

23 JAN 2020

D. SARAVANAN

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing

Reheja Towers, Near LIC

No.113-134, Anna Salai, Chennai 600 002

BZ 267088

P.S. SHANMUGA SUNDARAM

STAMP VENDOR

L.No. B4 / 109 / 88

HIGH COURT CAMPUS

CHENNAI - 600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

INDRP Case No.1197

Disputed Domain Name: <adityabirla.in>

Aditya Birla Management Corporation
Private Limited
B Wing, Ground Floor, Aditya Birla Centre,
S.K. Ahire Marg, Worli,
Mumbai- 400030, Maharashtra,
India

Vs.

..

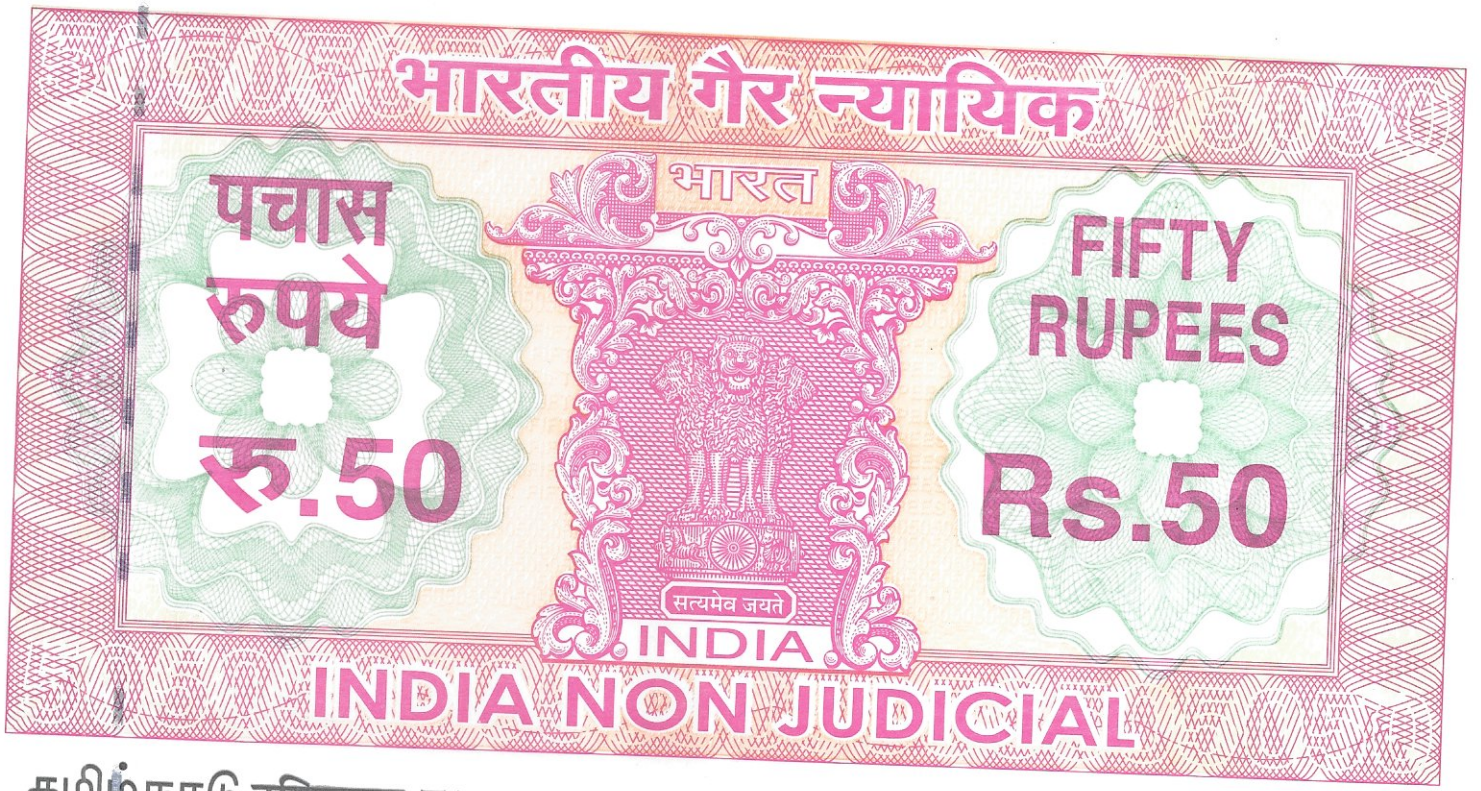
Complainant

Chinmay
45, 5th Main,
Bangalore- 560 001,
Karnataka, India.
Chinmay.pal.kumar@gmail.com

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Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

23 JAN 2020

D. SARAVANAN

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AX 470168

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HIGH COURT CAMPUS

CHENNAI - 600 104. (TAMIL NADU)

-2-

1. The Parties:

The Complainant Aditya Birla Management Corporation Private Limited, is a company duly incorporated under The Companies Act, 1956, with its registered office at B Wing, Ground Floor, Aditya Birla Centre, S.K. Ahire Marg, Worli, Mumbai- 400 030. The Complainant is represented through its Attorneys, M/s.Anand and Anand, First Channel, Plot No. 17A, Sector 16-A, Film City, Noida.

The Respondent Chinmay having his address at 45, 5th Main road, Bangalore- 560 001, Karnataka, India, is the current Registrant of the disputed domain name <adityabirla.in>. The Respondent neither represented himself nor was represented by anyone.



2. The Domain Name and Registrar:

The disputed domain name is <adityabirla.in>. The domain name has been registered with .IN REGISTRY through its Registrar, Dynadot LLC (IANA ID: 472).

3. Procedural History:

24 th January, 2020	:	The.IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
24 th January, 2020	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
29 th January, 2020		.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through courier.
1 st February, 2020	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.



11 th February, 2020	:	Due date for filing response.
