legislations pertaining to registration of the Disputed Domain Name includes, inter alia, The Trade Marks Ordinance, 2001, section 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, the Pakistan Penal Code section 478(1), that deal with infringement of Trade Marks, would 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 registered 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 would increase the likelihood of giving rise to liability under the above mentioned statutes, which in turn would raise significant doubt regarding the legitimacy and bona fide of the Respondent's registration of the Disputed Domain Name.

The Panel reasonably opines and infers that the Respondent's registering the Disputed Domain Name could incur liability under the above mentioned Pakistani Legislations. This, in itself, is a basis on which this Complaint could be decided. However, for the sake of completeness and procedural fairness, 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, has made note of the issue pertaining to email(s) sent by users, being bona fide customers/consumers of the Complainant. The Panel has taken into account another way in which the use of the Disputed Domain Name would cause confusion and would be contrary to 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.

The Panel notes the manner in which any “*a reasonable bystander*” or “reasonable user” may be misled and confused when sending emails to the Disputed Domain Name, being under the impression that the same, either are or maybe that of the Complainant. A customer, seeking any of the online services being provided by the Complainant, seeking any information, providing his own confidential information etc. may be misled into sending an email address corresponding to the Disputed Domain Name, considering either/all of them to be that of the Complainant. In such a manner, 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 nature of the way in which the Complainant’s registered trademark is used 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.

The Panel shall continue to deal sequentially with the next three issues:

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

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

The Complainant contends that:

A. The disputed domain name is identical or confusingly similar to the trademarks and service marks in which the Complainant has rights [ICANN Policy, para. 4(a)(i); ICANN Rules, para. 3(b)(ix)(1)].

(xiv) The facts and evidence provided in paragraphs 7 and 8(i) to (xiii) above clearly demonstrate that the CHANEL Trade Marks or any of them are the exclusive property of Complainant, who has the prima facie prior registered right to use the CHANEL Trade Marks in relation to inter alia perfumery, cosmetics, toiletry products, clothing and fashion accessories, throughout the world, including in Pakistan. The WIPO Panel has also upheld Chanel's rights in respect of the CHANEL Trade Marks in a number of earlier UDRP cases. Copies of the WIPO decisions in the above-mentioned cases are attached hereto as Exhibit 15.

(xv) The Domain Name consists of the word/component CHANEL, which is the registered trade mark of the Complainant in Pakistan and forms the principal element of the domain names owned and registered by Complainant and/or its related companies (principally, chanel.com). The Domain Name in fact consists of nothing more than the Complainant's CHANEL trade mark in its entirety. As stated by the WIPO Panel in Dr. Ing. H.c.F. Porsche AG v. Vasilij Terkin (Case No. D2003-0888, dated 6 January 2004 - copy attached as Exhibit 16), a domain name that wholly incorporates a complainant's registered trade mark is sufficient to establish confusingly similarity.

The addition of the suffix/ccTLD "NET.PK" is an irrelevant distinction

based on the findings of the WIPO Panel in the following cases, namely:

- *BIC Deutschland GmbH & Co KG v. Paul Tweed (WIPO Case No. D2000-0418, dated 20 June 2000);*
- *LG Chemical Ltd v. ChangHwan, OH (Case No. D2000-0889, dated 25 September 2000);*
- *Nokia Corporation v. Firdaus Adinegoro/Beli Hosting (Case No. D2004-0814, dated 19 November 2004);*
- *Zwiesel Kristallglas AG v. WWW Enterprise Inc. (Case No. D2005-1223, dated 23 January 2006); and*
- *Rosemary Conley Diet and Fitness Clubs Limited v. Nikolina Bartels-King (Case No. D2006-1401, dated 18 January 2007).*

Copies of these cases are attached hereto as Exhibit 17.

(xvi) Based on the above, there can be no doubt that the Domain Name is identical and/or confusingly similar to the CHANEL Trade Marks in which Complainant has prior exclusive rights.

The Respondent has failed to submit a Response and as such no contentions, assertions, response, information or anything of the like is on record.

As asserted by the Complainant and upheld by WIPO in numerous Administrative Panel Decisions, incorporating a trademark by somebody other than the trademark right holder, into a domain name constitutes infringement of the trademark.

