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September 22, 2020

Our Ref.: C-2039

**National Internet Exchange of India
6C, 6D, 6E, Hansalaya Building,
15, Barakhamba Road,
New Delhi – 110001,**

Kind Attn: Mr. Puneet Dhawan, Legal Officer

**RE: INDRP Domain Dispute relating to the Domain Name <adobe.ind.in>
Case No. 1255**

Dear Sir,

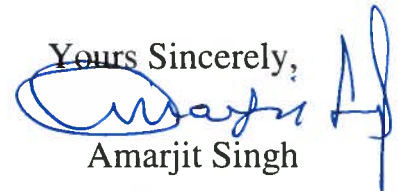
This has reference to your email dated September 14, 2020.

Please find attached hereto the Award, dated September 22, 2020, passed by this Panel in relation to the above Arbitration Proceedings. The hard copy of the duly executed Award is being sent to you by Courier.

We are also attaching hereto the Memo of Fee towards the Arbitration Proceedings, for remittance at your end.

Thanking you with the best regards,

Yours Sincerely,



Amarjit Singh

Enrol. No. D-122/1976



Encl: As above



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL67340593507838S
Certificate Issued Date	: 13-Aug-2020 12:07 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1742918604592941S
Purchased by	: AMARJIT AND ASSOCIATES
Description of Document	: Article 48(c) Power of attorney - GPA
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AMARJIT AND ASSOCIATES
Second Party	: Not Applicable
Stamp Duty Paid By	: AMARJIT AND ASSOCIATES
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

May 11

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

BEFORE THE LD. SOLE ARBITRATOR

MR. AMARJIT SINGH

**IN THE MATTER OF ARBITRATION IN INDRP CASE NO. 1255
UNDER THE INDRP POLICY**

AND

**RULES OF PROCEDURE OF .IN REGISTRY, NATIONAL
INTERNET EXCHANGE OF INDIA**

BETWEEN

ADOBE INC.

at:

345, PARK AVENUE SAN JOSE
CALIFORNIA-95110
UNITED STATES OF AMERICA

...COMPLAINANT

AND

SEEDS PROVIDER

at:

KAJASTINAS, TERAASD,
DELHI-110001, INDIA

...RESPONDENT



1. **THE PARTIES**

- 1.1 The Complainant in this Administrative Proceedings is **Adobe Inc.**, a Company incorporated under the Laws of USA having its registered office at 345 Park Avenue, San Jose California- 95110. The Complainant's authorized representatives are Ms. Shwetasree Majumdar, Ms. Astha Negi and Ms. Shreya Ganguly of Fidus Law Chambers, F 12 Ground Floor Sector 8, Noida- 201301.
- 1.2 According to the WHOIS Database of the National Internet Exchange of India [*hereinafter* NIXI], the Respondent in this Administrative Proceedings is **Seeds Provider** at Kajastinas Teraasd Delhi 110011 India.

2. **THE DOMAIN NAME AND THE REGISTRAR**

The disputed domain name <**adobe.ind.in**> was registered by the Respondent on September 14, 2019 with GoDaddy.com LLC, 14455, North Hyden Road, Suite 2019 Scottsdale, AZ 852606993 USA .

3. **PROCEDURAL HISTORY**

- 3.1 The Complaint was filed with NIXI, against the Respondent, in respect of the disputed domain <**adobe.ind.in**>. The NIXI verified whether the Complaint and the Annexures thereto satisfied the formal requirements of the **.IN DOMAIN NAME DISPUTE RESOLUTION POLICY**, (*hereinafter, The INDRP Policy*) and the **RULES OF PROCEDURE** (*hereinafter, The Rules*)



- 3.2 In accordance with the Paragraph 2(a) and 3 of The Rules, NIXI formally notified the Respondent of the Complaint being filed against it and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with The INDRP Policy and the Arbitration and Conciliation Act, 1996, along with the Rules framed there under. The Parties were first notified about my appointment as an Arbitrator on July 30, 2020.
- 3.3 The Panel had submitted the *Statement of Acceptance and Declaration of Impartiality and Independence*, in compliance with Paragraph 6 of The Rules, on July 30, 2020. Thereafter, the Arbitration Proceedings commenced on July 30, 2020. In accordance with Paragraph 5 (c) of The Rules, the Respondent was then notified about the commencement of Arbitration Proceedings and was duly sent, the Complaint, along with all the Annexures thereto, by NIXI on July 30, 2020.
- 3.4 The Respondent, by email dated August 6, 2020, was also intimated by this Panel about the Arbitration Proceedings, and was granted seven days' time ending on August 13, 2020 to file its response/written statement and evidence, if any. The aforesaid email, dated August 6, 2020 was duly delivered at the email address, **seedsprovider@gmail.com**, and **team@adobe.ind.in** furnished by the Respondent with the Registrar at the time of obtaining the disputed domain name, being **<adobe.ind.in>**.
- 3.5 The Panel did not receive any update or response from the Respondent to the email dated August 6, 2020. In the absence of any response by the Respondent to the complaint or any attempt to settle the matter amicably,



