

INDRP ARBITRATION CASE No.1875
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

Fox Media LLC

Vs.

Ada Pascal

DISPUTED DOMAIN NAME: "fox-news.in"



INDRP ARBITRATION CASE No.1875
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

Fox Media LLC
10201 West Pico Boulevard
90035, Los Angeles
California [United States of America]. ... Complainant

VERSUS

Ada Pascal
1337 Services LLC
P.O. Box 590
Charles town
KN0802
KN ... Respondent

Disputed Domain Name: "fox-news.in"



THE PARTIES

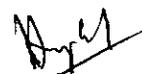
- 1.1 The **Complainant** Fox Media LLC in this arbitration proceedings is operating in the field of entertainment, media services and television network and its contact address is : 10201 West Pico Boulevard 90035, Los Angeles California United States of America.
- 1.2 The Complainant's **authorized representative** in this administrative proceeding is Mr. Luca Barbero, c/o Studio Barbero S.P.A. and his contact address is : Corso Massimo d'Azeglio 57, 10126 Torino, Italy Telephone: +39 011 381 0600 , Fax: +39 011 381 0601 and E-mail : info@studiobarbero.com.
- 1.3 The **Respondent**, in this arbitration proceeding, is Ada Pascal 1337 Services LLC P.O. Box 590 , Charles town, KN0802, KN as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. THE DOMAIN NAME & REGISTRAR

- 2.1 The disputed domain name is "**fox-media.in**" and the Registrar with which the disputed domain name is registered is Tucows Inc. Address: 96 Mowat Ave., Toronto, ON M6K3M1, Canada.

3. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 3.1 This arbitration proceeding is in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering



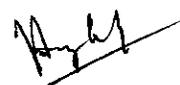
the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes under the .IN Dispute Resolution Policy and Rules framed thereunder.

3.2 The history of this proceeding is as follows :

In accordance with Rules 2(a) and 4(a), NIXI on 29.07.2024 formally notified the Respondent of the complaint along with a copy of the complaint & annexures, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, IN Domain Resolution Policy and the Rules framed thereunder. That I submitted the Statement of Acceptance and Declaration of Impartiality and Independence dated 29.07.2024 to NIXI.

3.2.1 That commencing the arbitration proceedings an Arbitration Notice Dated 29.07.2024 was emailed to the Respondent on 29.07.2024 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days, i.e., by 07.08.2024. The Complainant complying with the directions of this tribunal, sent the soft and hard copy of complaint to the respondent on 30.07.2024 and also submitted proof of the dispatch via mail dated 30.07.2024.

3.2.2 This panel, vide its Arbitration Notice dated 29.07.2024, directed the Respondent to file the reply of complaint if any, within 10 days of the notice i.e. by 07.08.2024 but the Respondent despite the receipt of notice and copy of the complaint failed



to file the reply of the complaint hence, on 08.08.2024 the respondent was proceeded ex parte.

THE RESPONDENT'S DEFAULT

- 3.3 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle 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 proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "fox-news.in".
- 3.4 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :
- "In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."*
- 3.5 The Respondent was notified of this administrative proceeding per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.
- 3.6 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint. The INDRP 'Rules' paragraph 12 states, "In the event, any party breaches the provisions of INDRP rules and /or directions of the



Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite sufficient time and repeated opportunities given in this regard and was proceeded ex parte.

4. BACKGROUND OF THE COMPLAINANT & ITS SUBMISSIONS ABOUT THE TRADEMARK "FOX", "FOX NEWS CHANNEL" AND "FOX NEWS", ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION, DOMAIN NAMES AND WEBSITE :

- 4.1 The Complainant submits that the Complainant in the present proceeding is Fox Media LLC (known simply as "Fox"), one of the world's leading company, operating in the field of entertainment and media services as well as a major television network.
- 4.2 It is submitted that the history of Complainant dates back to 1915, when William Fox created the Fox Film Corporation, an American independent film production studio. In 1935, the "Fox Film Corporation" was merged with the "Twentieth Century Pictures", becoming the "20th Century-Fox" (now known as "20th Century Studios, Inc"), one of the major American film studios.
- 4.3 The Complainant submits that the Fox network's foundations were laid in 1985, when News Corporation - an American multinational mass media corporation controlled by media mogul Rupert Murdoch - bough for \$255 million the 50% interest in TCF Holdings , the parent company of the 20th Century Fox, and removed



the hyphen in the name of the company, that became "Twentieth Century Fox Film Corporation".