In this case too, the Respondent has reproduced the trademark CHANEL into a domain name in entirety. It is pertinent to note that the trademark CHANEL is held by the Complainant in many jurisdictions, including Pakistan, in several classes, since 1943.

The Panel has looked into and taken into account the several WIPO Authorities cited by the Complainant and has applied the Discussion & Findings in those while deciding this Complainant.

The Panel has looked into following:

- Chanel Inc. v. hu, huzou, hpahg (Case No. D2010-0283, dated 14 April 2010);
- Chanel Inc. v. Software Outlet (Case No. D2010-01777 dated 4 April 2010);
- Chanel Inc. v. Dong Jiancai (Case No. D2010-0144 dated 24 March 2010);
- Chanel Inc. v. Chenying (Case No. D2009-1705 dated 19 February 2010);
- Chanel, Inc. v. Domain Privacy Group, Inc./Charlene Newport (Case No. D2009-0081 dated 16 March 2009);
- Chanel v. 1 (Case No. D2003-0218 dated 28 May 2003);
- Chanel Inc. v. Bontempo (Case No. D2002-0721 dated 17 October 2002);
- Chanel, Inc. v. LaPorte Holdings (Case No. D2005-0487 dated 12 July 2005);
- Chanel, Inc. v. Mike Torres d/b/a National Promotions, Inc. (Case No. D2000-1833 dated 22 February 2001);
- Chanel, Inc. v. IGGI Networks, Inc. (Case D2000-1831 dated 16 April 2001);

- Chanel, Inc. v. Cologne Zone (Case No. D2000-1809 dated 22 February 2001);
- Chanel, Inc. v. Urainia Heyward (Case No. D2000- 1802 dated 23 February 2001).

The Disputed Domain Name use the term “CHANEL” as its crux. A bare reading of the same gives the impression that the Respondent has incorporated the Complainant’s registered trade mark “CHANEL” in the Disputed Domain Name. The Panel opines that any consumer/customer of the Complainant would be confused into believing that the Disputed Domain Name has been registered by the Complainant. Since this is not true, it could adversely affect the reput, prestige and goodwill of the Complainant, all of which are considerably important to any corporate entity in maximizing its business prospects and keeping its customers/consumers happy and satisfied. The addition of the suffix “.pk” does not create any distinctive distinction that may eliminate the possibility of confusion by the Complainant’s users. The addition of the suffix “.pk” has not been considered to add any element of distinctiveness (see *Nokia Corporation v. Firdaus Adinegoro/Beli Hosting*, WIPO Case No. D 2004-0814).

In order to determine this aspect, the Panel has based its discussions and findings under this head on several WIPO Authorities as cited below herein:

- VIRBAC v. PrivacyProtect.org, Mantow Tian, Preventic China Systems, Isaac Goldstein, Case No. D2011-0026:

B. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration which predate by many years the date of registration of the disputed domain name by the Respondent.

The disputed domain name contains the Trade Mark in its entirety.

The Panel therefore holds that the Complaint fulfills the first condition of paragraph 4(a) of the Policy.

- Clearwire Communications LLC v. Ira Kugelman, Case No. D2011-0019:

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the Complainant’s Mark

The Panel finds that the Complainant has established the first element under paragraph 4(a) of the Policy.

- Saxo Bank A/S v. Domains by Proxy, Inc. / Forexmedia LTD, Case No. D2011-0018:

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <saxo-banque.com> is confusingly similar to the Complainant’s trademarks SAXOBANK.COM and

SAXOBANK.

The Panel has also taken into account the Discussions and Findings in previous DNDRC cases.

- Standard Chartered PLC v. Hosting Campus Domain , Case No. C2007-0001:

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

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

- Pakistan Herald Publications (Pvt.) Ltd. v. Averroes Sapertise Management, Case No. C2011-0001:

The Disputed Domain Names contain the Complainant’s trade mark in entirety and as such is identical to the Complainant’s registered trade mark that the Complainant uses for the purposes of conducting its business.

As such, basing its reasoning on the above cited precedents and the findings therein, the Panel determines that the Disputed Domain Names are identical and confusingly similar to the Complainant’s trade mark.

