



**INDRP ARBITRATION**  
**UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**  
**ADMINISTRATIVE PANEL PROCEEDING**  
**SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name**  
**<facebookliker.in>**

**and in the matter of INDRP caseno: 1643**

**Meta Platforms, Inc.1**  
**1601 Willow Road**  
**Menlo Park**  
**California 94025**  
**United States of America      Complainant**

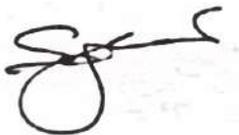
**Vs.**

**Nitin Mehta**  
**IELTS ICON,**  
**khalifa street**  
**Sangrur**  
**Chandigarh 148001**  
**mehta1212nitin@gmail.com ..... Respondent**

**ORDER**

**Brief Arbitration Proceedings Procedural History**

WHEREAS I, have been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant The Complainant in this administrative proceeding is Meta Platforms, Inc. (formerly as Face book, Inc.) (Meta), an American corporation with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America



seeking invoking of arbitration proceedings, against the Registrant / Respondent Mr. Nitin Mehta, IELTS ICON, Khalifa street, Sangrur, Chandigarh 148001 email mehta1212nitin@gmail.com in respect of domain name <**facebookliker.in**>

WHEREAS the Complainant has filed the above arbitral complaint against you as Registrant / Respondent for registering the domain name <**facebookliker.in**> thus seeking a claim of relief for transferring the domain name to the Complainant herein. As IN. registry registrar M/s. GoDaddy.com, LLC, withheld the office address and other details of the Registrant / Respondent from public by invoking “REDACTED FOR PRIVACY” concealing registration record containing the address and the domain details of the Registrant / Respondent.

On receipt of the WHOIS record containing the address and the domain details of the Registrant / Respondent, the Complainant has filed the amended complaint before the office of the undersigned by incorporating the office address Registrant / Respondent in this administrative proceeding in respect of domain name <facebookliker.in> The undersigned allowed amended arbitral complaint of the complainant in place of earlier application as such the undersigned opinion there is no need to issue fresh notice to the Registrant / Respondent, the notice issued to Registrant / Respondent on 11<sup>th</sup> of December 2022 is valid and is subsisting.

In reference to Service of hard copy documents to the Registrant / Respondent due to the difficulty of organizing service in the pandemic, the complainant representative have moved a request for waiving of requirement of serving hard copy to the Registrant / Respondent. The undersigned as being sole Arbitrator had accepted the plea of the complainant; hence the serving of hard copy of the complaint to the office address of the Registrant / Respondent is waived off.

The sole arbitrator had issued the directions to the complainant and the Registrant / Respondent on 11th of December 2022 to comply notice within 15 (fifteen) days to file reply, detail statement, if any and it should reach by 26<sup>th</sup> of December 2022. The respondent / registrant Mr. Nitin Mehta, IELTS ICON, Khalifa street, Sangrur, Chandigarh 148001 email mehta1212nitin@gmail.com had failed to submit reply, or any detail statement by 26<sup>th</sup> of December 2022 in the above arbitral reference.



## **1. The Complainant:**

**1.1** The Complainant, Meta Platforms, Inc., (Meta) is a United States social technology company, and operates, inter alia, Face book, Instagram, Meta Quest (formerly Oculus), Portal, and Whats App. The Complainant, formerly known as Face book Inc., announced its change of name to Meta Platforms Inc on 28 October 2021, and this was publicized worldwide. Meta's focus is to bring the metaverse to life and to help people connect, find communities and grow businesses. The metaverse will feel like a hybrid of today's online social experiences, sometimes expanded into three dimensions or projected into the physical world. It will let users share immersive experiences with other people even when they cannot be together and do things together they could not do in the physical world.

**1.2** The complainant company was Founded in 2004, the Complainant's Face book platform (Face book) is a leading provider of online social-media and social-networking services. Face book's mission is to give people the power to build community and bring the world closer together. People use Face book's services to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them. Face book rapidly developed considerable renown and goodwill worldwide, with 1 million active users by the end of 2004, 100 million users in August 2008, 500 million users in July 2010, 1 billion users worldwide by September 2012 and 2.27 billion users as of September 2018.

**1.3** The complainant Face book's company information, Inter brand's Best Global Brands for 2021, Face book's Wikipedia entry and press articles on Face book's rapid growth and popularity worldwide, including in India, Reflecting its global reach, the Complainant is the registrant of numerous domain names consisting of or including the FACE BOOK trade mark under a wide range of generic Top-Level Domains (gTLDs) as well as under numerous country code Top-Level Domains (ccTLDs).

**1.4** The Complainant has also made substantial investments to develop a strong presence online by being active on various social-media platforms, including Face book, Twitter and LinkedIn. For instance, Meta's official page on Face book has over 73 million "likes" and more than 13 million followers on Twitter.

