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N 893019

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR S. SRIDHARAN

Dated: 10<sup>th</sup> APRIL 2011

Metropolitan Life Insurance  
Company

--- Complainant

-vs-

Private Registrations Aktien

Gesellschaft

Domain Admin

--- Respondent

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Metropolitan Life Insurance Company ... Complainant

Versus

Private Registrations Aktien Gesellschaft,

Domain Admin ... Respondent

1. **The Parties**

1.1 The complainant is Metropolitan Life Insurance Company, an entity organized and existing under the laws of New York, USA with its principal place of business at 1095 Avenue of the Americas, New York, New York 10036, United States of America represented by Jaya Negi of Anand & Anand, Counsel at First Channel, Plot No.17A, Sector 16A, Film City, Noida.

1.2 Respondent is Private Registrations Aktien Gesellschaft, Domain Admin at CNR of Granby & Sharpe St, Suite K2134 Kingstown Saint Vincent & The Grenadines

**The Domain Name and Registrar**

1.3 The disputed domain name **<metlife.in>** is registered with Directi Internet Solutions Pvt Ltd (R5-AFIN).



**2. Procedural History**

2.1 On 18<sup>th</sup> January 2011 NIXI asked me about my availability and consent to take up the Complaint for arbitration. I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.

2.2 On 1<sup>st</sup> February 2011, I received hardcopy of the Complaint along with Annexures.

2.3 On 1<sup>st</sup> February 2011, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.

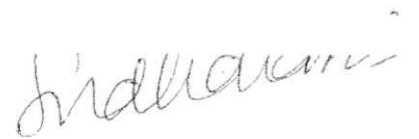
2.4 On 17<sup>th</sup> February 2011, I received a soft copy of the Complaint from the Complainant.

2.5 Respondent did not file his response within the stipulated time. On 17<sup>th</sup> February 2011, I granted him another seven days time to file his response. He did not file any response even within this extended period of time.

2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

**3. Factual Background**

**A Complainant**

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- 3.1 Complainant is a leader in insurance, annuities, pension fund, non-medical health and property and casualty insurance, and savings and retirement products and services for individuals, small businesses and large institutions. In addition, Complainant is also a leader in residential and commercial mortgage, lending, real estate brokerage and management services. Complainant is the largest life insurer in terms of life insurance "in-force" in North America, and offers financial products and services to 88 of the Fortune 100 companies. Complainant has filed excerpts on its business operations from its website [www.metlife.com](http://www.metlife.com) at Annexure 5.
- 3.2 Complainant has used the METLIFE mark in commerce continuously since at least as early as 1968 for an ever-increasing range of products and services, and has expended hundreds of millions of dollars to advertise and market its METLIFE products and services, resulting in sales of billions of dollars worth of same under the METLIFE® mark.
- 3.3 Complainant also has major operations, affiliates and representative offices throughout the Americas, Europe, and Asia, including direct international insurance operations in 10 countries, serving approximately 8 million customers, and began doing business in India in 1992. Complainant sought registration of its METLIFE mark in India in 1994 and in the United States in 1989. In 1994, the Complainant registered both [www.metlife.com](http://www.metlife.com) and [www.metlife.co.in](http://www.metlife.co.in) domain names. Complainant has filed evidence of registration of [www.metlife.com](http://www.metlife.com) at Annexure 4. As of

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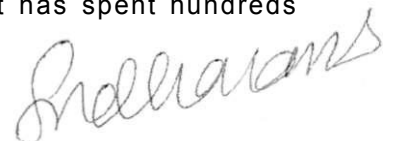
October 2009, Complainant had over 1 million individual policy holders in India, and more than 70,000 sales agents. Complainant also has over 700 office locations in India. Complainant has filed excerpts on its business and operations in India found on its website [www.metlife.com](http://www.metlife.com), as well as [www.metlife.co.in](http://www.metlife.co.in), at Annexure 6.

3.4 The METLIFE® mark has become a famous and distinctive mark throughout the world as a symbol of the high quality standards that the Complainant maintains for its products and related services.

3.5 The Complainant has registration for the mark METLIFE and its variations both in the US and India. In the US, the first registration under No.1541862 for METLIFE in class 36 dates back to 30<sup>th</sup> May 1989. In India, the first registration under No.627936 for METLIFE in class 16 dates back to 13<sup>th</sup> May 1994 and in class 36 under No.1354877 dates back to 3rd May 2005. All Metlife registrations both in the US and India are valid and subsisting.