The use of such a confusingly identical domain name would not only cause confusion to the user(s) and customer(s) of the Complainant but would also hinder the Complainant from registering the disputed domain name for itself in furtherance to its business thus may cause substantial, irreparable and irredeemable harm to the Complainant.

As such, basing its reasoning on the above cited precedents and the findings therein, the Panel determines that the Disputed Domain Name is identical and confusingly similar to the Complainant’s trade mark.

III. Legitimate interest in 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).”

The Respondent had the opportunity to demonstrate its rights or legitimate interest in the disputed domain name in accordance with paragraph 4(c) of the Policy however has not been able to do so conclusively in the opinion of this Panel due to failure to provide a Response in the required form, the Respondent has provided no documents or annexure as evidence to demonstrate their legitimate interest in the domain name in dispute or to substantiate their

contentions that have been submitted via email and are being considered by the Panel in a limited manner for the sake of completeness alone. Thus the Panel has nothing on record on part of the Respondent to decide Legitimate Interest in favor of the Respondent under section 5(e) of UDRP.

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 submitted the following:

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name [ICANN Policy, para. 4(a)(ii), 4(c); ICANN Rules, para. 3(b)(ix)(2)].

(xvii) Pursuant to ICANN Policy, sub-paragraph 4(c), Respondent may show rights in the domain name by its (1) use or preparations to use the domain name in connection with a bona fide offering of goods or services prior to notice of the dispute; (2) being commonly known by the domain name; or (3) legitimate non-commercial or fair use. Respondent fails on all counts as discussed below: Complainant has neither authorized nor licensed the Respondent to register or use the Domain Name. The Respondent has no affiliation with the Complainant or any of its related companies. Complainant further believes that the Respondent has never been known by the Domain Name nor has it ever been known by the CHANEL Trade Marks or any other name containing the word CHANEL. Respondent furthermore has misappropriated the CHANEL Trade Marks owned by the Complainant including the domain name registration for ‘chanel.net’. Thus, Respondent has not used the Domain Name to make a bona fide offering of any goods or services.

Respondent is clearly not making any non-commercial, fair use of the Domain Name. The Respondent, through the Domain Name (which consists of the Complainant’s famous trade mark CHANEL) is intentionally attempting to attract the general public including Complainant’s customers and the Internet users to a website (which website has been created but no live content has been posted as yet) and the corresponding email addresses (which email addresses are functional, one of which is fahd@chanel.net.pk), by creating a likelihood of confusion with the CHANEL Trade Marks as to the source, sponsorship, affiliation,

or endorsement of the Respondent's Domain Name. As a result, Respondent's use cannot constitute a fair, noncommercial use.

In this paragraph, the following are listed as circumstances that in particular, but without limitation, would demonstrate a respondent's legitimate interest or right in a disputed domain name:

- i. that the Respondent can show demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services;
- ii. that the Respondent has been commonly known by the domain name;
- iii. that the Respondent can demonstrate 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 of the Complainant.

The Panel, while deciding on this element, shall take into account each factor of the Paragraph 4(a)(ii):

- i. that the Respondent can show demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services;*

The Panel is unable to take into account the steps, measures, attempts, etc. taken by the Respondent to use the Disputed Domain Name for the purpose of selling or offering good and/or services. The Panel is unaware of the use that the Respondent is making of the Disputed Domain Name since no information has been provided to the Panel by the Respondent. The Complainant has contended that the Respondent is not using the Disputed Domain Name for any use. This allegation has neither been rebutted, nor challenged or countered by the Respondent. Even if the Respondent was not actually using the Disputed Domain Name, it could still allege "use" of the Disputed Domain Name if it showed any demonstrable preparations to use the Disputed Domain Name. This could be in form of disclaimer, banner, advance notification or anything along these, that could illustrate the intention(s) of the Respondent to use the Disputed Domain Name in near future.

However, in this case, the Respondent has not submitted a Response and the Panel has no information, material, data or the like available to infer what the Respondent's purpose is/was while registering the Disputed Domain Name.

Furthermore, since the Respondent has not submitted any kind of counter to the Complainant's assertions, nor has it put forth any information to contest the matter on its part, the Panel is left with no indication to determine, if at all, the Respondent is using the Disputed Domain Name in connection with a bona fide offering of goods or services.