12 th February, 2020	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant Aditya Birla Management Corporation Private Limited, is a company duly incorporated under The Companies Act, 1956, with its registered office at B Wing, Ground Floor, Aditya Birla Centre, S.K. Ahire Marg, Worli, Mumbai- 400 030. The Complainant is represented through its Attorneys, M/s.Anand and Anand, First Channel, Plot No. 17A, Sector 16-A, Film City, Noida.

4.2 Complainant's Activities:

- (i) The Complainant submits that the origin of the Complainant's group dates back to the 19th century when Seth Shiv Narayan Birla started trading in cotton, laying the foundation for the House of Birla. Through India's arduous times of the 1850s, the Birla business expanded rapidly. In the early part of the 20th century, the Group's founding father, Mr. Ghanshyamdas Birla, laid the foundation of Birla's industrial empire by establishing GM Birla



Company and went on to set up industries in critical sectors such as textiles and fiber, aluminium, cement, and chemicals and emerging as one of the foremost industrialists of pre-independence India.

- (ii) The Complainant submits that Mr. Ghanshyamdas Birla played an active role in the Indian freedom struggle and the Birla House in Delhi was the venue for many meetings crucial to the freedom struggle. Grasim, a business established in 1947, was the first Indian company to establish overseas operations. Thereafter, the Birla Empire ultimately came under the aegis of the Founder's grandson Mr. Aditya Vikram Birla, the Group's legendary leader who set up 19 companies outside India, in Thailand, Malaysia, Indonesia, the Philippines and Egypt. The name- Aditya Birla Group was a name adopted in honour of Mr. Aditya Vikram Birla.
- (iii) The complainant submits that, Aditya Birla Group, which originated way back in 1857, today forms one of World's largest business concerns and is presently a US \$48.3 billion corporation. The Aditya Birla Group is in the League of Fortune 500. The Aditya Birla Group operates in over 36 countries has over 130,000 employees belonging to 42 different nationalities.
- (iv) The complainant submits that, Presently, the Group consists of the world's largest aluminium rolling company as well as the largest producer of carbon black. It has within its fold the third largest cement company and one of the world's largest telecommunications company. The Group also has the proud distinction of being the largest fashion retailer of India, owning reputed brands such as Pantaloons, Allen Solly, Van heusen, Louis Philippe, Forever 2, Peter England, etc.,



