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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Advance Magazine Publishers Inc. -vs- Abhishek Singh

Divya Balasundaram

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ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name – <www.voguetravelhouse.co.in>

In the matter of:

Advance Magazine Publishers Inc.
One World Trade Center
New York, NY 10007
USA

Complainant

-vs-

Abhishek Singh
001/B Bhagwan Bhawan B D Road
New York, US 10026 USA

Respondent

1. THE PARTIES

- 1.1 The Complainant in these proceedings is Advance Magazine Publishers Inc., a company incorporated under the laws of the State of New York, United States of America of the address One World Trade Center, New York, NY10007 USA. The Complainant is represented by Mr. Rahul Chaudhry, RCY House, C-235, Defence Colony, New Delhi – 110024.
- 1.2 The Respondent in these proceedings is Abhishek Singh of the address 001/B Bhagwan Bhawan B D Road, New York, US 10026 USA.

2. DISPUTED DOMAIN NAME AND REGISTRAR

- 2.1 This dispute concerns the domain name www.voguetravelhouse.co.in (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is GoDaddy.com, LLC, Go Daddy Operating Company, LLC, 14455 N Hayden Rd Suite 219, Scottsdale, Arizona, USA.

3. PROCEDURAL HISTORY

- 3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).
- 3.2 NIXI vide its email dated July 6, 2020 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on the same day.
- 3.3 Arbitrator was appointed vide NIXI's email of July 7, 2020. The Arbitrator herein was informed by NIXI that its emails to the Respondent at the email address provided in the WHOIS details (abhishek93.rj@gmail.com) as well as postmaster@voguetravelhouse.co.in were returned undelivered. Since courier delivery from NIXI was not possible due to COVID-19 lockdown, the Arbitrator requested NIXI to send the notice of complaint and other information to the email provided on the website linked to the disputed domain name being sales@voguetravelhouse.co.in. This additional measure was taken given the exceptional circumstances.

- 3.4 Arbitrator sent email on July 8, 2020 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days. On July 15, 2020, Arbitrator received an email from one Mr. John (mobile no. +91 9873920288, email john@voguetravelhouse.co.uk) regarding www.voguetravelhouse.co.uk and requesting time till July 31, 2020 to respond. Since the instant dispute did not concern the domain name www.voguetravelhouse.co.uk, Arbitrator replied to Mr. John stating his email is irrelevant to these proceedings. The Arbitrator received a call from Mr. John with respect to the present proceedings, and informed him to direct all queries by email with copy marked to all parties concerned.
- 3.5 Subsequently, on July 16, 2020, Arbitrator received an email from one Mr. Sam (sales@voguetravelhouse.co.in) stating that they are not using the disputed domain name and it is not needed by them. Arbitrator responded to this email stating the reply of the Respondent would be taken into consideration whilst passing the Arbitral Award.
- 3.6 Arbitrator then sent email on July 24, 2020 to all concerned parties that the Panel would proceed to pass its award taking into consideration all the material presented before it. The language of these proceedings is English.

4. BACKGROUND OF COMPLAINANT AND ITS RIGHTS IN TRADEMARK 'VOGUE' AS STATED IN COMPLAINT

- 4.1 The Complainant is one of the world's most successful magazine publishers. Through its unincorporated division, Conde Nast, the Complainant publishes magazines as VOGUE, Glamour, The New Yorker, Self, Vanity Fair and QQ. The Complainant has wholly owned subsidiaries in various countries including India, all of which publish a magazine under the trade mark "VOGUE" and/or with variation to the said trade mark. The Complainant is the proprietor of the trademark "VOGUE" in respect of fashion magazine since the year 1892 when it was founded as a bi-monthly publication. The Complainant's magazine published under the trade mark "VOGUE" is sold / circulated in around 145 countries around the world. The U.S. edition of VOGUE is read by 12.7 million people every month and has an average print calculation of over 1.2 million people.
- 4.2 In 1992, the Complainant celebrated 100 years of the magazine "VOGUE" in a big way in New York. A 100th anniversary special issue of the magazine in the form of a hard cover book was released during a party at the New York Public Library. Today "VOGUE" magazine has become a fashion icon.
- 4.3 "VOGUE" was described by book critic Caroline Weber in The New York Times in December 2006 as 'the world's most influential fashion magazine'. The Complainant's customers / purchasers of the VOGUE magazine include fashion conscious people particularly of the age group ranging from 19 to 45 years.
- 4.4 The Complainant's presence in India can be said to be since the 1930s when Princess Karam of Kapurthala was photographed and featured in the American edition of VOGUE magazine. Many years later, Maharani Gayatri Devi was featured in the VOGUE magazine and was listed as one of the most beautiful women in the world. The VOGUE magazine has been available / sold in India since at least 1990. VOGUE INDIA is published through Complainant's Indian subsidiary, Conde Nast India Private Limited. The first issue was launched in India in September 2007 with a well-publicized and well attended launch party.
- 4.5 Sales and subscription figures for VOGUE INDIA magazine have been provided. For instance, in 2015, sales were more than Rs. 59 crores and subscription from 2008 to 2017 crossed 10,00,000 copies (including PDF copies). The magazine VOGUE INDIA is regarded as an opinion leader and trendsetter- which brings its readers the best of global and Indian fashion, beauty, people, luxury, travel, parties and culture.
- 4.6 The Complainant is the registered proprietor of the trade mark "VOGUE" in around 145 countries and owns over 1,000 trade mark registrations for VOGUE in connection

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with magazines, online publications and distribution of information. In India, the mark VOGUE is registered since 1976 in relation to publications as well as other goods and/or services. The registrations have been renewed from time to time and are valid and subsisting.