the Panel had no other choice than to decide the present Complaint on merits and on the basis of the material available on record.

- 3.6 The Panel considers that according to Paragraph 9 of The Rules, the language of the proceedings should be in English. In the facts and circumstances, an in-person hearing was not considered necessary for deciding the Complaint. Consequently, based on the Complaint and the Documents submitted on record, the present Award is being passed within the period of 60 days from the date of commencement of Arbitration Proceedings, as per Paragraph 5 of The Rules.

4. FACTUAL BACKGROUND

- 4.1 The Complainant, Adobe Inc., having its registered office at 345 Park Avenue, San Jose, California - 95110, United States of America.
- 4.2. The Complainant is approximately a US\$ 9 billion software and technology concern. The Complainant offers one of the world's most widely established, accepted and trusted array of software products and services for creating, managing, delivering, measuring, optimizing and engaging with compelling content across multiple operating systems, devices and media used by creative professionals, marketers, knowledge workers, application developers, enterprises and end users.
- 4.3 The Complainant offers a wide variety of software products and services within its family of products which are marketed and licensed in around 210 countries throughout the world on major operating system platforms and in more than 24 different language versions. Some of these products, solutions and services are Adobe Creative Cloud, including



the products Adobe Photoshop, Adobe Premiere Pro, Adobe InDesign, Adobe Illustrator, Adobe Dreamweaver, Adobe After Effects, Adobe Audition, Adobe Prelude, Adobe Spark, Adobe Scout; Adobe Experience Cloud, including the products Adobe Analytics, Adobe Audience Manager, Adobe Target, Adobe Experience Manager, Adobe Campaign, Adobe Primetime, Adobe Advertising Cloud and Adobe Commerce Cloud; and Adobe Document Cloud, including the products Adobe Acrobat, Adobe Acrobat Reader, Adobe Sign and its Adobe Portable Document Format (“PDF”) technology. The Complainant’s products and services, and the technologies associated with them, have redefined the world’s business, entertainment, and personal communications by setting new standards for producing and delivering content that engage people virtually anywhere at any time.

- 4.4 The Complainant is the proprietor of the trade mark **ADOBE** since as early as 1982. Apart from the word mark, the Complainant owns

registrations for the device marks viz.  **Adobe**,  and 

. The Complainant owns registrations for the **ADOBE** trade marks across the globe including India in numerous classes. In India, the Complainant is the registered proprietor of the trade mark **ADOBE** since 1987.

- 4.5 The Complainant has also registered the domain name **www.adobe.com** since 1986. The Complainant also maintains country specific websites. For instance, for India, the Complainant operates a website **www.adobe.com/in**, which is accessible to and indeed targets Indian customers and members of trade



- 4.6 The present dispute has arisen on account of registration of the domain **<http://adobe.ind.in/>** by the Respondent on September 14, 2020 which fully incorporates the trade mark **ADOBE** of the Complainant.

5. **PARTIES CONTENTIONS**

COMPLAINANT

The Complainant has raised the following three contentions in compliance with The INDRP Policy and The Rules.

A. ***Identical and Confusingly Similar***
[Para 3 (b) (vi) of the Rules and Para 3 of INDRP Policy]

- 5A.1 Complainant submits that since as early as 1982, it coined, conceived and adopted the trademark/tradename **"Adobe"** and has been openly, continuously and extensively using the same as its trade mark, trade name, corporate name, business name, trading style worldwide. After that, **Adobe Inc.**, got its domain name **<adobe.com>** registered in 1986 and has in continuance of its business maintained country specific websites. For instance, in India the Complainant operates and maintains website under **<www.adobe.com/in>** domain name.
- 5A.2 The Complainant is a global leader in digital marketing and digital media solutions with 74 offices worldwide and over 22,000 employees across the globe. In India, the Complainant has been carrying out its operations since as early as 1997. It is ranked among the "Top 100 Best Global Brands" in Interbrand's 2018 annual report. It is also ranked "100



amongst the top 100 Best Companies” by Working Mother Magazines, 2018; “Top 100 Digital Companies”; “World’s Most Innovative Companies” Forbes 2018; “World’s Most Valuable Brands 2018” of the Forbes magazine.