- (v) The Complainant submits that, the Group is currently India's third largest multinational corporation, with revenues exceeding US \$ 48.3 billion and operations ranging in 14 different industry sectors. A list of the group companies and the sectors in which they operate is annexed by the Complainant in the Complaint as '**Annexure D**'.
- (vi) The Complainant submits that, the enormous business success of the Group, and its admirable business practices, he also resulted in various awards and accolades being won by the Group and its members. For instance, the Aditya Birla Group won the AonBest Employer Award in 2018. Aditya Birla Fashion and Retail Ltd., also won the 'World Sustainability Congress', 'Sustainable Leadership', 'Sustainable Professional of the Year', and the 'Sustainable Business of the Year' awards in 2017. The Group has been ranked fourth in the world and first in Asia Pacific in the 'Top Companies for Leaders' study 2011, conducted by Aon Hewitt, Fortune Magazine and RBL (a strategic HR and leadership Advisory firm). The Group has topped the Neilsen's Corporate Image Monitor 2014-2015 and emerged as the Number one corporate, the 'Best in Class', for the third consecutive year. The Group has also been providing the Aditya Birla Scholarship for students pursuing law, management or engineering for the last 20years.
- (vii) That, apart from succeeding in its business goals, the Group and its member companies are also playing a crucial role in the society through its responsible and sustainable business practices, as well as its extensive corporate social responsibility (CSR) undertakings.



(viii) The Group runs the Aditya Birla Centre for Community Initiatives and Rural Development, which is dedicated to the development of rural India. Its operations spread across over 5000 Indian villages and affect lives of over 7.5 million people annually, most of who live below the poverty line. It has set up over 10,000 toilets in villages close to the Group's various plants and has also undertaken to create 300 model villages which are sustainable and self-sufficient through empowering the rural populace, especially women. The Centre also extends financial support to enable treatment of children suffering from cancer and has reached out to over 4,000 children till date. The efforts of the Group and its members have not only borne fruit in improving many lives, but has also been well-recognized by various organizations. The various recognitions received by the Group includes the prestigious 'Golden Peacock Award for overall excellence in CSR' and the 'Social Impact Award' by the Indian Chamber of Commerce awarded to Aditya Birla Group, containing details of the Group's companies and business activities was annexed by the Complainant in the Complaint as '**Annexure E**'.

(ix) The Complainant submits that, Aditya Birla Management Corporation Private Limited, is one of the group companies of the Aditya Birla Group, and is the registered proprietor of the trade mark 'ADITYA BIRLA'. The Complainant provides human resource, legal and strategic assistance to the group business and therefore, plays a critical role in the group's business.



4.3 Complainant's Trading Name:

- (i) It is submitted that the Aditya Birla Group adopted the trade mark 'ADITYA BIRLA' as its trade mark as well as the essential and prominent of its corporate name in the year 1996. The trade mark 'Aditya Birla' was adopted as it was the name of the Group's visionary leader, Mr. Aditya Vikram Birla, who was instrumental in putting the business in the world map, by establishing the first overseas operations of the Group on 1969.
- (ii) The Complainant submits that, the term "ADITYA BIRLA" forms a key, essential and dominant part of the corporate name and trading style of the Complainant as well as many of the companies which are part of the Aditya Birla Group. This ensures that any member of the public, on seeing the trade mark, will immediately associate the same with the Complainant and its Group.
- (iii) The Complainant submits that, the Aditya Birla Group has been using the trade mark 'ADITYA BIRLA' as its brand and corporate name for a long period, and has used the trade mark continuously and extensively. The association of the trade mark with the reputed business of the Aditya Birla Group, and the exposure of the public to the trade mark, 'ADITYA BIRLA' through news articles, advertisements, and various other sources has led to the trade mark holding significant goodwill and reputation. This has been complemented by extensive