- 4.7 Surveys and questionnaires conducted by the Complainant have found that "VOGUE" magazine has an unrivalled reach among luxury fashion and beauty consumer; VOGUE has a very high reach among luxury and premium fashion and beauty audiences in comparison to its competitors. The said magazine is known across most of the States and Union Territories of India, and is popular among fashion conscious people in the upper and middle strata of society. The VOGUE brands association increases consumer confidence in making a purchase. It has also been revealed that the words associated with the brand VOGUE include – influential, inspirational, iconic, luxury and leader.
- 4.8 The Complainant, over the course of years, has won / received several awards and recognitions and details of a few such recognitions have been provided. The mark VOGUE of the Complainant has also been included in the list of well-known trade marks by the Registrar of Trade Marks in India and published on its website at Serial No. 80.
- 4.9 Since 2000, Complainant is operating www.vogue.com, the online home of Vogue. This site features fashion show video coverage, Vogue magazine content, photos, designed profiles and current apparel line formation, as well as ads from luxury brand owners. Vogue.com obtains over 8.5 million-page views per month and over 600,000 unique users every month. The trade mark VOGUE has also been used extensively over the internet to identify the Complainant and to associate the said mark exclusively with the Complainant.
- 4.10 The India website www.vogue.in gets about 1,000,000 unique visitors per month and the Complainant has about 2,75,000+ monthly readership. VOGUE INDIA also has a huge following on its social media pages.
- 4.11 In the month of September 2019, the Complainant came across the disputed domain name, for the business of organizing / arranging travel plans / travel agency services. On learning about the same, the Complainant, through its counsel, sent a Cease and Desist Notice dated September 23, 2019 to the Respondent's addresses (as provided on their website at the following link: <https://www.voguetravelhouse.co.in/contact.php>). On non-receipt of any response from Respondent, two reminder letters dated October, 14, 2019 and January 24, 2020 respectively were sent by the Complainant to the Respondent at its email addresses provided at the above-mentioned link (at: <https://www.voguetravelhouse.co.in/contact.php>) asking the Respondent to cease use of the Complainant's VOGUE mark with respect to the impugned domain name www.voguetravelhouse.co.in and the website hosted at the said domain name as well as to stop using the mark VOGUE. However, no response has been received by the Complainant.

5. GROUND FOR COMPLAINT

- 5.1 With respect to the first ground, the Complainant has submitted that the mark VOGUE was adopted by the Complainant in 1892 and has been used continuously and extensively since then with respect to the magazine of the Complainant. The word VOGUE has become distinctive of the products of the Complainant such that any reference to the word VOGUE is immediately associated with the Complainant. The disputed domain name incorporates VOGUE in its entirety and use of the additional features i.e. 'TRAVEL HOUSE' does not distinguish business of Respondent's from that of the Complainant's business; it only describes the same. The operation of the disputed domain name has created and will further create confusion to the consumers at large and the people associated with it especially because of the fact that the Complainant is engaged in organizing and conducting parties, festivals and other

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entertainment events under its mark VOGUE. The disputed domain name reinforces the association with the Complainant's mark VOGUE by showing that the impugned domain name is somehow associated with the Complainant and its Indian subsidiary, wherein no such association exists.

- 5.2 Given the reputation and goodwill associated with the Complainant's VOGUE mark, most internet users who see the disputed domain name are likely to immediately recognize Complainant's VOGUE mark and assume that the infringing domain name and the websites is associated / owned, controlled and / or approved by the Complainant. Accordingly, under the INDRP Policy, the disputed domain name is confusingly similar to Complainant's trade mark.
- 5.3 As regards the second element of the Policy, the Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It was registered on October 17, 2016, which is long after the Complainant started using the mark VOGUE and established rights in the said trade mark around the world. There is no relationship between the Complainant and the Respondent and the Complainant never granted the Respondent any right to use or register the VOGUE mark either in connection with a domain name or a bona fide offering of the goods and/or services or for any other reason(s). Given that the Complainant's adoption and extensive use of the mark VOGUE long predates the Respondent's registration of the disputed domain name, the burden is on the Respondent to establish its rights or legitimate interests in the disputed domain name.
- 5.4 With regards to bad faith, the Complainant submits that the Respondent has registered or acquired the disputed domain name with the dishonest intention to mislead and divert the consumers.
- 5.5 The Respondent has registered and is using the disputed domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's VOGUE mark and from the likelihood that internet users will mistakenly believe that the disputed domain name is connected to the Complainant and its goods / services.
- 5.6 The Respondent has registered and is using the infringing domain name primarily for the purpose of disrupting the business of the Complainant and has no prior right in and no authorization to use given by the Complainant regarding the disputed domain name.
- 5.7 These activities demonstrate bad faith registration and use of the domain name in violation of the Policy as set forth in paragraphs 4(a)(iii) and 4(b). The Respondent has also made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3 (b) of the INDRP that "to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;" and under Paragraph 3 (d) that, "the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations".