- ii) that the Respondent has been commonly known by the domain name;*

The Respondent has not submitted any information, data, record or anything at all for the Panel to take into consideration while rendering this Decision even though, for the sake of completeness and for a fair and just deliberation of the matter, the material provided by the Complainant, was forwarded to the Respondent, which has not been countered, rebutted and/or

denied by the Respondent.

The Complainant holds trademark registration rights to CHANEL, in Pakistan, along with about 49 other countries across the globe. As already discussed above herein, the Panel, cannot, reasonably, deduce a relationship between the Complainant and the Respondent, especially since the Complainant has already asserted that there is no relationship between themselves and the Respondent, and as such cannot purport any affiliation, authorization, agency, association, dealership, distributorship, business prospect, or anything of this accord between the Parties. In such a case, where the Respondent has not provided any information related to itself, the Panel has no indication of whether the Respondent has been known by the Disputed Domain Name.

iii) that the Respondent can demonstrate 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 of the Complainant.

The Panel reiterates, for the sake of brevity that the Respondent has not submitted any Response and as such the Panel has no information on part of the Respondent to take into account, even though an opportunity to provide a Response was afforded to the Respondent and it was informed of the Complaint.

The sub provision requires the Respondent to demonstrate 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 of the Complainant. However, this has not been done so in this case by virtue of omission to submit a Response by the Respondent. In such a situation, the Panel has no information available with it to determine the use that the Respondent is making of the Disputed Domain Name.

Also, the Complainant alleges that the Respondent's act of registering the Disputed Domain Name is affecting its goodwill and reputation. Since the Complainant also manages an online portal vide one of its registered domain names, it is highly likely that an internet user looking for the Complainant's website/online portal ends up on the Disputed Domain Name and seeing that it is being directed onto a completely difference domain name would get confused as to the status of the Complainant's offering of its goods and services and its affiliation and association with/to some other company. This could severely harm and adversely impact the Complainant's business, which, it is reasonably construed, depends substantially on its online presence, and are the avid and the loyal customers of the Complainant. As such, in this way, not only would the Complainant's brand name be tainted, it could also affect the Complainant's business, revenue, profits, customer loyalty and, inter alia, goodwill of the Complainant.

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, panels have recognized that this could result in the often impossible task of proving a negative proposition, requiring information that is primarily if not exclusively within the knowledge of the Respondent. Thus, the consensus view is that paragraph 4(c) of the Policy shifts the burden to the Respondent to come forward with evidence of a right or legitimate interest in the Domain Name, once the Complainant has made a *prima facie* case showing indicating the absence of such rights or interests. See, *e.g.*, *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270. In this case, the Complainant has provided evidence of its bona fide rights in the Disputed Domain Name which incur by virtue of its trade mark registrations in its favor not only in Pakistan but also

internationally. These trade mark registrations, by virtue of the Trade Marks Ordinance, 2001, also afford the Complainant the right to use the same in domain names. It has been held in previously decided domain disputes that it is for the Respondent to rebut, counter and/or deny the allegations levied against it by the Complainant. In absence of the same, the panel(s) are empowered to decide the matter ex parte and/or draw reasonable inferences from whatever information is available.

The Panel has relied upon the Discussions and Findings in previously decided WIPO Authorities which are mentioned below herein:

- Orange Brand Services Limited v. Cinematurka Film Yapım ve Organizasyon, Ismail Atıl Turk, Case No. D2011-0002:

B. Rights or Legitimate Interests

Under the circumstances of this case, there are no indications before the Panel of any rights or legitimate interests of the Respondent in respect of the disputed domain name.

The Complainant, having made a prima facie case which remains unrebutted, has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

- TV Azteca, S.A.B. de C.V. v. Spiral Matrix, Case No. D2011-0008:

B. Rights or Legitimate Interests

Once the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden is on the Respondent to rebut that case. Here there has been no Response from the Respondent and the Panel is entitled to draw inferences from that.

The Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy and that the Respondent has no rights or legitimate interests in the disputed domain name.