promotional activities undertaken by the Aditya Birla Group, which has popularized the brand 'ADITYA BIRLA' and has made it a household name across India. Internet extracts evidencing wide- scale use of the trade mark 'ADITYA BIRLA' is being annexed by the Complainant in the Complaint as '**ANNEXURE F (COLLY)**'.

- (iv) The Complainant submits that, the reputation of the Aditya Birla Group in India, as well as across the globe, and its extensive business operations in various industries has ensured that trade mark 'ADITYA BIRLA' belongs to the category of well known, famous and reputed trademarks. It is instantly identifiable by consumers and members of the trade as being exclusively associated with the business of the Aditya Birla Group. Thus, the trade mark and corporate name 'ADITYA BIRLA' acts as a source identifier, insofar as it bears a strong association with the Aditya Birla Group and its high quality and reputed goods and services.
- (v) The Complainant submits that, due to the long, continuous and extensive use of the trademark 'ADITYA BIRLA', as a brand and corporate name, the Complainant has the sole and exclusive right to use and authorize the use of the trademark 'ADITYA BIRLA' which is a well-known trade mark known to a substantial portion of the public. Thus, the Complainant's well-known trade mark deserves a wide range of protection and members of the public may be deemed to be aware of the Complainant and its rights over the trade mark 'ADITYA BIRLA'.



(vi) The Complainant submits that, apart from the common law rights vested over the Complainant's trade mark 'ADITYA BIRLA' due to its long, continuous and extensive use, the Complainant has also secured trade mark registrations over the mark 'ADITYA BIRLA' in India under all trade mark classes, and an exhaustive list of trade mark registrations held by the Complainant and the Aditya Birla Group is annexed by the Complainant in the Complaint as '**Annexure G**'. The said trademark registrations are valid and subsisting and are, therefore, in full legal force. Copies of extracts of the E-Register of the Indian Trade Mark Registry pertaining to some of the relevant trade mark registrations of the Complainant are collectively annexed by the Complainant in the Complaint as '**Annexure H (COLLY)**'.

(vii) The Complainant submits that, the trademark registrations in favour of the Complainant grants it the sole and exclusive right to use or authorize the use of the trademark 'ADITYA BIRLA' under the Trade Marks Act, 1999. The registration of the trade mark under numerous classes, and the use of the trade mark in relation to various diversified business carried on by the Complainant and the Aditya Birla Group ensures that the trade mark is well-known to the public at large and any use of the term 'ADITYA BIRLA', or any term deceptively similar to it, would immediately lead one to draw an association with the Complainant or the Aditya Birla Group.



- (viii) The Complainant submits that, over and above the Indian trademark registrations, the Complainant has also secured trademark registrations for the mark 'ADITYA BIRLA' outside India, and a list containing the details of such registrations is annexed by the Complainant in the Complaint as **'Annexure I'**.
- (ix) The Complainant submits that, the Complainant thus, has statutory exclusivity over the use of the term 'ADITYA BIRLA' in India and abroad and no person may use the same without due authorization from the Complainant.
- (x) The Complainant submits that, the Complainant and its group companies have huge presence on the internet and operated numerous websites that provide information on their business activities, products and services, which are accessed by shareholders, customers and other members of the public. The information regarding the Aditya Birla Group's business and operations can be found on its website under the domain name <adityabirla.com>, which has been owned and operated by the Complainant since 26th March, 1997. Printouts of extracts from the website operated by the Complainant under the domain name <adityabirla.com> are annexed herewith as **'Annexure J'**. The Whois details of the Complainant's domain name <adityabirla.com> is also annexed by the Complainant in the Complaint as **'Annexure K'**.