- 5A.3 In India, the Complainant has offices in Noida, New Delhi, Mumbai, Bangalore, Hyderabad and Gurgaon. The Complainant has been present in India since 1997.
- 5A.4 The Complainant owns statutory rights over the trade mark **ADOBE** across approximately 67 countries of the world including but not limited to the US, European Union, Germany, Canada, Israel, Denmark, Iceland, New Zealand, etc. A non-exhaustive list of **ADOBE** trade marks owned by the Complainant is filed on record marked as **Annexure M**. Copies of few registration certificates from different countries are also filed on record marked as **Annexure N**.
- 5A.5 In the year 1986, the Complainant adopted the trade mark **ADOBE** as an essential and integral part of its domain name **<www.adobe.com>**. The current number of unique visits per month to that site from individuals in India is over 4.6 million. In addition, since 2006 the Complainant has also operated an India-specific site, at **<https://www.adobe.com/in/>**. This localized site currently receives over 2.6 million unique visits per month from individuals in India and provides information on the Complainant’s presence in India. Few printouts from **<www.adobe.com>** and **<https://www.adobe.com/in/>** are filed on record marked as **Annexure O**. A copy of the Complainant’s webpage from 1996



downloaded from internet archives is filed on record marked as **Annexure P.**

5A.6 The Complainant and its products have massive social media presence. For instance, the Complainant has more than 1, 297, 123 likes on Facebook, more than 1 Million followers on Instagram, more than 663K followers on Twitter. Few print outs from these social media are filed on record and marked as **Annexure Q.**

5A.7 The domain name **<adobe.ind.in>** completely subsumes the Complainant's well-known trade mark/trade name **ADOBE**. The disputed domain name is identical to the Complainant's trade mark **ADOBE**.

5A.8 Moreover, people accessing the disputed domain name, even without being aware of the content, are likely to think that the disputed domain name is owned by the Complainant or is in some way connected with it.

B.

Absence of Legitimate Interest

[Para 3(b) (vi) of The Rules Para 7 of INDRP Policy]

5B.1 **ADOBE** is the Complainant's registered trade mark and was adopted by the Complainant around 1982. The trade mark **ADOBE** has no other meaning save in relation to the Complainant and its products and services, or those of any authorized licensees or franchisees. The Respondent is not a licensee or franchisee of the Complainant and has adopted the identical trade mark with a view to ride upon the goodwill associated with the Complainant's well-known trade mark **ADOBE** and pass off its goods/services as that of the Complainant.



- 5B.2 The disputed domain name has not been used in connection with *bona fide* offering of goods or services by the Respondent. The domain name has instead been used to offer goods and services in violation of the trade mark rights of the Complainant. The Respondent is using the disputed domain name to advertise and promote their image and graphic platform services under the mark, misleading the consumers into believing that www.adobe.ind.in is in some manner affiliated to the Complainant by using the word **ADOBE** in conjunction with the generic word 'ind' which is nothing but a short form of India.
- 5B.3 The domain name has been registered as recently as September 14th, 2019 by the Respondent who has registered and designed the website solely for misleading the consumers. The Respondent has only recently adopted the name ADOBE IND with the aim to ride on the goodwill of the Complainant. Thus, the question of being known by the domain does not arise in the first place.
- 5B.4 The Respondent registered the disputed domain name for commercial gain as is clear from the fact that contents appearing on the Respondent's website are creating a wrong impression in the minds of consumers of the connect with the Complainant. Further, the fact that the disputed websites offers images and graphics for download, upload and use clearly demonstrates that the Respondent is attempting to pass off its services under the trade mark **ADOBE**. The Respondent has put the disputed domain name to an illegitimate commercial purpose or for unfair use by way of attempting to capitalize on the goodwill and reputation of the Complainant. There is a clear intent for commercial gain to misleadingly divert consumers.