3.6 These registrations for the METLIFE® Marks constitute *prima facie* evidence of their validity and conclusive evidence of Complainant's exclusive right to use the METLIFE® Marks in commerce in connection with the products and services named therein, and commercially related products and services.

3.7 Complainant maintains strict quality control standards for all of its products and services sold under the METLIFE® Marks, and Complainant carefully maintains its corporate image. To date, Complainant has spent hundreds

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of millions of dollars in advertising and promoting Complainant's products and services under the METLIFE® Marks, and as a result, Complainant and affiliated companies have enjoyed billions of dollars in sales of Complainant's products and services.

3.8 In September 2010, Complainant conducted a WHOIS search to determine the registrant of the disputed domain name <metlife.in>. At that time, the WHOIS search results indicated that the Respondent was the registrant. Respondent remains so today.

3.9 On September 10, 2010, Complainant sent a letter via email to domadmin@privateregistrationsws and a hard copy of the letter to Respondent via Federal Express courier service, requesting immediate transfer of the domain name. Complainant has filed a copy of the letter at Annexure 9. To date, Complainant has not received a response from Respondent of any kind.

3.10 As of December 20, 2010, Respondent is using the disputed domain name <metlife.in> to host links to third-party competitors' websites in flagrant defiance of Complainant's trademark rights. Respondent lists various websites under titles such as "Term Life Insurance Quotes", "GEICO Auto Insurance", "State Farm Insurance", and others, indicating services directly related to the insurance products and services that Complainant offers and going even further by providing links to websites of Complainant's competitors. Complainant has filed a print-out of Respondent's website at Annexure 10.

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3.11 The disputed domain name <metlife.in> was registered on 7<sup>th</sup> October 2006. It was last updated on 22<sup>nd</sup> October 2010 and it expires on 7<sup>th</sup> October 2011.

**B Respondent**

3.12 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

**4. Parties Contentions**

**A Complainant**

4.1 The disputed domain name <metlife.in> is confusingly similar to Complainant's registered METLIFE marks. The disputed domain name <metlife.in> uses Complainant's trademark, METLIFE, and then adds ".in." ".IN" is the country code extension for India. Panels have consistently concluded that the addition of a geographical term to a complainant's trademark does not preclude a finding of confusing similarity. Moreover, given that Complainant uses its famous and distinctive METLIFE mark throughout India, Respondent's addition of the geographic term ".in" to the METLIFE mark only solidifies confusion among internet users rather than dissipating it.

4.2 Complainant's METLIFE marks are so well-known and widely-recognized throughout the world, and have been used in connection with a wide variety of products and services for so many years and therefore there can be no legitimate use by the Respondent. In *Nike Inc. v. B.B. de Doer*, Case

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No. D2000-1397. (WIPO Dec. 21, 2000). the Panel concluded that the respondent had no legitimate rights, noting that it was difficult to see how the respondent could have a legitimate interest with respect to the domain "nike-shoes.com" in light of the complainant's famous NIKE trademark.

In this case, Complainant began using the METLIFE mark in the United States in 1968 and registered the METLIFE mark in India in 1994. Complainant also registered its www.metlife.com domain name in 1994. Respondent did not register the disputed domain name <metlife.in> until 2006. As such, chances are slim to none that Respondent was unaware of the famous METLIFE mark and Complainant's rights thereto prior to registering the disputed domain name in <metlife.in> 2006.

Respondent has no obvious connections with the disputed domain name <metlife.in> as it neither offers goods nor services under a METLIFE mark nor trades under the METLIFE name. Moreover, the website under the disputed domain name <metlife.in> hosts a directory of links to the websites of Complainant's competitors in an apparent pay-per-click scheme, which such use misleadingly diverts consumers to Respondent's website for its own commercial gain.

Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy, nor is there any legitimate non-commercial or fair use of the disputed domain name <metlife.in>. As such, there is no evidence that paragraph 7(ii) or

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7(iii) of the Policy applies either. Respondent clearly has no legitimate rights or interests in the disputed domain name <metlife.in>.

4.6 Finally, there exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the disputed domain name <metlife.in>, which incorporates the METLIFE mark in its entirety and which is confusingly similar to Complainant's marks.

4.7 Respondent's actions evidence bad faith in registering and using the disputed domain name <metlife.in> under paragraph 4(iii) of the Policy and paragraph 3(b)(vi) of the Rules. Registration of a domain name that is confusingly similar or *identical* to a famous trademark by any entity which has no relationship to that mark is sufficient bad faith registration and use.