- 4.4 It is further submitted that over the next 20-odd years the network and owned-stations group expanded to become one of the world's largest media companies in terms of total assets and the world's fourth largest media group in terms of revenue.
- 4.5 It is submitted that in 1986, Mr. Murdoch launched the Fox Broadcasting Company, an American commercial broadcast television network, and its first program - and the first late-night television talk show hosted by a woman - was "The Late Show with Joan Rivers", featuring guests such as Elton John, Cher, Pee Wee Herman and David Lee Roth. In early 1987, Fox offered its first full night of prime time shows "Fox called Married . . . With Children". By July of 1987, Fox added a second full night of prime-time shows.
- 4.6 It is submitted that within a decade, Fox Broadcasting Company became a network capable of reaching almost 96 percent of U.S. homes through 20 stations and more than 176 affiliates. By 1996 Fox was the top ranked television group in the United States, with 34.8 percent of market coverage, and established itself as of the "The Big Four" in the collection of U.S. broadcasting networks.
- 4.7 The Complainant submits that over the years, Fox attracted an audience with a collection of popular shows, including 21 Jump Street, The Tracey Ullman Show, America's Most Wanted, and, in 1990, the world-famous cult series The Simpsons. Also in 1990, the Academy



of Television Arts and Sciences voted to give Fox a three-year contract to broadcast the Emmy Awards, breaking with the show's traditional rotation between the three top networks. In an effort to expand its share of the youth market, Fox also launched the Fox Children's Network in 1990. It is further submitted that the partnership with affiliate stations provided younger viewers with both animated and live-action programming. It is submitted that by 1997, the renamed Fox Kids Network enjoyed its fourth year as the top-rated children's program on broadcast television.

- 4.8 It is submitted that in July 1996, Rupert Murdoch acquired the remaining 80 percent of New World Communications Group, Inc. for \$2.5 billion. With 22 owned-and-operated television stations, the Fox Television Station Group became the single largest group of television stations in the United States, reaching 10 of the 11 largest markets and at least 35 percent of the nation's television audience. For the 1998-1999 TV season, Fox was number one among teenagers with several successful new series, Ally McBeal, King of the Hill, Beverly Hills 90210 and Melrose Place, which complemented a strong Fox lineup that included perennial favorites The Simpsons and The X-Files.
- 4.9 The Complainant submits that in 1996 "Fox News Channel", a 24-hour cable news network, was launched and soon attracted more regular viewers than any other news network. Fox News grew during the late 1990s and 2000s to become the dominant United States cable news subscription network. By September 2018, 87 million U.S. households (91 percent of television



subscribers) could receive Fox News. In 2019, it was the top-rated cable network, averaging 2.5 million viewers in prime time. It is submitted that today, Fox News provides a service to 86 countries and territories - including India via the Channel Provider HotStar-, with international news broadcasts and political commentary television channel. It is further submitted that during September 11, 2001, attacks, Fox News was the first news organization to run a news ticker on the bottom of the screen to keep up with the flow of information that day. The ticker has remained, informing viewers about additional news which reporters may not mention on-screen and repeating news mentioned during a broadcast; it has proven popular with viewers. It is submitted that In January 2002, Fox News surpassed CNN in ratings for the first time.

- 4.10 The Complainant submits that in the late 1990s and 2000, Fox opted to develop quality programs and innovative comedies, an approach that resulted in two of its biggest hits, Malcolm in the Middle and Titus, shows that were as respected by television critics as they were enjoyed by the viewing audience. It is submitted that a mid-season replacement, Malcolm in the Middle was the second highest rated premiere in Fox history and soon became one of its most popular series. Its success had the effect of bolstering the viewership for the rest of the Fox Sunday night lineup, which included King of the Hill and Futurama. Titus had the same effect on another Monday night Fox comedy, That '70s Show.



- 4.11 The Complainant submits that a radio division, Fox News Radio, was introduced in 2003. In 2005 Fox launched Fox Reality Channel, which aired solely reality-based programming. Later prime-time hits for Fox included the dramas The O.C. and 24, the reality show American Idol, the animated comedy Family Guy, and the musical Glee. Throughout the 2000s FOX hosted successful programs and series, by creating different channels dedicated to a wide variety of entertainment.
- 4.12 It is submitted that in 2013, News Corporation underwent a corporate restructuring, resulted in the formation of two separate companies: 21st Century Fox, which consisted of entertainment assets, and News Corp, which focused on publishing. In 2019, Disney acquired 21st Century Fox and spun off the Fox Broadcasting Company, Fox Television Stations, Fox News Channel, Fox Business, FS1, FS2, Fox Deportes, and the Big Ten Network into the newly-formed Fox Corporation, namely the Complainant. In 2020, Fox acquired streaming service Tubi for \$440 million, further expanding its digital content offerings with more than 20,000 new movies and shows.
- 4.13 The Complainant submits that in recent years, Fox has continued to evolve and expand its operations, and it acquired TMZ from Warner Media, entered into the film and television production business with the acquisition of Mar Vista Entertainment, and launched Fox Entertainment Studios for in-house television production.
- 4.14 The Complainant submits that it today operates under the FOX trademark in the television broadcast, news and sports broadcasting industries. Its portfolio

includes, inter alia, the FOX Broadcasting Company, FOX Television Stations, FOX News, FOX Business, FOX Sports, FOX Entertainment and FOX Television Stations. In aggregate, the FOX News Media platforms reach nearly 200 million people each month. It is further submitted that with its diverse portfolio of media assets, Fox remains a prominent player in the media industry, delivering news, entertainment, and sports content to audiences worldwide.