(xi) The Complainant submits that, it is pertinent to mention here that the Complainant and its group companies own as many as 492 domain names which contain their well-known trademark 'ADITYA BIRLA'. A list of such domain name is attached by the Complainant in the Complaint '**Annexure L**'. The following table contains the details of few of the domain names owned by the Complainant:

S.No	Domain Name	Registration Date
1.	<adityabirla.com>	26.03.1997
2.	<adityabirla.net>	27.10.2003
3.	<adityabirla.co.in>	08.02.2016
4.	<adityabirla.info>	08.02.2016
5.	<adityabirla.org>	21.02.2019
6.	<adityabirlagroup.com>	24.05.2002
7.	<adityabirlagroup.net>	20.01.2005
8.	<adityavikrambirla.com>	25.06.2003
9.	<adityabirlanuvo.com>	11.09.2005
10.	<adityabirlalumni.com>	06.09.2007
11.	<adityabirlabizlabs.com>	06.08.2015

The whois details of the above-mentioned domain names are annexed by the Complainant in the Complaint as '**Annexure M (COLLY)**'.



4.4 Respondent's Identity and activities:

- (i) The Complainant submits that, the Respondent in the present dispute has registered the domain <adityabirla.in> thereby illegally and without authority misappropriating the trademark 'ADITYA BIRLA' which is the exclusive property of the Complainant and the Aditya Birla Group. An extract of the whois lookup through Dynadot.com LLC, the Registrar of the disputed domain name, and an extract from the Respondent 's website is filed by the Complainant in the Complaint as '**Annexure N**' and '**Annexure O**' respectively. The Whois details show that the Respondent has created the disputed domain name as recently as on 10th May 2019 and the details of the registrar have been masked so as to avoid identification. A perusal of the website shows that no functional or legitimate website is being operated under the disputed domain.

5. Dispute

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.



6. Parties contentions:

A. Complainant:

(i) The domain name <adityabirla.in> is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

- a) The Complainant submits that the disputed domain name <adityabirla.in> is identical to the Complainant's domain name <adityabirla.com>, which consists of the Complainant's well-known trademark 'ADITYA BIRLA'. There is nothing in the Respondent's domain name to distinguish it from the Complainant's well-known trade mark, corporate name or its domain name. The only difference between the Complainant's domain name and the disputed domain name is the extension used, which is due to the fact that the Complainant's domain name is a generic top-level domain (gTLD) while the disputed domain name is country code top-level domain (ccTLD). It is submitted that when two domain names are identical in every aspect except the suffix attributable to different TLDs, then the domain names are to be considered as identical and the difference in the suffix is to be considered immaterial to establish identity or similarity.
- b) The Complainant placed his reliance on the decision rendered in *Humor Rainbow, Inc. v. Yin Jun, China* (INDRP/1153), where the Hon'ble Arbitral Tribunal has held that incorporation of a trademark in its entirety without any additions, subtractions or any other modifications results in identical domain name and that the ".in"



suffix of the domain name would be immaterial for the purposes of comparison. The Complainant also relied upon WIPO's Administrative Panel Decisions in *Kentucky fried Chicken International LLC v. Donmai Inc, Frank Makange* (WIPO Case No. DTZ2016- 0001) and *Missoni S.p.A v. Colin Zhao* (WIPO Case No. DCC2010-0004) where the panel held that country code top level domains were a functional element of the domain name system and may be disregarded for the purposes of inquiry into identity or similarity of domain names. In all three of the aforementioned decisions, the domain names were transferred to the Complainants. Copies of the decisions are collectively annexed by the Complainant in the Complaint as '**Annexure P (COLLY)**'.