- Johnson & Johnson Corporation v. Gidget's Active Organics, Janet Rossi, Case No. D2011-0015:

B. Rights or Legitimate Interests

There is no Response in the current proceeding, and no attempt to rebut the Complainant's prima facie case. The record does not indicate that the Respondent has been known by a name corresponding to the Domain Name, nor that it has acquired trademark rights in a corresponding name. The Respondent advertises a product with a name that is similar to the Complainant's mark,

“Ludovica Active Natural Skincare”. There is nothing in the record that establishes whether this is the Respondent’s own product and, if so, when the Respondent began to use this name or make demonstrable preparations to use it for a skin care product. There is also no evidence in the record that the Respondent is a reseller with rights to use a portion of that product name as a domain name.

The Panel finds no persuasive evidence, on this record, that the Respondent has rights or legitimate interests in the Domain Name. The Panel concludes that the second element of the Complaint has been established.

The Panel has also taken into account the Discussions and Findings in previous DNDRC Complaints:

- Telenor v. Mohammad Tahir, Case No. C2008-0001

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

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

- Pakistan Herald Publications (Pvt.) Ltd. v. Averroes Sapertise Management, Case No. C2011-0001:

the Panel cannot establish any legitimate interest on the part of the Respondent to the Disputed Domain Name as the Respondent is not linked to the Complainant or its business in any manner of form nor does it act on the Complainant’s behalf in any capacity as the Complainant has contended that no authorization has been given to the Respondent to make use of its registered trade name or any obvious derivations of it, as part of the Disputed Domain Names.

As such, the Panel is not satisfied that the Respondent has any legitimate interest in the Disputed Domain Names.

Based on the above discussions and in absence of a Response by the Respondent, the Panel cannot establish any legitimate interest on the part of the Respondent to the Disputed Domain Name.

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

With regard to the issue of bad faith the Paragraph 4(b) of the UDRP states that:

*“the following circumstances, in particular but **without limitation**, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:*

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

The Complainant has submitted the following:

C. The disputed domain name was registered and is being used in bad faith [ICANN Policy, paras. 4(a)(iii), 4(b); ICANN Rules, para. 3(b)(ix)(3)].

(xviii) Respondent has intentionally registered and used the Domain Name in bad faith. Sub-paragraph 4(b)(i) of the ICANN Policy allows for a finding of bad faith when the registration was acquired primarily for the purposes of selling, renting or otherwise transferring the domain name registration to the Complainant for valuable consideration. Upon receipt of Complainant's cease and desist letter, the Respondent has (as per the last letter received from the authorised representative of the Complainant) discontinued the use of the trade name "Chanel International" and the CC Monogram of the Complainant, which use had been identified following the investigation referred to in paragraph 8 (xii). However, the Respondent refused to transfer the Domain name to the Complainant. Moreover, the Respondent made an offer to the Complainant's counsel (during one of his telephonic discussions with the Complainant's counsel) to sell the Domain Name to the Complainant. Since the Complainant, as a matter of practise, does not extend monetary compensation to infringers of Complainant's intellectual property rights, the above offer was not considered by the Complainant. Such an offer for sale of the Domain Name (registration whereof per se violates Chanel's registered rights in the trade mark CHANEL in Pakistan) is evidence of, and establishes that, the Domain Name has been registered and is being used in bad faith.

Taking into account the submission made by the Complainant, the Panel is informed that the Complainant attempted to resolve the matter without having to resort to any legal means, which are afforded to it by law to secure its intellectual property rights. The Complainant sent the Respondent a Cease and Desist Notice and called upon the latter to voluntarily transfer the Disputed Domain Name to the Complainant. Furthermore, as submitted by the Complainant, the Respondent made an offer to sell the Disputed Domain Name to the Complainant. This has been neither denied nor rebutted or countered by the Respondent. In such a situation, the Panel is unable to assess whether the Respondent did not make such an offer to sell.

Moreover, it appears to the Panel that, even if the Respondent was not aware of the Complainant before, it was definitely so after the communication and correspondence that took place between the two parties. Even after this knowledge of the Complainant's presence and intellectual property rights, the Respondent did not discontinue his registration of the Disputed Domain Name.

