



सत्यमेव जयते

## INDIA NON JUDICIAL

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#### e-Stamp

Certificate No.	: IN-DL15810863367399R
Certificate Issued Date	: 05-Jul-2019 11:28 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1737267274837091R
Purchased by	: POOJA DODD
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DODD
Second Party	: Not Applicable
Stamp Duty Paid By	: POOJA DODD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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#### ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

#### 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.
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**Disputed Domain Name: 7eleven.co.in**

**Decision of Ms. Pooja Dodd, Sole Arbitrator**

**INDRP Case No. 1088**

IN THE MATTER OF:

7-ELEVEN, Inc.,

3200, Hackberry Road,

Irving, Texas 75063,

United States of America.

...Complainant

Versus

Sameer Shekh

87 Roshan Park,

Society D, Cabin Road,

Vadodara- 390 002

India

...Respondent

**1. The Parties:**

- 1.1. The Complainant in this arbitration proceeding is 7-ELEVEN, Inc, with its corporate headquarters at 3200, Hackberry Road, Irving, Texas 75063, United States of America, represented by Authorized Representative, Mr. Sanjay Chhabra, Senior Partner, Archer & Angel, K-4, South Extension Part – II, New Delhi- 110049, India.

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1.2. The Respondent is Sameer Shekh, a resident of 87 Roshan Park, Society D, Cabin Road, Vadodara- 390 002, Gujarat, India. The email address connected with the Respondent is [skyelevenenterprise@gmail.com](mailto:skyelevenenterprise@gmail.com) and the phone number connected with the Respondent is +91-8140476733.

**2. Domain Name and Registrar:**

2.1. The Disputed Domain Name is 7eleven.co.in which was registered on August 2, 2017.

2.2. The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy.com, LLC situated at 14455 N. Hayden Rd., Ste. 226, Scottsdale, Arizona 85260 - 6993, United States of America.

**3. Procedural History:**

3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the “Policy”), adopted by the National Internet Exchange of India (“NIXI”) and the INDRP Rules of Procedure (the “Rules”), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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





- 3.1. The Complaint was filed by the Complainant with NIXI, against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.2. On May 17, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.3. NIXI notified the Parties of my appointment as the Arbitrator via email on May 17, 2019 and served an electronic as well as a physical copy of the Complaint on the Respondent. I informed the Parties about the commencement of arbitration proceedings on May 22, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.4. On June 3, 2019, I informed the Parties that though no Response was received from the Respondent within the time period granted, in the interest of justice, I was granting additional time of 5 days, and that if no reply was filed by June 8, 2019, the award would be passed on merits. The additional time period granted lapsed but no Response was received.

**Grounds for Arbitration Proceedings**

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the domain name; and



C. The Disputed Domain Name was registered and is being used in bad faith.

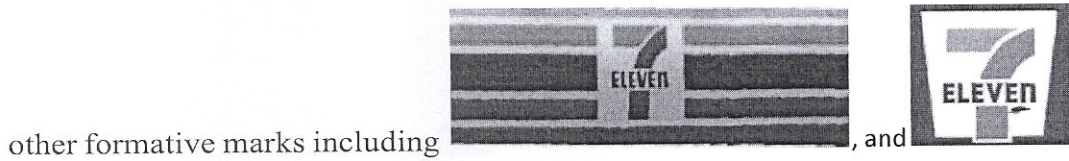
**5. Summary of the Complainant's Contentions:**

In support of its case, the Complainant has made the following submissions:

- 5.1 The Complainant was founded as The Southland Corporation in 1927 at Dallas, Texas and has since pioneered the concept of the convenience stores. The Complainant opened its first convenience store in 1946 and has since become the world's largest convenience store chain with 66,000 stores around the world in 18 countries under the brand name 7-ELEVEN. A perusal of Exhibit C1 substantiates the aforesaid claims of the Complainant.
- 5.2 The Complainant's house mark was first adopted for its convenience stores in 1946 and has been in continuous use thereafter. The first 7-ELEVEN store of the Complainant outside the United States was opened in Canada in 1969, and two years later the Complainant expanded into Mexico. The first 7-ELEVEN store outside North America was opened in 1974 in Japan. A perusal of Exhibit C2 substantiates the aforesaid claims of the Complainant.
- 5.3 To capitalize on the growing reputation of the 7-ELEVEN, the Complainant changed its corporate name from The Southland Corporation to 7-Eleven, Inc in 1999. The Complainant is known to be first-to-market in relation to a host of products and services, including being the first to operate 24-hour-a-day stores. It was also the first convenience store to sell pre-paid phone cards and first convenience retailer to offer ATM services.

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5.4 The Complainant has trademark registrations for the mark 7-ELEVEN and



internationally, including in India. It is the owner of the registered trademark 7-ELEVEN in India in classes 16, 29, 30, 32 and 35. A perusal of Exhibits C3 and C4 substantiates the aforesaid claims of the Complainant.

5.5 The Complainant is the owner of numerous generic top- level domain names, including <7-eleven.com>, which has been registered since October 21, 1997 and comprises of the Complainant's name and registered trademark 7-ELEVEN in its entirety. Moreover, the Complainant also owns various other top – level as well as country specific domain names. A perusal of Exhibit C5 substantiates the aforesaid claims of the Complainant.

5.6 The Complainant submits that the Disputed Domain Name <7eleven.co.in> is unabashedly identical to the Complainant's registered trademark 7-ELEVEN, as well as deceptively similar to the Complainant's various 7 – ELEVEN marks. It is contended that the Disputed Domain Name incorporates the Complainant's registered trade mark 7-ELEVEN in its entirety and is in conflict with the Complainant's legitimate rights over the 7-ELEVEN. A perusal of Exhibits C6 and C7 substantiates the aforesaid claims of the Complainant.

5.7 The Complainant's marks have been adjudicated as and considered as inherently distinctive well-known marks by various courts and judicial forums



around the world, including by WIPO. A perusal of Exhibit C9 substantiates the aforesaid claims of the Complainant.

5.8 The Complainant has been continuously and extensively using the registered trademark 7-ELEVEN in commerce since its adoption in 1946. Its rights in the 7-ELEVEN marks are contended to be beyond reproach. Further, the Disputed Domain Name has been registered only as recently as August 2, 2017 which is vastly subsequent to the Complainant's common law and statutory rights in the 7-ELEVEN marks globally as well as in India.

5.9 Bad faith in registration of the Disputed Domain Name can be attributed to the Respondent on the basis of the following:

5.9.1 The Respondents' personal data has been blocked from public view on the WHOIS search conducted for [www.7eleven.co.in](http://www.7eleven.co.in) on the .IN registry's official website.

5.9.2 It is a settled principle that no rights are acquired on the basis of mere registration when there is no usage of the Disputed Domain Name.

5.9.3 Having already been adjudged as a well-known mark by Courts and judicial forums internationally, Registration of domain name of a well-known mark is sufficiently strong evidence of bad faith.

5.9.4 Mala fides of the Respondent are further evident from copying the exact alpha numeric sequence of the Complainant's marks.

5.10 The Complainant has further alleged apprehension of misuse of the Disputed Domain Name by the Respondent leading to damage to the goodwill and reputation of the Complainant. Given the ubiquitous association of the mark 7-

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ELEVEN with the Complainant, grave likelihood of confusion exists among the public in believing that the Disputed Domain Name is the Complainant's India specific domain.