- c) The Complainant further stated that, due to the above mentioned factors, the trade mark, 'ADITYA BIRLA' has acquired immense distinctiveness, reputation and goodwill, and is exclusively identified with the Aditya Birla Group's goods and services. As a result of which, the use of the trademark 'ADITYA BIRLA' as a domain name would be understood with reference to the Complainant and the Aditya Birla Group, thus perpetuating confusion among consumers who wish to access the Complainant's web page. The Complainant relied upon the decision in *Magnum Piering Inc V. The Mudjackers* (WIPO case No. D2000- 1525) wherein it was held that when a domain name wholly incorporates the Complainant's registered mark, the same is sufficient to establish identity or confusing similarity. A copy of the abovementioned decision is annexed by the Complainant in the Complaint as '**Annexure Q**'.



(ii) **The Respondent has no rights or legitimate interest in the domain name <adityabirla.in> [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**

- a) The Complainant submits that, in the present case, the disputed domain name comprises of the Complainant's registered and well known trademark 'ADITYA BIRLA'. The Complainant has numerous trademark registrations over the mark 'ADITYA BIRLA', which is also the prominent part of its corporate name and the corporate name of several other companies belonging to the Aditya Birla Group. The trademark has also been widely and extensively promoted and used. Thus, in view of the immense reputation, goodwill and recognition of the Complainant and its trademark 'ADITYA BIRLA', it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the identical term as its domain name, i.e. <adityabirla.in>. The Complainant relied upon the decision in *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No. D2000-03) and in *Vodafone Group Plc. V. Syed Hussain* (INDRP Case No. 1009) where it has been held that when the disputed domain name uses a well known brand or trademark, it is very difficult to conceive the possibility of the Respondent having any legitimate right or interest over the domain name and, thus, the panels have concluded that the Respondents in the cases had no legitimate right or interest over the disputed domain names. Copies of the said decisions are annexed by the Complainant in the Complaint as '**Annexure R (COLLY)**'.



- b) That, the Respondent has not been permitted to the Complainant's trade mark under any license or other arrangement, and as such, use of the Complainant's trademark is a violation of the Complainant's rights over the trademark. The Respondent is in no way affiliated to the Complainant and, therefore, has no right or interest on the term 'ADITYA BIRLA' or the disputed domain name <adityabirla.in>.
- c) The Complainant submits that a perusal of the website under the disputed domain name <adityabirla.in> shows that the Respondent has not created any functional website under the domain name. To the best of the Complainant's knowledge, the Respondent is not using, and has shown no intention to make any *bona fide* offering of any good or service under the disputed domain name or any name corresponding to the commonly known by the domain name. Further, the Respondent is not commonly known by the name and has not made any legitimate non-commercial use or fair use of the disputed domain name. Under the circumstances, the Respondent cannot be held to have any legitimate right or interest on the domain name <adityabirla.in>. In support of the above contention, the Complainant relied upon the decision of the administrative panel in *M/s Merck KGaA v. Zeng Wei* (INDRP/323), where it was held that where the Respondent is not known by the domain name and has not made any legitimate offering of any goods or service, or any legitimate non-commercial use, the Respondent cannot be found to have any legitimate right or interest over the domain name. A copy of the said decision is annexed by the Complainant in the Complaint as '**Annexure S**'.



(iii) The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP]:

- a) The Complainant submits that, the Complainant's mark 'ADIYA BIRLA' is a well known trademark which has been continuously and extensively used in India and across the globe for a very long time. In view of the widespread use, goodwill, and reputation of the Complainant's trademark, it is not possible that the Respondent was not aware of the Complainant, its trademark or its rights. Thus, the Respondent is presumed to have had knowledge of Complainant's trademark at the time it registered the identical domain name. Thus, this is a *prima facie* evidence of the Respondent's bad faith use and registration. Further, the Respondent has registered the disputed domain name, which is identical to the Complainant's domain <adityabirla.com>, only in May, 2019, which is over two decades after the Complainant's domain name <adityabirla.com> was registered.
- b) The Complainant therefore submitted that, the domain name has only been registered in bad faith for monetary gains by either offering to sell that domain name to the Complainant at an elevated price, or sell the domain name to any competitor or spurious business enterprise which would be interested in reaping commercial gains by usurping the goodwill and reputation of the Complainant through the identical domain name, use of which would necessarily confuse and mislead members of the public, who would immediately associate the domain with the Complainant and the Aditya Birla Group. Thus, the Respondent's actions amount to cybersquatting.