The Panel has no evidence, information or the like provided to it by the Respondent to decide that the Respondent did not register the Disputed Domain Name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name.

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

The Respondent has not submitted any Response, information, data, documentation or the like.

The Complainant has alleged the following:

(xix) Sub-paragraph 4(b)(ii) of the ICANN Policy allows for a finding of bad faith when the registration was acquired to prevent a trade mark owner from reflecting the mark in a corresponding domain name. When Respondent acquired the Domain Name, it had constructive knowledge of the CHANEL Trade Marks via Complainant's trade mark registrations in Pakistan (as well as in numerous other countries around the world); and must have had actual knowledge that the CHANEL Trade Marks were used in relation to perfumery, toiletry, cosmetics and/or related products for years prior to its registration, due to the fame of the CHANEL Trade Marks. Notwithstanding this knowledge and complete lack of authorization, Respondent intentionally registered the Domain Name containing the famous CHANEL trade mark or service mark, without authorization for use in relation to a web site (which website has been created, but no live content has been posted as yet) and corresponding email addresses. As stated by the WIPO Panel in Kraft Foods (Norway) v. Fredrik Wide and Japp Fredrik Wide (Case No. D2000-0911, dated 23 September 2000 – copy attached as Exhibit 18), the fact "that the Respondent chose to register a well-known mark to which he has no connections or rights indicates that he was in bad faith when registering the domain name at issue".

The Panel has no information available with it in order to determine that the Respondent did not register the Disputed Domain Name in order to prevent the Complainant, who is the trademark registration holder in this case, from using the trademark CHANEL to register a domain name for itself. In effect, vide registering the Disputed Domain Name, the Respondent has prevented the Complainant from registering <chanel.net.pk> for itself, since a domain name cannot be registered by two at the same time.

By information and evidence submitted by the Complainant, it is the Complainant who holds trademark registrations for CHANEL in over 50 countries, including Pakistan. As such, and by virtue of the Trade Marks Ordinance, 2001, it is the Complainant who has rights to register a domain name with corresponding trademark. However, in this case, the Complainant is unable to

register <chanel.net.pk> for itself since the registration of the same has been made by the Respondent.

The Panel is unable to infer anything on part of the Respondent as the same has not submitted any Response, information, evidence, etc.

- (iv) *you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or*

The Respondent has not provided any information, evidence etc.

The Complainant has submitted the following:

(xx) ICANN Policy, sub-paragraph 4(b)(iii), allows a finding of bad faith if the registration is primarily for the purpose of disrupting the business of a competitor. Respondent's action in registering the Domain Name is likely to deprive Complainant of "the chance to be contacted by prospective customers" - see SGS Societe Generale de Surveillance S.A. v. Inspectorate (WIPO Case No. D2000-0025, dated 17 March 2000 - copy attached as Exhibit 19); especially since the Domain Name and the website (which has been created, but no live content has been posted as yet) and the corresponding email addresses would pass off as a legitimate, authorized website and email addresses of the Complainant in Pakistan. As noted, Respondent is not an authorized licensee of Complainant. Furthermore, a customer who checks a "whois" database may adopt the mistaken belief that Respondent (who, as per the business inquiries, is engaged in the business of retailing perfumery, cosmetic products and toiletries) has an affiliation with Complainant or its licensees based on its registration of a domain name and the corresponding email addresses that contains the CHANEL name or mark.

The Panel, taking into account the submissions made by the Complainant, along with the evidence submitted, is informed of the nature of Respondent's business, being similar to that of the Complainant and being that of retailing perfumery, cosmetic products and toiletries. The Respondent has neither denied, rebutted, nor countered this and as such the Panel is unable to account that the Respondent is not indulging in this business.

Since the Respondent has neither denied nor rebutted itself to be a competitor of the Complainant, since it is offering products similar to those of the Complainant, the Panel is at a loss to deliberate what the true intentions of the Respondent are in doing such a thing, but since the Respondent has not put forth any information, the Panel is unable to deduce anything on its part. However, the Panel does, reasonably believe that the Respondent has registered the Disputed Domain Name to make use of the repute, goodwill and customer/consumer portfolio/fan following that is associated with the Complainant. Not only this, but also that, quite possibly, the Respondent has registered the Disputed Domain Name to affect the business of the Complainant, by, inter alia, pulling the users of the Complainant to itself and thereby generating revenue/profit for itself and thus depriving the Complainant of the same.