5.11 In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure I	Copy of the .IN Domain Name Dispute Resolution Policy
Annexure II	A copy of the email received from NIXI on April 4, 2019.
Exhibit C1	Name Certificate of the Complainant (from The Southland Corporation to 7-Eleven, Inc.) dated April 29, 1999 and the Certificate of Amended and Restated Articles of Incorporation of the Complainant dated November 9, 2005 issued by the office of the Secretary of State for the state of Texas, U.S.A.
Exhibit C2	An excerpt from the book "Oh Thank Heaven- The Story of Southland Corporation" by Allen Liles, corroborating the adoption of the 7-ELEVEN in 1946.
Exhibit C3	Detailed list of the trademark registrations granted for the 7-ELEVEN Marks worldwide.
Exhibit C4	Representative copies of registration certificates from different jurisdictions.
Exhibit C5	Representative extracts from the WHOIS database evidencing the validity of the listed domain names and the Complainant's ownership.

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Exhibit C6	Extracts from <a href="http://www.7-eleven.com">www.7-eleven.com</a>
Exhibit C7	Copy of landing page at <a href="http://www.7eleven.co.in">www.7eleven.co.in</a>
Exhibit C8	Copy of WHOIS search conducted for <a href="http://www.7eleven.co.in">www.7eleven.co.in</a> on the .IN registry's official website.
Exhibit C9	Copy of orders by various courts and judicial forums around the world adjudicating the 7-ELEVEN mark of the Complainant as a 'well known mark'.
Exhibit C10	Extracts of the Google search for 7-eleven.

## 6. Discussions and findings:

6.1. The submissions and documents provided by Complainant lead to the conclusion that the 7-ELEVEN Marks form an integral part of the Complainant's business. The Respondent does not have any relationship with the business of, or authorization from of the Complainant; the Respondent does not have any legitimate interest in the Disputed Domain Name and the Respondent has registered the Disputed Domain Name to enrich itself unjustly from such adoption and registration.

6.2. It's a well-established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that he has some legitimate interest in the domain name, to rebut this presumption.

6.3. The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given

a fair opportunity to present its case. Even though sufficient time (including additional time) was granted, the Respondent chose to refrain from submitting any Response to the Complaint.

6.4. Paragraph 11(a) of the Rules empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, I initially gave the Respondent 10 days and in the absence of a Response, I granted an additional 5 days to the Respondent to file a Response, but the Respondent failed to file any Response to the Complaint and has sought not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend himself. Thus, this *ex parte* award.

6.5. Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to respond to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to submit a Response, despite having been given sufficient opportunity and time.

7. The issues involved in the Dispute:

7.1. The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for a domain name dispute, which are;

- 1) whether the domain name in question is identical or confusingly similar to a trade mark;
- 2) why the Respondent cannot claim any legitimate interest in the trade mark; and
- 3) why the domain name in question should be considered as having been registered and being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

Element 1- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

7.2. I am of the view that the Complainant has submitted enough documentary evidence to prove its rights in and to the ownership of the 7-ELEVEN marks arising out of prolonged use and registration. The 7-ELEVEN marks have been used extensively by the Complainant and have acquired secondary meaning. The submissions and documents provided by Complainant lead to the conclusion that the Complainant has proprietary rights, more particularly



trade mark rights and other common law rights in the 7-ELEVEN marks. The Disputed Domain Name incorporates the Complainant's 7-ELEVEN marks in their entirety and thus, the Disputed Domain Name is confusingly similar to the Complainant's 7-ELEVEN marks and its trading name. [Decisions relied upon: Eleven Inc. vs. Kornelius Wietska – INDRP case no. 1073; Six Continent Hotels, Inc. vs. The Omnicorp, WIPO Case no – D2005 – 1249; Britannia Building Society v. Britannia Fraud Prevention, WIPO Case no. – D2001-0505; PepsiCo, Inc. v. PEPSI, SRL& EMS Computer Industry – WIPO Case No. D2003-0696; Hoffmann-La Roche AG v. Andrei Kosko, WIPO Case No. D2010-0762; Farouk Systems, Inc. v. QYM, WIPO Case No. D2009 – 1572; Orange Personal Communications Services Ltd. v. Luttringer Alexander, WIPO Case No. D2008-1979]

- 7.3. Therefore, in light of the Complaint, accompanying documents and cited case law, I am of convinced beyond doubt that the Disputed Domain Name is confusingly similar to the Complainant's 7-ELEVEN marks and related domains. The use of the Complainant's trading name in its entirety in the Disputed Domain Name will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant. Hence, the first element is satisfied.