c) It is submitted by the Complainant that, the registration of a famous trademark without legitimate commercial interests in the same is *prima facie* evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademark/ corporate name. The proposition that the registration of a domain name incorporating a well known trademark of the Complainant is bound to be in bad faith has been upheld by numerous INDRP and UDRP decisions. Some notable cases which have upheld this proposition are *SeatGeek, Inc. v. Nash Enterprises, Inc.* (WIPO Case No.D2019- 0145), *Bharti Airtel Limited V. Registration Private, Domains By Proxy, LLC/ Vivek Bhardwaj, Viskon Consulting* (WIPO Case No. D2018-2950) *Marie Clarie Album v. Marie Claire Apparel Inc.* (WIPO Caswe No.D2003- 0767), *Accenture Global Services Limited v. WhoisGuard Protected, WhoisGuard Inc./ David Tracey* (WIPO Case No. 2018-0811), *Veuve Clicquot Ponsardin, Maison Fonde en 1772 v. The Polygenix Group Co.* (WIPO Case No. D2000- 0163) wherein it has been held that registration of a well known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith. The reference cases are annexed by the Complainant in the Complaint as '**Annexure T (COLLY)**'.

d) That, the Respondent has registered the disputed domain name, but is not using the same for any legitimate purpose. The disputed domain name does not resolve to a website or other online presence and there is nothing to show that such a website or online



presence is under the process of being created. This amounts to passive holding and its further indication of use of the disputed domain name in bad faith by the Respondent under the present circumstances. Reliance is placed upon the administrative panel decisions in *Lockheed Martin Corporation v. Aslam Nadia* (INDRP Case No. 947) and *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No. D2000-03) where it was held that passive holding of a domain name is itself evidence of bad faith. The referenced cases are annexed by the Complainant in the Complaint as '**Annexure U (COLLY)**'.

- e) The circumstances therefore support the conclusion that the Respondent did not register the disputed domain name for any *bona fide* purpose but intentionally used a name which was identical to the Complainant's registered trademark, corporate name and domain name <adityabirla.com>, in order to sell, rent or otherwise transfer the domain name registration to the Complainant, or to competitor, or an unscrupulous business entity which may seek to acquire the disputed domain name so as to confuse the public, for valuable consideration in excess of costs involved in registering the domain name.

B. Respondent:

The Respondent, in spite of notice dated 1st February, 2020 and default notice dated 12th February, 2020 did not submit any response.



7. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and that Respondent have been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on 12th February, 2020.

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

(a) Identical or confusing similarity:

- (i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses the registered trademark "ADITYA BIRLA" around the world, including India. The same is evident from **Annexures D, E, G, H & I** marked by the Complainant. The



Complainant has registered domain names under "ADITYA BIRLA" and the same is evident from **Annexure M**. The Complainant's mark was first adopted by them in year 1996 and thus it is the rightful proprietor of the trademark "ADITYA BIRLA" by virtue of priority in adoption and registration, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade. From **Annexure G**, this Tribunal perceives that the earliest registration of the Complainant's mark, "ADITYA BIRLA" dates back to 17th May 2005. Whereas, from **Annexure N**, this Tribunal perceives that the disputed domain name was registered on 10th May, 2019 much later to the registration of the Complainant's mark. This Tribunal is therefore convinced from the documents marked by the Complainant that the Complainant owns the mark "ADITYA BIRLA". The disputed domain name <adityabirla.in> incorporates the Complainant's mark in entirety and hence is identical or confusingly similar to the Complainant's mark.