The Panel is unable to determine that the Respondent has not registered the Disputed Domain Name to disrupt the business of the Complainant, being a competitor.

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Respondent has not submitted any information, evidence nor provided a Response to the Complaint or the Complainant's assertions.

The Complainant has submitted the following:

(xxi) ICANN Policy, sub-paragraph 4(b)(iv), furthermore allows a finding of bad faith where the Respondent intentionally attempts to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site. The WIPO Panel in Red Bull GmbH v. Harold Gutch (Case No. D2000-0766, dated 21 September 2000 – copy attached as Exhibit 20), found that the use of the domain name by respondent therein would lead visitors to the belief that the domain name was affiliated with the complainant, therefore making the registration alone equal to use in bad faith. In sum, Respondent's registration and use of the Domain Name has been in bad faith.

(xxii) Furthermore, given Chanel's prior established goodwill and proprietary rights in the CHANEL Trade Marks, the registration and use of the Domain Name by the Respondent (who, as per the inquiries, is engaged in the business of retailing perfumery, cosmetic products and toiletries) is clearly in bad faith with an attempt to misappropriate and cash on and to trade unfairly upon the reputation and goodwill enjoyed by Chanel.

(xxiii) Without prejudice to the above, the Respondent has obtained, and continues to hold, registration for the Domain Name since 2006, but has not yet posted any material on the website linked to such Domain Name. Such passive holding of a domain name that incorporates the well-known name and mark CHANEL of the Complainant also indicates that the Domain Name has been registered, retained and is being used by the Respondent in bad faith.

Since the Respondent has not availed the opportunity to respond that was afforded to it under the Policy, the Panel has had to decide this matter ex parte. The Panel, in absence of any information put forth on its part by the Respondent, is unable to deduce that the Respondent is not encashing on the goodwill and repute associated with the Complainant by creating a likelihood that it is in

related, affiliated, endorsed by, or the like by the Complainant.

The failure on part of the Respondent to submit any Response, and thereby not rebut, challenge and/or counter any of the allegations levied against it by the Complainant, the Panel cannot be reasonably satisfied that the Respondent has registered the Disputed Domain Name for any other purpose than to attract internet users by misleading and confusing them to believe that the Respondent is affiliated to the Complainant. The Panel is led to reasonably infer that since the Complainant's trade mark is famous, well established, well reputed and recognized by the masses, it would consequent in fame and popularity for the Respondent too since the users would be confused about the true identity of the Respondent and would be unaware of the fact that there is no relationship between the Complainant and the Respondent.

The Panel has made use of the Discussions and Findings in previously decided WIPO Authorities while rendering this Decision, along with the one mentioned by the Complainant:

- Godrej Consumer Products Private Limited v. Chris Peri, Case No. D2011-0023

D. Registered and Used in Bad Faith

Thus, the Panel finds on the balance of probabilities that the Respondent registered the Domain Name, knowing it to be the unique and very well-known Indian household brand name of the Complainant and with intent to capitalize in some way on the value of the Complainant's trade mark.

In the view of the Panel that continuing threat of abusive use hanging over the head of the Complainant is sufficient to constitute an abusive use for the purposes of paragraph 4(a)(iii) of the Policy.

The Panel finds that the Domain Name was registered and is being used in bad faith.

- Trimble Navigation Limited v. Goodstead Limited, Case No. D2011-0025

C. Registered and Used in Bad Faith

Given the strength of both the Complainant's trademarks and the likelihood of confusion in this case, and given that the Respondent's site appears to include links to other commercial websites, it is highly likely that the disputed domain name is being used to attract customers to the Respondent's site and thereby to reap commercial gain. In addition, the Complainant has brought evidence of a pattern of similarly confusing registration by the Respondent. Together these facts suggest that the disputed domain name was registered in bad faith, and that it would constitute bad faith for the Respondent to continue to use the disputed domain name.

The Panel therefore finds that the Complainant has established the third element of paragraph 4(a) of the Policy.