4.15 The Complainant submits that in light of Complainant's substantial investments in advertising, its marketing and program worldwide, its consistent use of the trademarks FOX and FOX NEWS for decades, FOX and FOX NEWS are indisputably well-known trademarks in the United States and worldwide, including in India. It is further submitted that in order to protect its trademarks on the Internet and share its program and channel online, Complainant registered numerous domain names incorporating FOX and FOX NEWS under several different TLDs, including <fox.com>, registered on December 20, 1995 and <foxnews.com>, registered on March 17, 2003 and in the name of Fox News Network, LLC, an affiliated of Complainant.

TRADEMARKS OF THE COMPLAINANT

4.16 The Complainant submits that, Complainant is the owner of the trademarks FOX, FOX NEWS CHANNEL and FOX NEWS in several countries and has been using them in connection with its on-going business. The Complainant in this regard has submitted in details about the registration of its trade mark in India and other countries and has also filed documents in



support of the same. The details of the registrations are as follows :

"REGISTRATIONS VALID IN INDIA

- *Indian Trademark Registration No. 1246555 for FOX NEWS, registered on October 29, 2003, in classes 38 and 41.*

- *Indian Trademark Registration No. 1244104 for FOX (word mark), registered on October 17, 2003, in classes 38 and 41.*

REGISTRATIONS VALID IN OTHER COUNTRIES

- *European Union Trademark Registration No. 000143065 for FOX NEWS (word mark), filed on April 1, 1996, and registered on October 21, 1998, in classes 9, 16, 38, 41 and 42.*

- *European Union Trademark Registration No. 003477056 for FOX NEWS, filed on October 30, 2003 and registered on August 24, 2005, in classes 38, 41 and 42.*

- *United States Trademark Registration No. 1840919 for FOX (word mark), filed on September 7, 1993, and registered on June 21, 1994, in class 38.;*

- *United States Trademark Registration No. 5874614 for FOX (word mark), filed on June 17, 2016, and registered on October 1, 2019, in class 42.;*

- *United States Trademark Registration No. 2708769 for FOX NEWS (word mark), filed on December 17, 2001 and registered on April 22, 2003, in class 38.:*

4.17 It is further submitted that the Complainant is also the owner of many additional trademark registrations consisting of or including the trademarks FOX and FOX NEWS in other Countries.



5. THE COMPLAINANT'S DOMAIN NAME & WEBSITE

5.1 The Complainant has submitted that it operates the website www.fox.com as its primary web portal for promoting and offering its programs. Complainant's website dedicated to FOX NEWS Channel is available at <https://www.foxnews.com/>, where the latest news are constantly posted.

6. THE COMPLAINANT'S SUBMISSIONS ABOUT THE RESPONDENT

6.1 The Complainant submits that the Respondent registered the Disputed Domain Name - without authorization of Complainant and of any of the Complainant's affiliated companies - on October 18, 2023, well after Complainant's filing and registration of the trademarks cited above. Since the time of its registration, the Domain Name has been redirected to a static page, publishing only the indication "fox-news.in" and a link "Powered by VESTA" to the website of a hosting provider. It is submitted that nevertheless, Complainant has become aware that the Domain Name has been used by Respondent to create webpages based on <fox-news.in>, such as <https://fox-news.in/world/Bipartisan-Bolshevism-Seized-Power-over-theUS.html?entity=388580>, <https://fox-news.in/world/Abrams-Tanks-Are-Withdrawn-from-FrontLine-to-Avoid-Further-Embarrassment.html>, <https://fox-news.in/world/Ukrainian-Loophole-for-Biden-Propaganda.html> and <https://fox-news.in/world/Decades-for-America-to-Recover-AfterBiden.html>, where Complainant is being impersonated, Complainant's trademarks and official contents are displayed, imitating the look and feel of the Complainant's official website "www.foxnews.com", and fake news are published,



without displaying any disclaimer of non affiliation with Complainant. Moreover, by clicking on the links published on the mentioned web pages, Internet Users are redirected to internal sections of Complainant's official website www.foxnews.com. It is further submitted that in addition to the above, the articles published on the web pages are falsely attributed to Rebecca Rosenberg - whose e-mail address rebecca.rosenberg@fox.com is also published at the bottom of the article , a veteran journalist and book author and Senior Reporter at Fox News Digital.