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These pages are available at the following URLs:

<https://www.facebook.com/Meta>

<https://www.instagram.com/Meta>

<https://twitter.com/Meta>

<http://www.youtube.com/Meta>

<https://www.linkedin.com/company/meta/>

## **2. The Domain Name and Registrar:**

**2.1** The disputed domain name *<facebookliker.in>* is registered by the IN. registry registrar M/s Go Daddy.com, LLC and the Registrar invoked "REDACTED FOR PRIVACY" there by withheld address and other details of the Registrant / Respondent, as such address details of the Registrant / Respondent were not available in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant Meta Platforms, Inc. at 1601 Willow Road, Menlo Park, California, 94025, United States of America approached NIXI for invoking of arbitration proceedings, against the Registrant / Respondent Mr. Nitin Mehta, IELTS ICON, Khalifa street, Sangrur, Chandigarh 148001 email mehta1212nitin@gmail.com in respect of domain name *<facebookliker.in>*

## **3 Arbitration Proceedings Procedural History:**

**3.1** This is a mandatory arbitration proceeding 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] as approved by NIXI 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 pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

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**3.2** In accordance with the Rules, 2(a) and 4(a), NIXI formally notified, the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Name Dispute Resolution Policy and the Rules framed there under.

The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

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

**3.3** The present Arbitral Proceedings have commenced on 11<sup>th</sup> of December 2022 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully served by the complainant to the Respondent / Registrant through email.

**3.4** Further as per the issued Notice to the Respondent / Registrant was directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by **26<sup>th</sup> of December 2022**, failing which the Complaint shall be decided on the basis of the merits. The respondent / registrant had failed to submit reply, or any detail statement in the above arbitral reference even after receipt of notice of 11th of December 2022 through email address as sent under rule 5(c) of INDRP Rules and procedure for submission reply, detail statement, if any, on or before **26<sup>th</sup> of December 2022**.

**3.5** As per available email record placed before the sole arbitrator, the sole arbitrator is of considered view that the respondent / registrant was duly served through listed email address and despite of receipt of this notice the Registrant / Respondent had failed to submit its reply to the sole arbitrator panel office by **26<sup>th</sup> of December 2022**.



**3.6** It clearly proves that the respondent / registrant was not interested in pursuing the present arbitration proceedings, as such the sole arbitrator had on vide its order dated 29<sup>th</sup> of December 2022 foreclosed the right of the respondent / registrant of filing of reply and proceeded with deciding of this domain dispute complaint <*facebookliker.in*> solely on merits.

#### **4. Factual Background:**

**4.1** The Complainant in these administrative proceedings is M/s. Meta Platforms, Inc. (formerly Facebook, Inc.) (Meta), an American corporation with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America has invoked this administrative domain arbitration proceeding through its authorized signatory, in respect of domain name <*facebookliker.in*> against the Registrant / Respondent.

#### **5 .Parties Contentions:**

**5.1** The complainant has submitted its submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <*facebookliker.in*> illegally.

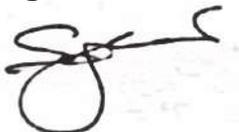
**5.2**The Registrant / Respondent had failed to submit its reply or detailed statement to the sole arbitrator panel within 15 days of the issued notice but the Registrant / Respondent had also had failed to comply directions of the said notice as well.

**5.3** The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <*facebookliker.in*> is stated as under:

#### **A. Complainant Grounds for proceedings**

*I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*

*II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*

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*III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.*

**I) Background of the Complainant and its statutory and common law rights related prior Adoption and use:**

**5.4** The complainant is Complainant and its trademark FACEBOOK enjoys a worldwide reputation. Complainant owns numerous FACEBOOK trademark registrations around the world.

**5 5** In addition to its strong presence online, the Complainant has secured ownership of numerous trade mark registrations in the term FACE BOOK in many jurisdictions throughout the world, including but not limited to the following:

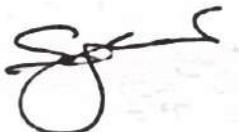
Indian Trade mark No. 1622925, FACEBOOK, registered on 9 Nov 2011  
EU Trade Mark No. 002483857, FACEBOOK, registered on 13 June 2003;  
US TM Registration No. 3122052, FACEBOOK, registered on 25 July 2006 (first use in commerce in 2004); and International Registration No. 1280043, FACEBOOK, registered on 16 July 2010.

**5.6** The Complainant states that the Complainant's valuable reputation offline and online is not only crucial to maintain the value and distinctiveness of its brand, but also vital to the success, integrity and protection of its business and customers. Accordingly, the Complainant devotes significant resources to protect its trade mark rights and goodwill in forums such as this administrative proceeding.