- (ii) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.
- (iii) The Arbitral Tribunal therefore concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.



(b) Respondent's Rights or Legitimate Interests:

- (i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the .IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal however does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "ADITYA BIRLA". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.
- (ii) Further as observed above, the Complainant's registration of mark dates back to 1997 whereas, the disputed domain name is registered only in the year 2019. Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-03) and in Vodafone Group Plc. V. Syed Hussain (INDRP Case No. 1009) where it has been held that when the disputed domain name uses a well known



brand or trademark, it is very difficult to conceive the possibility of the Respondent having any legitimate right or interest over the domain name and, thus, the panels have concluded that the Respondents in the cases had no legitimate interest over the disputed domain names. This Tribunal observed that the present facts of the case squarely applies to the ratio held in the said decision wherein the Complainant has prior registration of the mark "ADITYA BIRLA" and the Respondent has not substantiated their right in the said mark and that it is most likely that the mark "ADITYA BIRLA" is known to the Respondent prior to the registration of the disputed domain name.

(iii) The WHOIS lookup in **Annexure C & N**, reflects that the disputed domain name, <adityabirla.in> belongs to the Respondent herein namely, "Chinmay, having his address at 45, 5th main, Bangalore-560 001, Karnataka, India", who is not even in the slightest manner connected with the Complainant or Complainant's marks, namely "ADITYA BIRLA". The view of the Tribunal is supported by the decision placed by the Complainant in the above mentioned *M/s Merck KGaA v. Zeng Wei* (INDRP/323), where it was held that where the Respondent is not known by the domain name and has not made any legitimate offering of any goods or service, or any legitimate non-commercial use, the Respondent cannot be found to have any legitimate right or interest over the domain name.

(iv) The above establishes that the Respondent do not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits.



(v) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the 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 and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy applies. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark. The Respondent is therefore found to have acted in a way that tarnishes the Complainant's well-known mark "ADITYA BIRLA", by using the mark without any proper authorization.

(vi) In light of the above, this Tribunal finds that the Respondent does not have any rights or legitimate interest in the domain name.

(vii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) It is seen from **Annexure C**, the Respondent had registered the disputed domain name on 10th May, 2019 which is very much after the date of registration of the Complainant's trademark. By that time, the Complainant's mark, "ADITYA BIRLA" through extensive and continuous use, had acquired immense goodwill and reputation amongst the public and trade. The rights of the Complainant in the marks are also well established by various precedents submitted by the Complainant, collectively marked as **Annexure T & U**



- (ii) The registration of a famous trademark without legitimate interests in the same is prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademark/ corporate name. The proposition that the registration of a domain name incorporating a well known trademark of the Complainant is bound to be in bad faith has been upheld by numerous INDRP and UDRP decisions submitted by the Complainant, collectively marked as **Annexure T**.
- (iii) The Complainant in **Annexure U** has further established that passive holding of a domain name is itself evidence of bad faith, which can be evidently witnessed in this case that the Respondent has registered the disputed domain name, but has not been using the same for any legitimate purpose. The disputed domain name does not resolve to a website or other online presence and there is nothing to show that such a website or online presence is under the process of being created which amounts to passive holding and its further indication of use of the disputed domain name in bad faith by the Respondent under the present circumstances.
- (iv) From the discussions above, it is drawn that the Respondent is involved in cyber-squatting by registering domain names containing well known trademarks and thereby making illegal benefits.
- (v) The Respondent has no legitimate rights or interests in the disputed domain name and there was a *mala fide* intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to



generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

- (vi) The Arbitral Tribunal is satisfied that the Respondent's registration and use of the Complainant's domain name is in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.
- (vii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "ADITYA BIRLA" and also the disputed domain name <adityabirla.in> be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator
18th February, 2020
Chennai, INDIA