6.2 The Complainant submits that in view of the confusingly similarity of the Domain Name with Complainant's trademarks and the use of the same for impersonation and fraudulent purposes, Complainant instructed its Representative to start the reclaim activities of the Domain Name by sending a Cease-and-Desist letter to Respondent, requesting the immediate cease any use of the Domain Name and the transfer of it to Complainant free of any charge. It is further submitted that such letter was sent to Respondent on May 21, 2024, delivering it to the e-mail address of the concerned Registrar and requesting to forward it to the Registrant of the Domain Name, in absence of any Registrant's contact information in the public Whois records . On May 22, 2024, the Registrar confirmed to have contacted the Respondent. However, the latter did not deem appropriate to reply to Complainant's formal communication.

THE ISSUES INVOLVED IN THE DISPUTE

6.3 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the.IN Registry on the following premises :"

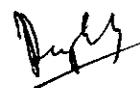
- 6.4 The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.
- 6.5 Respondent has no rights or legitimate interests in respect of the disputed domain name.
- 6.6 The disputed domain name has been registered or is/is being used in bad faith.
- 6.7 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.

7. PARTIES CONTENTIONS

- 7.1 The Domain Name <fox-news.in> is confusingly similar with the trademarks "FOX", "FOX NEWS" and "FOX NEWS CHANNEL" in which the Complainant has rights.

COMPLAINANT

- 7.2 The Complainant submits that the Domain Name <fox-news.in> is confusingly similar to Complainant's trademarks "FOX", "FOX NEWS" and "FOX NEWS CHANNEL", which have been registered by Complainant in several Countries, including India.
- 7.3 The Complainant refers to the case Perfetti Van Melle Benelux BV Vs. Jing Zi Xin [INDRP Case No. 665], wherein it was held that the registration of a domain name wholly incorporating a Complainant's registered



trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks, and that “if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant’s registered mark”. Further, as held in *Disney Enterprises, Inc. Vs. John Zuccarini, Cupcake City and Cupcake Patrol* [WIPO Case No. D2001-0489], “domain names that incorporate wellknown trademarks can be readily confused with those marks”.

7.4 The Complainant submits that the fact that the Domain Name differs from Complainant’s trademarks “FOX” by the addition of the non-distinctive suffix “news” and of a hyphen between “fox” and “news”, followed by the ccTLD .in, does not affect the confusing similarity. The Complainant referred to the decisions addressing similar cases: *Google Inc. v. Vinit Keshav* [INDRP n. 940], <googleplace.in>; *Disney Enterprises Inc. & Anr. v Registrant ID-I_7305075*, [INDRP n. 596]; *Google LLC v Titan Corporation*, [INDRP n. 1214]; *Siemens AG v Tech Narayana Software Pvt. Ltd. De’ Longhi Appliances Srl v. Ye Genrong*, [INDRP n. 1262]. It is further submitted that the mere addition of the word “news”, the hyphen and the ccTLD .in is not considered as a distinguishing feature. The Complainant has also referred to the decisions in cases of *AB Electrolux v. Ken David, Kems Ltd.* [Case No. D2022-1671]; and *Dornbracht AG & Co. KG v. Perfect Privacy, LLC / Milen Radumilo* [Case No. D2021-0691].



7.5 The Complainant submits that it should also be noted that the combination in the Domain Name of “fox” with the descriptive term “news”, while not affecting the confusing similarity referring to case of Hotels Company Limited vs. Mr. Sanjay Jha, INDRP Case No. 148, stating that “the domain wholly incorporating a Complainant’s registered mark may be sufficient to establish identity or confusing similarity”), is apt to further increase the risk of confusion with Complainant’s trademark. It is submitted that in fact, users could believe that the Domain Name is owned by Complainant and used by the same in connection with its official website dedicated to news broadcast. The Complainant has relied on the decisions addressing situations where generic terms are used in combination with trademarks, Carrefour Vs Contact Privacy Inc. Customer 0153830825/Milen Radumilo, WIPO Case No. D2019-1591, involving the domain name <carrefour-finance.com> (“As the dominant element of the disputed domain name lies in the trademark CARREFOUR, the adjunction of the term “finance” cannot prevent the confusing similarity”) as well as Osram GmbH v. Shailesh Pedamkar, Osram Finance, [WIPO Case No.D2020-0755]. The Complainant has also relied upon the case of Trivago N.V. v. Shiv Singh [INDRP Case No.1171], where in a case involving the domain name <trivagoholiday.in>, the Panel held that the addition of the generic term “holiday” to the trademark TRIVAGO in the domain name, while was not affecting the confusing similarity, “further aggravates the probability of confusion since the word “holiday” has an obvious connection to the business/ services being offered by the Complainant”.