- VIRBAC v. PrivacyProtect.org, Mantow Tian, Preventic China Systems, Isaac Goldstein, Case No. D2011-0026

D. Registered and Used in Bad Faith

The Panel also considers that, in the circumstances of this case, the failure of the Respondent to respond to the Complainant's letters of demand and to file a Response further supports an inference of bad faith (Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc., WIPO Case No. D2002-0787).

The Panel therefore finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

The Respondent has provided no evidence to demonstrate lack of bad faith, and after the correspondence that took place between the two Parties, the Respondent had actual knowledge of the trademark of the Complainant and the products/services in connection with which the trademark is used by the Complainant and therefore, the registration of the Disputed Domain Name by the Respondent amounts to bad faith. As it was noted in *Herbalife International, Inc v. Surinder S. Farmaha*, WIPO Case No. D2005-0765:

“the registration of a domain name with the knowledge of the complainant's trademark registration amounts to bad faith.”

In the current proceedings, no indication of any correspondence between the Complainant and/or any representative of Complainant, on one side, with Respondent, on the other, or similar evidence, have been determined to suggest or imply that the Complainant may have approved of the Respondent's use of their registered trade mark. Without any form of substantial evidence to indicate that the Complainant approved of the Respondent's use of their trade mark 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).

The Panel has also considered the Discussions and Findings in the previous DNDRC Cases:

- *Rediff.com India Ltd. v. Daniyal Waseem*, Case No. C2009-0005

Lastly, the Complainant informed the Respondent of the infringement of its registered trademarks taking place by its registration of such a domain name via the cease and desist letter sent to the Respondent, however the Respondent failed to acknowledge or respond to the letter thereby laying further credence to the existence of bad faith on the part of the Respondent.

In light of these circumstances, the Panel concludes that the Respondent's registration of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is being used in bad faith" by Respondent.

- Telenor v. Pakpoint Network, Case No. C2008-0004

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

Based on the above cited precedents, discussions and findings thereof and the absence of a Response on part of the Respondent, the Panel is unable to determine that the Respondent by using the domain name, has not intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Panel, in deciding this matter and for the purposes of this Decision, has taken into account the Discussions & Findings in the Administrative Panel Decisions in following WIPO Authorities which were instituted by the Complainant and in which the disputed domain names were successfully transferred to the Complainant:

- Chanel Inc. v. hu, huzou, hpahg (Case No. D2010-0283, dated 14 April 2010);
- Chanel Inc. v. Software Outlet (Case No. D2010-01777 dated 4 April 2010);
- Chanel Inc. v. Dong Jiancai (Case No. D2010-0144 dated 24 March 2010);
- Chanel Inc. v. Chenying (Case No. D2009-1705 dated 19 February 2010);
- Chanel, Inc. v. Domain Privacy Group, Inc./Charlene Newport (Case No. D2009-0081 dated 16 March 2009);
- Chanel v. 1 (Case No. D2003-0218 dated 28 May 2003);
- Chanel Inc. v. Bontempo (Case No. D2002-0721 dated 17 October 2002);
- Chanel, Inc. v. LaPorte Holdings (Case No. D2005-0487 dated 12 July 2005);
- Chanel, Inc. v. Mike Torres d/b/a National Promotions, Inc. (Case No. D2000-1833 dated 22 February 2001);
- Chanel, Inc. v. IGGI Networks, Inc. (Case D2000-1831 dated 16 April 2001);
- Chanel, Inc. v. Cologne Zone (Case No. D2000-1809 dated 22 February 2001);
- Chanel, Inc. v. Urainia Heyward (Case No. D2000- 1802 dated 23 February 2001).

09. Decision

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

- i. 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.
- ii. The Respondent has no legitimate interest in the Disputed Domain Name.
- iii. The Disputed Domain Name is identical to the Complainant's trade mark and registered domain names.

- iv. The Respondent is making mala fide use of the Complainant's trade mark.
- v. 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 recommends to PKNIC to transfer the registration of the Disputed Domain Name to the Complainant, as prayed for within 48 hours of receipt of this decision by email or it being uploaded onto the DNDRC website www.dndrc.com/cases_resolved/, whichever takes place earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Ms. Fozia Umar

Dated: 05th April, 2012