- 5B.5 Additionally, the several references to the Complainant's trade mark **ADOBE** and the contents and advertisements appearing on the Respondent's website demonstrates the Respondent's intention of commercial use of the website to have unlawful gains.
- 5B.6 None of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the domain name or to use the **ADOBE** trade mark. The Complainant has prior rights in the trade mark **ADOBE** which precedes the registration of the disputed domain name by the Respondent.
- 5B.7 That the Respondent has no legitimate interest in the disputed domain name, rather the sole purpose of the Respondent is to misappropriate the reputation associated with the Complainant's famous trade mark **ADOBE**. The Complainant has not authorized the Respondent to use its trade mark/ trade name/trading style. The Respondent has no rights or legitimate interests in the word **ADOBE**.

C. ***Impugned Domain Name was Registered in Bad Faith***
[Para 39(b)(vi)(3) of the Rules and Para 6 of INDRP Policy]

- 5C.1 The well-known status of the trade mark **ADOBE**, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of the Complainant's trade mark. It has been consistently found that the mere registration of a domain name that is identical or confusingly similar to



a famous or widely known trade mark by an unaffiliated entity can itself create a presumption of bad faith.

5C.2 On the basis of the extensive goodwill and reputation associated with the **ADOBE** trade mark, the Complainant has been able restrain several third parties who were using the trade mark **ADOBE** unauthorizedly in relation to their business. A list of some orders passed in favor of the Complainant by the Delhi High Court and the Indian Trademark Registry is provided below:

TITLE / OPPOSITION NO.	RESPONDENTS' MARK AND APPLICATION NO.	DATE OF DECREE/ORDE R	FORUM
842601	ADOBE PHARMACEUTICA LS App No. 2707603	March 16, 2018.	Trademar k Registry
863477	ADroBe App No. 2999209	March 28, 2017.	Trademar k Registry
862346	ADOBE (LOGO) App No. 2824290	December 6, 2017	Trademar k Registry
CS(COMM)123/20 19 Adobe Inc. v. Brijest Mishra & Anr.	CODER ADOBE	May 9, 2019	Delhi High Court
CS (COMM) 1309 of 2016 Adobe Systems Incorporated V/s Adrobe Networks Pvt. Ltd	ADROBE	February 2, 2017	Delhi High Court

Copies of the aforementioned orders are filed on record marked as **Annexure S** (collectively).

5C.3 The Complainant's rights over and priority in adoption and use of the **ADOBE** trade marks have been upheld by various UDRP panelists in several cases, the particulars of which are listed below:

➤ In *Adobe Systems Incorporated v. Jeff Bluff, Online RX Sales LLC Case No. D2006-1475* it was observed that the incorporation of a trade mark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the complainant's registered mark. Further, it is well established that the addition or subtraction of punctuation marks will not affect whether the name is identical or confusingly similar to a mark. Therefore, the domain www.new-adobe.net was transferred to the complainant.

➤ In *Adobe Systems Incorporated v. Amjad Kausar Case No. D2003-0879*, it was found that intentional registration and use of the Domain Name in dispute clearly manifests an intent by Respondent to capitalize on and to benefit from the goodwill in the ADOBE Trade mark of Complainant as well as an intent to take advantage of Internet users misspelling a domain name which constitutes use of the Domain Name in Dispute in bad faith. The domain name wwwadobe.com was ordered to be transferred to the Complainant.

5C.4 It is clear from the fact that Respondent had registered the disputed domain name for sole purpose of designing the website to mislead consumers. By doing so the Respondent has intentionally attempted to



create a likelihood of confusion with the Complainant's registered trade mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

- 5C.5 The disputed domain name is identical to the Complainant's registered trade mark **ADOBE**, in which the Respondent cannot have any rights or legitimate interest.
- 5C.6 Under paragraph 6(iii) of the IN Domain Dispute Resolution Policy (INDRP), if by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location, it shall be evidence that the Registrant's registration and use of the domain name is in bad faith.

D. RESPONDENT

- 5D.1 The Respondent, in the present dispute, got the impugned domain **<adobe.ind.in>** registered on September 14, 2020.
- 5D.2 The Respondent, as aforesaid, failed/neglected and omitted to file any response to the averments made in the Complaint and/or the documents filed in support thereof on merits; despite an opportunity having been granted by the Panel via email dated August 6, 2020.



6. DISCUSSIONS AND FINDINGS

- 6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the. In Dispute Resolution Policy and the Rules framed thereunder in terms of Paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.
- 6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.
- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.