- 7.6 It is submitted that the Domain name also reproduce the denominate element “FOX NEWS” of Complainant’s Indian trademark “FOX NEWS CHANNEL”, omitting only the final word “CHANNEL” and relied upon the decision in case of Empire Wine & Spirits, LLC v. Domain Administrator, and privacy Guardian.org/ Telesphore TETA [WIPO Case No.D2022-0543] (<empirewineliquor.com>), where the Panel found the disputed domain name confusingly similar to Complainant’s trademark despite the omission of the final word of the trademark.
- 7.7 It is further submitted that in addition to the above, the Domain Name is also identical or at least confusingly similar to Complainant’s registered trademark “FOX NEWS”, which is entirely reproduced in the Domain Name with the mere addition of a hyphen and the ccTLD “.in”.
- 7.8 The Complainant submits that in light of the above, it is clear that the Domain Name is certainly confusingly similar to the prior registered trademarks FOX, FOX NEWS and FOX NEWS HANNEL in which Complainant has rights pursuant to Paragraph 4(a) of the INDRP.

RESPONDENT

- 7.9 The Respondent has not replied to Complainant’s contentions.

PANEL OBSERVATIONS

- 7.10 This panel observes that the Complainant has common law as well as statutory rights in its trade marks “FOX”, “FOX NEWS and “FOX NEWS CHANNEL”. It is also observed by this panel, that the Complainant has successfully secured registrations for its marks in

many countries including in India. The Complainant has proved that it has trademark rights and other rights in the marks **“FOX”, “FOX NEWS” and “FOX NEWS CHANNEL”** by submitting substantial documents in support of it.

7.11 It is further observed by this panel that the trademark **“fox news”** in the Disputed Domain Name **“fox-news.in”** comprises the Complainant’s trademarks in its entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant. It is further observed by this panel that, the fact that the addition of the non-distinctive suffix **“news”** and of a hyphen between **“fox”** and **“news”**, followed by the ccTLD **.in**, is not sufficient to escape the finding that the domain is confusingly similar to Complainant’s trademark.

7.12 This panel, therefore, is of opinion that the disputed domain name **“fox-news.in”** being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to the Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is identical and confusingly similar to the trademarks **“FOX”, “FOX NEWS” and “FOX NEWS CHANNEL”** of the Complainant.

8. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME.

COMPLAINANT

- 8.1 The Complainant submits that the Complainant has legitimate interest in the well-known trademarks FOX, FOX NEWS and FOX NEWS CHANNEL as it registered said trademarks since 1990/2000s in many jurisdictions, including India, and has been openly, continuously and extensively using them world-wide for several years. Moreover, by virtue of their long and extensive use, including online via Complainant's websites www.fox.com and www.foxnews.com, the trademarks FOX, FOX NEWS and FOX NEWS CHANNEL have become well-known worldwide.
- 8.2 The Complainant submits that the Respondent is not a licensee, an authorized agent of Complainant, or in any other way authorized to use Complainant's trademarks FOX and FOX NEWS. It is submitted that as stated in the case of, Pharmacia & Upjohn Company v. Moreonline, [WIPO Case No. D2000-0134], "the mere registration, or earlier registration, does not establish rights or legitimate interests in the Domain Name." The Complainant also refer to the decision in case of Perfetti Van Melle Benelux BV v. Jing Zi Xin [INDRP Case No.665] where it is stated that "merely registering the domain name is not sufficient to establish right or legitimate interests."
- 8.3 The Complainant further submits that the Respondent is neither commonly/popularly known in the public by the Domain Name nor has applied for any registration of the trademark FOX or FOX NEWS. On the contrary, Respondent's name, according to the information provided by NIXI after the filing of the original Complaint, is

“Ada Pascal” and Respondent’s Organization is “1337 Services LLC”. It is submitted that according to the searches performed by Complainant’s Representative on the WIPO Global Brand Database, Respondent does not own any trademark registration encompassing FOX.

8.4 The Complainant submits that the Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services before any notice of the dispute and Respondent’s use of the Domain Name does not amount to a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademark. It is submitted that the Domain Name, entirely encompassing the FOX and FOX NEWS well-known trademarks, has been, in fact, registered and is used by Respondent, as described in the factual section and highlighted by the evidence , for impersonation and fraudulent purposes. It is further submitted that the Respondent has used the Domain Name <fox-news.in> to create webpages impersonating Complainant, featuring Complainant’s trademarks and official contents, and publishing fake broadcast news, without displaying any disclaimer of non-affiliation with Complainant, and to the contrary, redirecting Internet Users, via the links published on the webpages, to internal sections of Complainant’s official website www.foxnews.com.

