



हरियाणा HARYANA

M 670158

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

**Coldwell Banker LLC**  
175 Park Avenue  
Madison, NJ 07940  
**United States of America**

..... Complainant

**GaoGou**  
YERECT  
Suite 1100 South Tower,  
175 Bloor Street, East  
Toronto M4W 3R8  
**Canada**

..... Respondent

Disputed Domain Name: [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in)

**AWARD**

**1) The Parties:**

The Complainant in this arbitration proceeding is Coldwell Banker LLC, 175 Park Avenue, Madison, NJ 07940, United States of America. The Complainant is represented by its authorized representatives Fidus Law Chambers, First Floor, G-165, Sector- 63, Noida – 201301, U.P.

The Respondent in this arbitration proceeding is GaoGou, YERECT, Suite 1100 South Tower, 175 Bloor Street, East, Toronto M4W 3R8, Canada as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

**2) The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in). The Registrar is In registrar d.b.a. inregistrar.com

The Registrant is GaoGou, YERECT, Suite 1100 South Tower, 175 Bloor Street, East, Toronto M4W 3R8, Canada.

**3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on October 22, 2013, and the notice was issued to the Respondent on October 22, 2013 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent replied on October 22, 2013 that they will file a response against the dispute. The Arbitrator also directed the Complainant to provide by email copy of complaint and Annexures to the Respondent which was duly complied by the Complainant. The Respondent





however did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before November 15, 2013. However, no response was submitted by the Respondent within the stipulated time or thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

- a) Coldwell Banker LLC, is the oldest and most established residential real estate franchise system in North America, and it is known as one of the most innovative, forward-thinking real estate brands. Its story of leadership, innovation and success dates back to San Francisco in 1906.
- b) Coldwell Banker was the first full-service real estate brand to launch a national website, stream listing videos online, create social media and ipad applications.
- c) The Complainant's business globally is carried out under its well-known and iconic trademark/trade name 'COLDWELL BANKER'. The Complainant's association with the trademark COLDWELL BANKER dates back to the year 1906 when no such word was known or in use. Ever since its adoption, the complainant has extensively and continuously used the said trademark.
- d) The Complainant also operates the website [www.coldwellbanker.com](http://www.coldwellbanker.com) from the United States which is accessible around the world and has held and operated the said domain name since May 02, 1995.
- e) The complainant submits that they have registered the following marks :

Trademark	Trademark Application no. and class	Registration no. and Registration	Certificate date of
Coldwell Banker	744349 and class 16	263132 and 1996	29 <sup>th</sup> October
Coldwell Banker	744350 and class 16	262257 and	29 <sup>th</sup> October



		1996
Coldwell Banker previews international (device)	1397467 and class 16 and 36	743251 and 9 <sup>th</sup> November 2005
Coldwell Banker commercial CB (device)	1483272 and class 16	764162 and 31 <sup>st</sup> August 2006
Coldwell Banker commercial	1483273 and class 16	764159 and 31 <sup>st</sup> August 2006
Coldwell Banker	1241393 and class 36	503793 and 6 <sup>th</sup> October 2003
Coldwell Banker CB (device)	1241395 and class 36	678056 and 6 <sup>th</sup> October 2003
Coldwell Banker commercial	1289307 and class 36	520710 and 10 <sup>th</sup> June 2004
Coldwell Banker commercial CB (device)	1483274 and class 36	765686 and 31 <sup>st</sup> August 2006

Further, the complainant has also own many marks with COLDWELL BANKER as its essential feature which are currently pending.

- f) The Complainant submits that the impugned domain name/URL [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) is registered by the Respondent directly uses the trademark/ trade name COLDWELL BANKER as its operative part and this trademark/ trade name is identical to that of the registered trademark COLDWELL BANKER of the Complainant.
- g) The Complainant further submits that as the impugned domain name/URL being identical to the registered trademark of the Complainant as well as being identical to the international website URL of the complainant [www.coldwellbanker.com](http://www.coldwellbanker.com) operated by the Complainant, the internet users are likely to be confused by the presence of the impugned domain name/ URL on the internet and thus cause loss of business and reputation to the Complainant.
- h) The Complainant was made aware of the existence of domain name [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) on September 18, 2013 when the Complainant received an email from the email id [inbrandname@gmail.com](mailto:inbrandname@gmail.com) informing the Complainant that the domain name [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) was up for sale by the Respondent.
- i) The Complainant thereafter sent an email to the address [domainhk@hotmail.com](mailto:domainhk@hotmail.com) to try and negotiate a price for the purchase of the said domain name. The Respondent demanded an exorbitant sum of USD 7700 to sell the impugned domain name which is identical to the trademark/ trade name of the Complainant. The Complainant made an offer of USD 1000 for the purchase and transfer of the impugned domain name.

This offer of the Complainant was not acceptable to the Respondent, who made a final offer to sell the domain name for USD 3500.

- j) The Complainant therefore, visited the website [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) and noted that the said URL redirects to another website [www.manyvideos.com](http://www.manyvideos.com).
- k) The Complainant submits that the impugned domain name/ URL has only been created as recently as September 20, 2012 and uses the complainant's trademark COLDWELL BANKER clearly prompts the conclusion that the Respondent has purely done so for the purpose of promoting and the Respondent's own business and causing loss of business and reputation to the Complainant, and they are also making a profit by holding the Complainant to ransom.

### **Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

### **5) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'COLDWELL BANKER' leads to the conclusion that the Complainant has superior and prior rights in the mark 'COLDWELL BANKER'. Thus it can be said a) the web users associate the word 'COLDWELL BANKER' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incomplete address at the time of registration violated clause 3 (a) of .IN Domain Dispute Resolution policy. As per the report provided by NIXI dated November 13, 2013 from Blue Dart Express it was informed that no such consignee at given address of Respondent.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;





It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'COLDWELL BANKER'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'COLDWELL BANKER' mark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'COLDWELL BANKER' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain. The Respondent even demanded considerable compensation for transfer of the domain name and the amount asked was much higher than reasonable cost and expenses incurred for registering and maintain the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale and is using the website to generate revenue.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in).

- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further by offering the domain for sale and providing a wrong address for registration shows bad faith.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'COLDWELL BANKER' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.



**7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name [www.coldwellbanker.co.in](http://www.coldwellbanker.co.in) be transferred from Respondent to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**December 03, 2013**