4.8 Additionally, where a registrant has registered the domain name in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, evidence of bad faith will lie, provided that the registrant has engaged in a pattern of such conduct. [Policy, paragraph 6(ii)] Respondent engages in such bad faith conduct regularly. Over the course of two years (November 2008 to November 2010), Respondent was ordered to transfer a total of thirty domain names incorporating the trademarks of third parties. Complainant has filed a list of such actions in Annex 8. Respondent's registration of the disputed domain name <metlife.in> prevents Complainant from reflecting its own

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mark in the first-level ccTLD of India, a country where Complainant has significant business operations.

4.9 Moreover, bad faith lies in Respondent's intentional use of the disputed domain name **<metlife.in>** to attract internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's METLIFE mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. See Policy, paragraph 6(iii). Indian consumers seeking the MetLife website in India are now inclined to search for the disputed domain name **<metlife.in>** (the first-level ccTLD for India). Upon visiting Respondent's website, visitors will be confused as to whether MetLife in some way sponsors, is affiliated with, or endorses Respondent's website. Furthermore, Respondent trades off the goodwill of the famous and registered METLIFE mark by hosting links to third-party websites of Complainant's competitors. In numerous respects, Respondent has shown patent bad faith in registering the disputed domain name **<metlife.in>**

4.10 It is evident that Complainant has met the requirements of the Policy and the Rules by demonstrating its own legitimate interest in the METLIFE mark, that Respondent has no rights or legitimate interests in Complainant's famous METLIFE mark, and that Respondent registered and has used the disputed domain name **<metlife.in>** in bad faith. It is also clear that Respondent's interest in the disputed domain name **<metlife.in>** is to prevent the Complainant from registering a

corresponding domain name and to attempt to profit unlawfully from it by hosting third-party links in an apparent pay-per-click scheme. Accordingly, Complainant believes that it is entitled to the remedy prayed for in the complaint.

**B. Respondent**

4.11 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

**5. Discussion and Findings**

5.1 Respondent did not file his response within the stipulated time, 16<sup>th</sup> February 2010. On 17<sup>th</sup> February 2011, I granted him, as a matter of natural justice, another seven days' time to file his response. He did not file any response even within this extended period of time. Since the Respondent chose not to respond to this Complaint within the original and extended time granted to him, I am proceeding to determine this Complaint on the basis of the materials available on record.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (l) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

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- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

*Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.*

5.4 The Complainant is the proprietor of the mark METLIFE. Complainant has been using the METLIFE mark in commerce continuously since at least as early as 1968 internationally. Complainant began doing business in India in 1992. The Complainant has registrations for the mark METLIFE all over the world including India. Complainant's first registration in India dates back to 1994. In 1994, the Complainant registered both [www.metlife.com](http://www.metlife.com) and [www.metlife.co.in](http://www.metlife.co.in) domain names. The disputed domain name **<metlife.in>** was registered on 7<sup>th</sup> October 2006. Obviously, the Complainant is the prior adopter and registrant of the mark METLIFE. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark METLIFE.

5.5 The Complainant's METLIFE marks are famous and well known throughout the world including India. It is clearly seen that the disputed domain name **<metlife.in>** wholly incorporates METLIFE, the prior

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registered trade mark of the Complainant. The disputed domain name is similar to the Complainant's domain names [www.metlife.com](http://www.metlife.com) and [www.metlife.co.in](http://www.metlife.co.in) .

5.6 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its trade mark METLIFE.
- (b) The disputed domain name **<metlife.in>** is:
  - (i) Identical to the Complainant's prior registered trade mark METLIFE, and
  - (ii) Similar to the Complainant's domain name [www.metlife.com](http://www.metlife.com) and [www.metlife.co.in](http://www.metlife.co.in) .

*Respondent has no rights or legitimate interests in respect of the disputed domain name*

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark METLIFE. The Complainant's mark METLIFE is well known in many countries across the globe including India.
- (b) The Complainant's trade mark was adopted internationally in the year 1968. It was registered in India in 1994. The disputed domain name **<metlife.in>** was registered by the Respondent only on 7<sup>th</sup> October 2006.

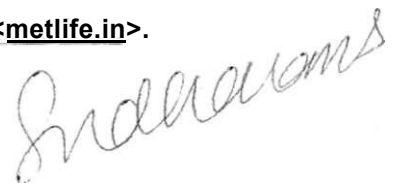
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5.8 Respondent did not register the disputed domain name <metlife.in> until 2006. As such, chances are slim to none that Respondent was unaware of the famous METLIFE mark and Complainant's rights thereto prior to registering the disputed domain name in <metlife.in> 2006.