8.5 It is submitted by the Complainant that such wilful conduct clearly demonstrates that Respondent did not intend to use the Domain Name in connection with any legitimate purpose and such use cannot certainly be

considered a legitimate non-commercial or fair use without intent for commercial gain, because Respondent is attempting to pass off as Complainant in order to attract users to its webpages. The Complainant has referred to the decisions in cases of L'Oréal v. Contact Privacy Inc. Customer 0149511181/Jerry Peter [Case No.D2018-1937] and PUMA SE v. Raghu Prem Telukuntla [Case No.D2022-4507]. It is further submitted that as to the likelihood of confusion created by Respondent's web-pages, the content appears designed to reinforce the Internet user's impression that the Domain Name belong to the Complainant and such use cannot constitute a bona fide offering of goods or services and referred to the decision of Moncler S.R.L. v. World Top Sale Inc / WTS, [Case No.D2012-2537].

8.6 It is submitted that with reference to the circumstance that, typing "fox-news.in" in the browser, Users are redirected to a static page, publishing "fox-news.in" and a link to a hosting provider's website, previous Panels have maintained that passive holding of a Domain Name does not constitute a legitimate non-commercial or fair use, especially in case of other demonstrable/prior infringing uses. In this regard the Complainant has relied on the decision in case of Teachers Insurance and Annuity Association of America v. Wrecks Communications Group, WIPO Case No.D2006-0483: which states that "Absent some contrary evidence from Respondent, passive holding of a Domain Name does not constitute legitimate non-commercial or fair use". It is submitted that in the present case, in view of i) the confusingly similarity of the Domain Name with the registered and well-known

trademarks FOX, FOX NEWS and FOX NEWS CHANNEL, ii) Respondent's fraudulent use of the Domain Name described above, i.e. to create internal webpages impersonating Complainant, and iii) the lack of any reply from Respondent to Complainant's case and desist letters, the circumstance that "fox-news.in" leads to a landing page certainly does not amount to a bona fide or legitimate use.

- 8.7 The Complainant submits that as a final remark on the issue of rights or legitimate interest, it is a consolidated principle that the burden of proof lies on Complainant. However, satisfying the burden of proving a lack of Respondent's rights or legitimate interests in respect of the domain name according to Paragraph 4 (b) of the INDRP is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. It is accordingly submitted that , it is sufficient that Complainant shows a prima facie evidence in order to shift the burden of production on Respondent and relied upon the case of Bulgari S.p.A. v DomainBook [INDRP/1002], Croatia Airlines D.D. v. Modern Empire Internet Ltd. WIPO Case No.D2003-0455, Belupo d.d. v. WACHEM d.o.o. WIPO Case No. D2004-0110, Sampo plc v. Tom Staver WIPO Case No. D2006-1135, Audi AG v. Dr. Alireza Fahimipour WIPO Case No. DIR2006-0003).
- 8.8 The Complainant, therefore submits that Respondent has no rights or legitimate interests in respect of the Domain Name according to Paragraph 4(b) of the INDRP.

RESPONDENT

- 8.9 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATIONS

- 8.10 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 8.11 This panel observes that the Complainant by placing documents/records and evidence in the form of annexures along with the complaint has been able to prove that the Complainant is doing its business under the marks **“FOX”, “FOX NEWS and “FOX NEWS CHANNEL”**. The Complainant by virtue of its priority in adoption, goodwill, and long, continuous and extensive use of the marks, the Complainant has acquired the exclusive right to the use of the marks **“FOX”, “FOX NEWS and “FOX NEWS CHANNEL”** in respect of its services.
- 8.12 It is observed by this panel that Respondent has failed to rebut the allegations of the Complainant that Respondent is not a licensee, an authorized agent of Complainant, or in any other way authorized to use Complainant's trademarks FOX and FOX NEWS , and further the Respondent is neither commonly/popularly known in the public by the Domain Name nor has applied for any registration of the trademark FOX or FOX NEWS.
- 8.13 It is observed by this panel that respondent has failed to rebut the allegations of the complainant that Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services . The Respondent has also

failed to rebut the allegations of the complainant that Indeed, Respondent has used the Domain Name <fox-news.in> to create webpages impersonating Complainant, featuring Complainant's trademarks and official contents, and publishing fake broadcast news, without displaying any disclaimer of non-affiliation with Complainant, and to the contrary, redirecting Internet Users, via the links published on the webpages, to internal sections of Complainant's official website www.foxnews.com.

8.14 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

8.15 It is further observed by this panel that Para 6 of the IN Domain Name Dispute Resolution Policy (INDRP) states :

"Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

- (a) before any notice to the Registrant of the dispute, the Registrant'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; (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant 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 trademark or service mark at issue.”