- 6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to have been admitted.
- 6.5 The decision of Hon'ble Supreme Court of India in the matter of *Jahuri Sah Vs. Dwarika Prasad*, AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof (*See*: Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent and are therefore deemed to have been admitted.
- 6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- 6.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy, irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

- 6A.1 A mere glance at the disputed domain name show that the domain name registered by the Respondent contain the entire Trade Mark/Trade Name 'adobe' of the Complainant.



6A.2 UDRP Panels have held in many decisions [See: *Farouk Systems, Inc. v. Yishi*, Case No. D2010-0006; *Havells India Limited, QRG Enterprises Limited v. Whois Foundation* D2016-1775] that a domain name which wholly incorporates a Complainant's Trade Mark/Trade Name may be sufficient to establish identicalness or deceptive similarity, irrespective of the addition of other words to such marks or not.

6A.3 In the case of *OSRAM GmbH v. Yuri A Ivano*, Case No. D2009-0692; it was held that-incorporating a Trade Mark in its entirety may be sufficient to prove that a domain name used by the Registrant is confusingly or identically similar to a Trade Mark used by the Complainant.

6A.4 In the present case, it is very natural for an internet user, who wishes to visit the website of the Complainant to type its commercial name/brand name followed by the country specific Top-Level Domain <.in>. This will lead the Internet user to believe that the Complainant is associated with or owns the web site bearing the domain name <www.adobe.ind.in>.

6A.5 Addition of the letters "ind" to the Complainant's trade mark **ADOBE** does not affect the overall impression of the dominant part of the disputed domain name. In fact, such use gives the impression that the disputed domain is the Complainant's India specific extension and hence increases confusion that the Respondent's domain is associated with the Complainant.



- 6A.6 In *Lockheed Martin Corporation Vs. Aslam Nadia (INDRP Case No. 947)* which held that when the disputed name contains the entirety of the Complainant's trade mark followed by a generic term, the addition of the top-level domain .in will not distinguish the Respondent's disputed domain name. In *Ducati Motor Holding S.p.A vs. Abhishek Chordia (INDRP case No. 834)* it was held that a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. Cop
- 6A.7 The Complainant is therefore successful in establishing the First Element of INDRP Policy and the Panel finds that the disputed domain name is identical to the Trade Mark/Trade Name/Domain Name of the Complainant. Consequently, the First requirement of Paragraph 4 of the policy is satisfied.

B. ABSENCE OF LEGITIMATE INTEREST

- 6B.1 Under paragraph 7 of the IN-Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:

- Before any notice to the Respondent of the dispute, the Respondent's 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.



- The Respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights.
- The Respondent is 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 trade mark or service mark at issue.

6B.2 The Complainant has registered the mark '**adobe**' in various foreign jurisdictions and also has pending registrations in various countries including India. It is apparent that the Respondent knew of the Complainant's mark and its business activities as the mark '**adobe**' has been in use by the Complainant in relation to array of software products and services for creating, managing, delivering, measuring, optimizing and engaging with compelling content across multiple operating systems, devices and media used by creative professionals, marketers, knowledge workers, application developers, enterprises and end users

6B.3 It is pertinent to note that the Respondent has no connection with the Complainant, or any company licensed by the Complainant. Respondent is not commonly known by the disputed domain name or the Trade Mark '**adobe**'. Further, Respondent was not and is not authorized by Complainant to register, hold or use the disputed domain name.

6B.4 In Red Bull GmbH v. Harold Gutch WIPO case No. D2000-0766 where the panel held that "The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating any of those marks. Combination of

the words "Red" and "Bull" is a purely fanciful combination of words, as there does not exist a red colored bull. Therefore, no trader would legitimately choose this mark unless seeking to create an impression of association with the Complainant. Accordingly, the Respondent has no rights or legitimate interests in respect of the disputed domain name."

6B.5 In *inter-Continental Hotels Vs Abdul Hameed INDRP/278*, where it was observed that trade mark registration is recognized as prima facie evidence of rights in a mark. In *Shulton Inc. vs Mr. Bhaskar INDRP/483*, it was established that if the Respondent does not have trade mark rights in the word corresponding to the disputed domain name and in the absence of evidence that the Respondent was commonly known by the disputed domain name, the Respondent can have no rights or legitimate interest.

6B.6 The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity. In this specific case, the Complainant is in the business of software and developing software and their official website <www.adobe.com> serves as an information portal for potential buyers and customers. Moreover, a domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.