5.9 I visited the web site of the Respondent under the disputed domain name <metlife.in>. The disputed domain name <metlife.in> provided links to web sites of the Complainant's competitors. The link "Met life term insurance" appearing on the left side menu leads to [www.timesjobs.com](http://www.timesjobs.com) . The site also leads through the search results to the Complainant's web site. It is obvious that the Respondent never intended to use the disputed domain name <metlife.in> in connection with a bona fide offering of goods or services.

5.10 In the absence of response from the Respondent, I accept the argument of the Complainant that:

- (a) Complainant's METLIFE marks are so well-known and widely-recognized throughout the world, and have been used in connection with a wide variety of products and services for so many years and therefore there can be no legitimate use by Respondent.
- (b) Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy, nor is there any legitimate non-commercial or fair use of the disputed domain name <metlife.in>. Respondent clearly has no legitimate rights or interests in the disputed domain name <metlife.in>.



(c) There exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the disputed domain name <metlife.in>, which incorporates the METLIFE mark in its entirety and which is confusingly similar to Complainant's marks.

5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <metlife.in>.

*Respondent's domain name has been registered or is being used in bad faith.*

5.12 The Complainant is the proprietor of the mark METLIFE. Complainant has been using the METLIFE mark in commerce continuously since at least as early as 1968 internationally. Complainant began doing business in India in 1992. The Complainant has registrations for the mark METLIFE all over the world including India. Complainant's first registration in India dates back to 1994. In 1994, the Complainant registered both www.metlife.com and www.metlife.co.in domain names. The disputed domain name <metlife.in> was registered on 7<sup>th</sup> October 2006. Obviously, Complainant's rights in the METLIFE trademark pre-dates Respondent's registration of the disputed domain name <metlife.in>. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark METLIFE of the Complainant at the time he acquired the disputed domain name <metlife.in>.

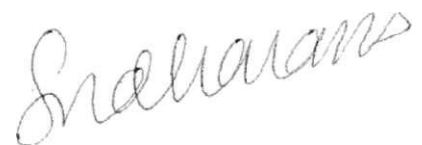
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of the Respondent's website. Indian consumers seeking the MetLife website in India are now inclined to search for the disputed domain name **<metlife.in>** (the first-level ccTLD for India). Upon visiting Respondent's website, visitors will be confused as to whether MetLife in some way sponsors, is affiliated with, or endorses Respondent's website. Furthermore, Respondent trades off the goodwill of the famous and registered METLIFE mark by hosting links to third-party websites of Complainant's competitors. In numerous respects, Respondent has shown patent bad faith in registering the disputed domain name **<metlife.in>**.

5.17 Complainant has established: (a) his own legitimate interest in the METLIFE mark, (b) that Respondent has no rights or legitimate interests in Complainant's famous METLIFE mark, and (c) that Respondent registered and has used the disputed domain name **<metlife.in>** in bad faith. It is also clear that Respondent's interest in the disputed domain name **<metlife.in>** is to prevent Complainant from registering a corresponding domain name and to attempt to profit unlawfully from it by hosting third-party links in an apparent pay-per-click scheme.

5.18 Thus it is clearly established that Respondent registered the disputed the disputed domain name **<metlife.in>** in bad faith.

5.19 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name **<metlife.in>** into any fair/useful purpose. Respondent not





- 5.13 As seen above, Respondent is currently using the disputed domain name <metlife.in> primarily for giving links to other web sites offered by third parties and not for any other purpose. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <metlife.in> is nothing but an unjust exploitation of the well known reputation of the Complainant's prior registered trade mark METLIFE.
- 5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's trademark METLIFE.
- 5.15 Where a registrant has registered the domain name in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, evidence of bad faith will lie. Over the course of two years (November 2008 to November 2010), Respondent was ordered to transfer a total of thirty domain names incorporating the trademarks of third parties. Complainant has filed a list of such actions in Annex 8. Respondent's registration of the disputed domain name <metlife.in> prevents Complainant from reflecting its own mark in the first-level ccTLD of India, a country where Complainant has significant business operations.
- 5.16 Moreover, bad faith lies in Respondent's intentional use of the disputed domain name <metlife.in> to attract internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's METLIFE mark as to the source, sponsorship, affiliation, or endorsement

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even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

**6. Decision**

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name **<metlife.in>** be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards costs of the proceedings.



S.Sridharan  
Arbitrator