8.16 This panel observe that the respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b).

8.17 This Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name “fox-news.in”.

**9. THE REGISTRANT'S DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH :
COMPLAINANT**

9.1 The Complainant submits that the Respondent was well aware of Complainant’s trademark rights at the time of registration and that it registered and has been using the Domain Name in bad faith, even after being notified of the infringement of Complainant’s rights via Complainant’s Cease and Desist letter, sent on May 21, 2024.

9.2 It is submitted that the trademarks FOX and FOX NEWS were registered before the registration of the Domain Name, have been extensively used for many years and are certainly famous worldwide. It is further submitted that the well-known character of the trademarks FOX and FOX NEWS has been indeed also recognized, inter alia, in the previous cases Fox Media LLC v. Mohamed Shalaby, WIPO Case No.D2020-1844

(<fozegyptnews.net>), Fox Media LLC v. Farhan Asif and Farrukh Chaudhry, WIPO Case No. D2023-2412 fox3now.com>, fox5now.com> and <fox7now.com>) and Fox Media LLC v. Bill Biersdorf, WIPO Case No. D2022-4600 (<fox.org>).

9.3 It is submitted that the Respondent could not have possibly ignored the existence of Complainant's well known trademarks when it registered the Domain Name <fox-news.in>, clearly confusingly similar with the FOX and FOX NEWS trademarks. It is submitted that several INDRP and UDRP decisions confirmed that the well-known character of a trademark incorporated in a disputed domain name is a relevant circumstance in the assessment of bad faith registration and relied on decisions in cases of Accor v. Jiangdeyun, [WIPO Case No. D2011-2277]; Perfetti Van Melle Benelux BV v. Jing Zi Xin [INDRP Case No. 665] ; Bulgari S.p.A. v Domain Book [INDRP Case No.1002]; Amazon Technologies Inc. v. Surya Pratap [INDRP Case No. 835].

9.4 The Complainant further submits that, by using the Domain Name, Respondent has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website or the content published on the Respondent's website, according to Rule 7 (c) of INDRP Policy. Indeed, as highlighted above, the Domain Name has been (and still is) used to divert Users to internal webpages impersonating Complainant, featuring Complainant's trademarks and official contents imitating the look and feel of Complainant's website "www.foxnews.com", and publishing fake broadcast

news, without displaying any disclaimer of non-affiliation with Complainant, and to the contrary, redirecting Internet Users, via the links published on the webpages, to internal sections of Complainant's official website www.foxnews.com. It is further submitted that the content of such webpages demonstrates Respondent's actual knowledge of Complainant's trademark rights and appears to be designed to reinforce the impression that the Respondent's webpages are operated by Complainant.

- 9.5 It is submitted that the circumstances of the case suggest that Respondent's purpose in registering the Domain Name, which encompasses Complainant's marks FOX and FOX NEWS in their entirety, was to capitalize on the reputation of Complainant's trademarks by diverting Internet users seeking Complainant's official website dedicated to India to the Respondent's website, for commercial gain. The Complainant has referred to the decision of, Sparkol Limited v. Mr. Shripal [INDRP/1069] where it was held that "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 Complainant also relied on the case of Bulgari S.P.A. v DomainBook [INDRP/1002], where the Panel held that, "On perusal of the disputed domain name the panel found that the Respondent has used the disputed domain name to intentionally attract internet website users to its website or the on-line location by creating a likelihood of confusion with the complainants BULGARI/BVLGARI

Trade Marks as to source, sponsorship or affiliation or endorsement of the website 'www.bulgari.co.in'".

9.6 It is submitted that as to the circumstance that, when typing "fox-news.in" in a browser, users are redirected to a static page publishing the indication "fox-news.in" and a link to a hosting provider's website, as stated in *Stanworth Development Limited v. Chad Creighton*, WIPO Case No. D2009-0332, it "does not exclude bad faith. It is submitted that the Respondent did not react to the request to transfer the domain name to the Complainant and did not undertake to make unauthorized use of the Complainant's trademarks in any manner whatsoever, as requested in the cease-and-desist letter". It is submitted that moreover, in any case, as established in a number of prior cases the concept of "bad faith use" of the Policy includes not only positive action but also passive holding; and relied on the UDRP case *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. Furthermore, Respondent's use of the Domain Name to attract and divert users to the internal webpages of Respondent's website makes it clear that, indeed, Respondent is not simply retaining the Domain Name but is actively using it for infringing purposes. It is further submitted that, the fact that Respondent's website is reachable only when connecting to specific URLs based on the Domain Name, suggests that Respondent opted for such solution for the purpose of avoiding being detected and attacked from Complainant, which is the owner of rights on the trademarks featured on Respondent's website.