6B.7 Moreover, the Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the Trade Mark/Trade Name 'ADOBE' in its entirety, a mark in which the Complainant has sole and exclusive rights and that has



become well-known owing to the Complainant's efforts. [Relevant Decision: *Arthur Golden v. Galileo Asesores S.L. Case No. D2006-1215*].

6B.8 The disputed domain name has not been used in connection with *bona fide* offering of goods or services by the Respondent. The domain name has instead been used to offer goods and services in violation of the trade mark rights of the Complainant. The Respondent is using the disputed domain name to advertise and promote their image and graphic platform services under the mark, misleading the consumers into believing that *www.adobe.ind.in* is in some manner affiliated to the Complainant by using the word ADOBE in conjunction with the generic word 'ind' which is nothing but a short form of India.

6B.9 The Respondent is not, either as an individual, business or other organization, commonly known by the name 'ADOBE'. The Respondent has no active legitimate or bona-fide business in the name of 'ADOBE'. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent. [Relevant Decisions: *Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO, June 27, 2000)*; *ITC Limited vs. Mr. Mark Segal, INDRP/079 (February 10, 2009)*; *Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581 (May 15, 2014)*; *Aon PLC and Ors. v. Gangadhar Mahesh, INDRP/632 (October 31, 2014)*; *Aon PLC and Ors. v. Guanrui, INDRP/633 (October 28, 2014)*].



6B.10 Furthermore, the Respondent whose name is ‘‘ Seeds Provider, as per the WHOIS records, is not commonly known by the disputed domain name, nor the Respondent actually engages in any business or commerce under the name ‘**Seeds Provider**’. [Relevant Decision: *Etro S.p.A v. M/S Keep Guessing*, INDRP/024 (June 27, 2007); *Tata Sons Limited v. Jacob W.*, Case No. D2016-1264].

6B.11 The case of *SOCIETE DES PRODI ITS NESTLE SA, SWITZERLAND v. NESCAFE LIMITED*, United Kingdom was decided on May 24, 2009 by NIXI Panel. The relevant excerpt are as under:

“Nescafe Ltd. has got the domain name “nescafe.co.in” registered in its name, whereas the Complainant was the proprietor of the mark “NESCAFE” and has got several TLDs registered including nescafe.com, nescafe.co.uk, nescafe.info, nescafe.biz, nescafe.mobi, nescafe.name, nescafe.pl, Nescafe.lk, nescafe.cn, nescafecoffee.com. In the case, Arbitrator’s award at page 7 states that– “It appear that, the Respondent has registered the domain name with full knowledge of the Complainant’s marks and uses it for the purpose of diverting Internet traffic, which is neither fair use nor non-commercial use. Such facts and circumstances create a rebuttable presumption that the Respondent has no rights in the domain name and is not using it for any legitimate purpose.”

6B.12 In *Monster.com (India) Pvt. LIMITED. v. Domain Leasing Company*, where the domain name in dispute was **monster.in** and the Arbitrator articulated that the onus in on the Registrant to ensure that they are not infringing on any 3rd party rights.



6B.13 It is thus, highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. Moreover, the impugned domain name was registered by the Respondent in order to cash-in on the reputation of the ‘adobe’ brand. The impugned domain name was registered on September 14, 2020 while the Complainant’s mark adobe has been in continuous and extensive use since 1986 [Relevant Decisions: Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003; Kelemata S.p.A. v. Mr. Bassarab Dungaciu, D2003-0849].

6B.15 The Panel finds that the Respondent has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent’s registration of the disputed domain name. Furthermore, the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed Domain Name.

6B.14 The Complainant has therefore established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.

C. DOMAIN NAME WAS REGISTERED IN BAD FAITH

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:



- a. Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the Domain Name; or
- b. The Registrant has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- c. By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's Website or location or of a product or service on Registrant's Website or location.

6C.3 If by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location, it shall be evidence that the Registrant's registration and use of the domain name is in bad faith.