Element 2 - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

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- 7.4. Through its submissions, the Complainant has established that it has never authorized or licensed the Respondent to use its 7-ELEVEN marks. The Respondent does not seem to have any relationship with the business of the Complainant or any legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name on August 2, 2017 which is many decades after the Complainant first used the 7-ELEVEN marks.
- 7.5. The burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent, and by not responding to the Complaint, within the timeline set, the Respondent failed to establish legitimacy in registering the Disputed Domain Name. [Decisions relied upon: Deutsche Telekom AG v. Phonetic Ltd., WIPO Case No. D2005 – 1000; Alpha One Foundation, Inc. vs. Alexander Morozov, NAF Case No. 766380; Six Continent Hotels, Inc. vs. Patrick Ory, WIPO Case no – D2003 – 0098; The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516; Orange Brand Services Limited vs. P.R.S. Reddy <orangesms.in> - INDRP /644; The Ritz Carlton Hotel Company LLC v. Nelton! Brands inc., INDRP/250; William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp./ WhoisGuard Protected, WhoisGuard, Inc. WIPO Case No. D2016-1049]
- 7.6. The Respondent does not have any legitimate business offerings on the website that resolves at the Disputed Domain Name. For these reasons, I find that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Element 3 - The domain name in question should be considered as having been registered and being used in bad faith.

7.7. Given the reputation and fame of the Complainant's 7-ELEVEN marks and the Complainant's prior registration of identical, domain names, the registration of the Disputed Domain Name is clearly intended to mislead and divert consumers. A cursory Internet search would have already made it clear to the Respondent that the Complainant owns the 7-ELEVEN marks and uses them extensively. Given the deceptive similarity, the registration of the Disputed Domain Name will not only persuade Internet users to believe that the Disputed Domain Name leads to the Complainant's official Indian webpage, it also restricts the Complainant from activating -its country specific website for India, over which it has statutory rights. Thus, the choice of country code Top-Level Domain ".co.in" is, in this case, bound to further increase the likelihood of confusion. In my view, this clearly indicates the bad faith of the Respondent, and I therefore rule that the Respondent registered the Disputed Domain Name in bad faith.

7.8. Further, from the evidence submitted by the Complainant, it is proved without a doubt that the Complainant's 7-ELEVEN marks and the corresponding business are famous and that the Respondent has no connection or authority from the Complainant to use the 7-ELEVEN marks. Thus, it is evident that the registration of the Disputed Domain Name by the Respondent was done in bad faith. Successive UDRP panels have found bad faith to have existed upon the subsequent registration of famous marks by third parties. [Decisions relied upon: Compagnie Generale des Etablissements Michelin v. Terramonte Corp, Domain Manager, WIPO Case No. D2011- 1951; Amazon.com Inc, Amazon Technologies, Inc. v. Giovanni Laporta/ Yoyo.Email, WIPO Case No. D2015- 0009]



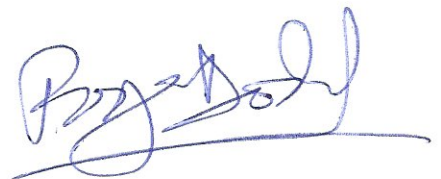
7.9. In view of the above, it is evident beyond reasonable doubt that the Respondent has adopted the Disputed Domain Name in bad faith.

8. **Decision:**

8.1. In view of the foregoing, I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's well-known 7-ELEVEN marks, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

8.2. The parties are to bear their own costs.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd

Sole Arbitrator

Dated: July 8, 2019