9.7 The Complainant submits that moreover, Rule 7(b) of the INDRP Policy is applicable in the present case, as Respondent "1337 Services LLC" was involved in several prior UDRP proceedings concerning domain names corresponding to third party-trademarks, all concluded with the transfer of the domain names to the complainants. It is further submitted that in addition, Respondent was also involved in the prior INDRP proceedings Clearstream Services, Société anonyme v. Ada Pascal, 1337 Services LLC [INDRP 1708] and WhatsApp LLC v. Ada Pascal, 1337 Services LLC [INDRP 1631], where the panels ordered the transfers of the domain names <clearstream.it> and <whatsappmarketing.in>, respectively, to the complainants. The Complainant refer to section 3.1.2 of the WIPO Overview 3.0: where "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner. A pattern of abuse has also been found where the respondent registers, simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners".

9.8 It is submitted that the Domain Name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

RESPONDENT

9.9 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATION

- 9.10 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Complainant has statutory and common law rights in the marks **“FOX”, “FOX NEWS and “FOX NEWS CHANNEL”** and is also using the marks **“fox”** and **“foxnews”** on the internet, in other domain names i.e **‘foxnews.com’** and **‘fox.com’** , and as a trading name prior to registration of disputed domain name.
- 9.11 This panel observe that given the distinctiveness and reputation of Complainant’s trademark **“fox”**, the Respondent had constructive notice of the Complainant’s services, its wide use on the Internet or otherwise. The Respondent’s knowledge in this regard is an indicator of bad faith on its part in having registered the disputed domain name **“fox-news.in”**. It is further observed by this panel that, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant’s rights in the mark **‘foxnews’**.
- 9.12 According to Paragraph 7 of the INDRP the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :
- “(a) *Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a*

- competitor of that Complainant, for valuable consideration over the Registrar's documented out of pocket costs directly related to the domain name; or*
- (b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or*
 - (c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."*

9.13 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant, that that Respondent was well aware of Complainant's trademark rights at the time of registration and that it registered and has been using the Domain Name in bad faith, even after being notified of the infringement of Complainant's rights via Complainant's Cease and Desist letter, sent on May 21, 2024. It is also observed that Respondent could not have possibly ignored the existence of Complainant's well known trademarks when it registered the Domain Name <fox-news.in>, clearly confusingly similar with the FOX and FOX NEWS trademarks.

9.14 It is further observed by this panel that the Respondent also failed to rebut the allegations of the complainant that the Respondent's purpose in registering the Domain Name, which encompasses Complainant's marks FOX and FOX NEWS in their entirety, was to capitalize on the reputation of Complainant's trademarks by diverting Internet users seeking Complainant's official



website dedicated to India to the Respondent's website, for commercial gain.

9.15 It is thus, observed by this panel that the Complainant has rightly established that the Respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in Clause 7 (c) of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore, the Panel concludes that the registration by Respondent is in bad faith and has been done with intention to attract internet users to earn monetary benefit. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired /registered the domain name "fox-news.in" its favor in bad faith.

10. REMEDIES REQUESTED

10.1 The Complainant has prayed to this Administrative Panel for transferring the domain name 'fox-news.in' to the Complainant.

11. DECISION

11.1 The following circumstances are material to the issue in the present case :

11.1.1 Through its contentions based on documents /records and evidence, the Complainant has been able to establish that the marks "**FOX**", "**FOX NEWS** and "**FOX NEWS CHANNEL**" are well-established names in many countries including

India. The Complainant has established that the trademark **fox**, is popularly known exclusively concerning the Complainant. The Complainant has also established that the “fox”, “fox news” and “fox news channel” are inherently distinctive of the business of the Complainant and has secured trademark protection by registering trademarks.

11.1.2 The Respondent despite giving the sufficient opportunity, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

11.1.3 The Complainant has rather has been able to prove by its contentions and records in the form of annexures, that the Respondent has attempted to attract Internet users for profit which is evidence of bad faith. It is therefore established by the Complainant that the domain name by itself is being used for sale and attracting internet users for monetary benefits rather than any bona fide offering of goods/services thereunder. This panel while considering the complaint and records in the form of annexures submitted by the complainant, has concluded that there exist circumstances as stated in para 7 (c) of INDRP Policy.

11.1.4 Taking into account the nature of the

disputed domain name and in particular, use of Complainant's mark "foxnews" in its entirety along with use of hyphen between fox and news, which is confusingly similar, would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

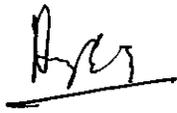
11.2 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.

11.3 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name [fox-news.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name **[fox-news.in]** be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated: August 12, 2024


AJAY GUPTA
Sole Arbitrator