- 6C.4 It is reiterated that the disputed domain name is identical to the Complainant's registered trade mark **ADOBE**, in which the Respondent is held to have no rights or legitimate interest.
- 6C.5 It is clear from the fact that Respondent had registered the disputed domain name for sole purpose of designing the website to mislead consumers. By doing so the Respondent has intentionally attempted to create a likelihood of confusion with the Complainant's registered trade mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.
- 6C.6 The well-known status of the trade mark **ADOBE**, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of the Complainant's trade mark. It has been consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trade mark by an unaffiliated entity can itself create a presumption of bad faith.
- 6C.7 In Motorola, Inc. v. NewGate Internet, Inc., WIPO Case No. D2000-0079 where it was held that "... the use of somebody else's trademark as a domain name (or even as a meta-tag) clearly does not constitute a "bona fide" offering of goods or services when the web site owner has no registered or common law rights to the mark, since the only reason to use the trademark as a domain name or meta-tag is to attract customers who ... were looking for the products or services associated with the trademark. Such use of a trademark can create customer confusion or



dilution of the mark, which is precisely what trademark laws are meant to prevent. And actions that create, or tend to create, violations of the law can hardly be considered to be "bona fide".

- 6C.8 In *Yahoo! Inc. vs Akash Arora & Anr (1999 PTC (19) 210 Delhi)*, wherein it was held that defendant's domain name could be perceived as being another domain of the plaintiff. In *Colgate Palmolive (India) Ltd. vs. Zhaxia INDRP/887* where it was observed that by registering the impugned domain name, the Respondent has attempted to attract internet users by creating likelihood of confusion with the Complainant's mark/source of origin.
- 6C.9 Based on the foregoing, the Panel hold that the Respondent has registered and is using the disputed domain name in bad faith interalia for the following reasons.
- 6C.10 The mark "**adobe**", having been extensively used in relation to the business of the Complainant, namely array of software products and services for creating, managing, delivering, measuring, optimizing and engaging with compelling content across multiple operating systems, devices and media used by creative professionals, marketers, knowledge workers, application developers, enterprises and end users and has acquired distinctiveness and is understood and associated by consumers as the mark of the Complainant denoting their goods, services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith. The Respondent clearly knew of the Complainant's prior rights when registering the domain name. This by itself constitutes "bad faith".



- 6C.11 More specifically, customers and potential buyers would be induced to believe that the Respondent's domain name has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant and that the Respondent is carrying on activities that have been endorsed by the Complainant on its behalf and the services or products that are sought to be offered by the Respondent are at the same level of quality and reliability as that offered by the Complainant and its group of companies.
- 6C.12 In light of the Respondent's presumed knowledge of the Complainant's rights, it is reasonable to infer that the Respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. The Respondent must have the intention to sell it for financial gain or misuse the disputed domain name, as the impugned domain name has no functional website.
- 6C.13 Such passive holding of the domain name by the Respondent amounts to bad faith under the present circumstances. [*Relevant Decisions: Lockheed Martin Corporation v. Aslam Nadia, INDRP/947; Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003*].
- 6C.14 Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the Complainant's rights. Thus, the disputed domain name was registered in bad faith. [Relevant Decision: *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011)*].
- 6C.15 Further, in *Netgear Inc. vs Chen Shenglu*, involving the disputed domain name <netgear.co.in>. Complainant (Netgear Inc.) contended that the



domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant stated that it is known consumers worldwide as 'NETGEAR' and that the disputed domain name is <netgear.co.in> is likely to be confusing with the Complainant's distinctive mark Netgear. The Complainant also stated that it owned more than 680 trademark registrations worldwide for marks containing the word 'NETGEAR' and contended that the Respondents has no rights or legitimate interests in respect of the domain name. It was also stated that respondent has not been commonly known by the mark 'NETGEAR' and further that the Respondent was not making legitimate or fair use of the domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant. The Complainant further contended that the domain name has been registered and is used in bad faith and it is registered only for the purpose of trafficking and that the main object of registering the domain name <netgear.co.in> by the Respondent was to earn profit and mislead the general public and the customers of the Complainant. The Complainant stated that the use of a domain name that appropriates a well-known mark to promote competing or infringing products cannot be considered a 'bonafide offering of goods or services'. The Respondent did not reply to any of the Complainant's contentions. The Arbitrator ordered that the domain name be transferred to the Complainant.

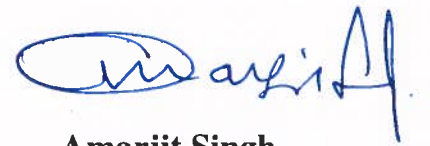
6C.16 In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.



7. **DECISION**

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel directs the transfer of impugned domain name <www.adobe.ind.in> to the Complainant.



Amarjit Singh
Sole Arbitrator



Dated: September 22, 2020