6. DISCUSSION AND FINDINGS

- 6.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant as well as the case law cited by the Complainant. The reply of the Respondent has also been considered. The Arbitral Tribunal has been properly constituted.
- 6.2 The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which it has rights. The Arbitrator finds that the Complainant has been able to establish its rights in the trade mark VOGUE globally and in India for many years before 2016 (year of registration of disputed domain name). The mark VOGUE had become distinctive of Complainant's business and services before 2016 and had already acquired the status of a well-known

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mark. It is well settled that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. See *Ingersoll-Rand Co. Frank Gully d/b/a Advcomren*, WIPO Case No.D2000-0021. In *Boehringer Ingelheim Pharma GmbH &Co.KG v. Philana Dhimkana*, WIPO Case No.2006 -1594, it was held that, if a well-known trademark was incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark.

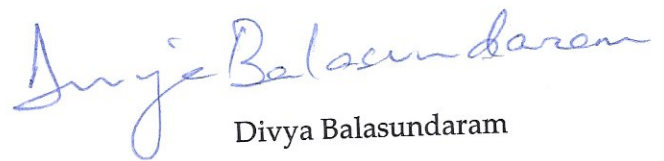
- 6.3 The Arbitrator notes that 'VOGUE' is the main and predominant part of the disputed domain name and wholly incorporated into the disputed domain name; the component 'travel house' is descriptive in nature for the Respondent's services and it does not serve as a distinguishing element. Hence the first element is satisfied.
- 6.4 As regards the second element, registration of the disputed domain name incorporating the well-known mark VOGUE of the Complainant with a descriptive term itself creates a presumption of bad faith adoption by the Respondent which also indicates a lack of legitimate right on part of the Respondent. It appears that the Respondent acquired the disputed domain name only with the intention benefit from the goodwill and fame associated with the Complainant's VOGUE mark. The operation of the disputed domain name is likely to create confusion in the minds of the public that it is a venture associated with the Complainant. The likelihood of confusion is enhanced as the Complainant is engaged in organizing and conducting parties, festivals and other entertainment events under its mark VOGUE. No material has been placed on record by Respondent to show any right or legitimate interest in the mark VOGUE.
- 6.5 In the case of *Paris Hilton v. Deepak Kumar*, [WIPO Case No. D2010-1364], it was found that if the owner of the domain name is using the domain name in order "...to unfairly capitalize upon or otherwise take advantage of a similarity with another's mark' then such use would not provide the registrant with a right or legitimate interest in the domain name.
- 6.6 The Respondent is also not commonly known by the domain name, nor is making legitimate, non-commercial or fair use of the same. The Complainant also has not authorized the Respondent to use the disputed domain name. Hence, the second element is satisfied.
- 6.7 With respect to the third element, the Complainant's mark is well-known, and the Respondent would have been aware of the same at the time of registration of the disputed domain name in 2016. There seems to be no other plausible reason for adopting the disputed domain except to benefit from the goodwill attached to Complainant's mark and intentionally attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's mark.
- 6.8 *Pentair Inc. v. Bai Xiqing INDRP/827* was another case where the panel accepted that "the complainant has established its prior adoption and rights in the trademark PENTAIR. Further the complainant's trademark applications were clearly made before the disputed domain name PENTAIR.IN was registered. The evidence on record shows that the complainant's trade mark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy".
- 6.9 The Arbitrator also notes that in the instant case, the Respondent has provided the address '001/B Bhagwan Bhawan B D Road, New York, US 10026 USA' in the WHOIS details. As this did not appear to be accurate, the Arbitrator conducted a search on Google and no such address was located. Hence, the Respondent has provided incorrect contact information regarding the actual registrant and this also shows bad faith on behalf of Respondent.



6.10 The only reply received from Respondent was an email of July 16, 2020 stating 'We are not using Voguetravelhouse.co.in, You can go ahead and take this domain right we dont need it.' Considering this and keeping in mind other facts of the case, the Arbitrator concludes that the three requirements of the Policy are met. See Lonely Planet Publication Pty Ltd. V. Hoang Anti Minh andcicvn.com, WIPO Case No. D 2003-0355 and Desotec N.V. v. Jacobi Carbons AB, WIPO Case No. D2000-1398.

7. DECISION

- 7.1 For all the foregoing reasons, the Complaint is allowed.
- 7.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <www.voguetravelhouse.co.in> be transferred to the Complainant.
- 7.3 No order as to costs.



Divya Balasundaram

Sole Arbitrator

Date: July 28, 2020

Place: New Delhi.