**5.7** The Complainant's valuable reputation offline and online is not only crucial to maintain the value and distinctiveness of its brand, but also vital to the success, integrity and protection of its business and customers. Accordingly, the Complainant devotes significant resources to protect its trade mark rights and goodwill in forums such as this administrative proceeding.

**The Respondent, the Domain Name and the associated website**

**5.8** The Complainant's FACEBOOK trade mark and company name had been registered with the addition of the descriptive term "liker" under the .IN ccTLD by the Respondent.

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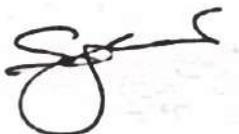
**5.9** On 7 February 2022, the Domain Name resolved to a website which purported to offer "SMM Panel" services. SMM Panel services allow users to buy social media services such as "followers" or "likes".

At the time of the filing of the Complaint, the Domain Name does not resolve to an active website, Facebook's Terms of Service, placing the security and privacy of Facebook users at risk. In addition, such use of the Domain Name breached Facebook's Developer Policies.

The Complainant owns numerous trade mark registrations for FACEBOOK in many jurisdictions throughout the world, The Complainant further submits that the Domain Name is confusingly similar to trade marks in which the Complainant has rights as the Domain Name incorporates the Complainant's FACEBOOK trade mark in its entirety with the addition of the descriptive term "liker". The Complainant submits that the combination of the Complainant's FACEBOOK trade mark together with the descriptive term does not prevent

**5.10** A search conducted by the Complainant revealed that the name listed in the WhoIs record was associated with another domain name, namely <ieltsicon.com>. This domain name previously resolved to a website which listed the following email address: [rajeshponia4200@gmail.com](mailto:rajeshponia4200@gmail.com).

**5.11** The Complainant's attention was drawn by the registration of the domain name <facebookliker.in> which entirely reproduces its trademark FACEBOOK and associates it with the misspelled generic term "liker", which does not prevent any likelihood of confusion. On the contrary, this term along with the extension ".in" increases the likelihood of confusion since it targets directly Complainant's field of activity. Therefore, Internet users may be led into believing that the domain name is endorsed by Complainant or that it will direct them to an official website displaying Complainant's products intended for the Indian market.

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**5.12** The disputed domain name <**facebookliker.in**> is almost identical to Complainant’s domain name <**facebook**> differing only in two letters, which makes potential typing error by Internet users more likely to happen, and as result diverting the traffic from Complainant’s site to the Respondent’s. The omission of the letter “c” does not significantly affect the appearance or pronunciation of the domain name. This practice is commonly referred to as “typosquatting” and creates virtually identical and/or confusingly similar marks to the Complainant’s trademark (*WIPO Case No. D2011-0692, Mapfre S.A. y Fundación Mapfre v. Josep Sitjar; WIPO Case No. D2009-1050, Compagnie Gervais Danone of Paris v. Jose Gregorio Hernandez Quintero*).

**5.13** As per section 1.9 of the WIPO Jurisprudential Overview 3.0: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. (*WIPO Case No. D2008-1302, Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator, WIPO Case No. D2013-0368, Sanofi v. Domains By Proxy, LLC / domain admin, WIPO Case No. D2015-2333, Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*)

**5.14** It should be noted that in its legal analysis the Complainant relies further on another decisions rendered by panels under the .IN Policy as well as the *Uniform Domain Name Dispute Resolution Policy (UDRP)*, given that the *.IN Policy* closely follows the *UDRP*. See, for instance, *LEGO Juris A/S v. Robert Martin, INDRP / 125 (<lego.co.in>)*.

**5.15** a finding of confusing similarity between the Domain Name and the Complainant's FACEBOOK trade mark, which remains clearly recognizable in the Domain Name. Prior panels have found similarly-constructed domain names to be confusingly similar to the trade mark at issue; see, e.g., *KPMG International Cooperative v. Valentin Berger, WIPO Case No. D2017-1291 (<home-kpmg.com>)* and *LEGO Juris A/D v. Immanuel Robert INDRP / 810 (<legohouse.in>)*. See also *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter the WIPO Overview 3.0)*, section 1.8.

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**5.16** With regard to the .IN ccTLD, it is well established under the .IN Policy that such suffix should be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark. *See AB Electrolux v. GaoGou of YERECT, INDRP / 630 (<zanussi.in>) (finding that "the expressions .in and .com need to be discarded while comparing the marks with the domain names").*<sup>30</sup>. Therefore, the Domain Name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4(i) of the .IN Policy.

## **II The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

**5.17** The Complainant is a prior adopter, of its trade name / mark and is identified by the purchasing public exclusively with the Complainant as such it has acquired an enormous goodwill in several countries across the globe including India. On account of the high degree of inherent and acquired distinctiveness, which the mark 'FACEBOOK' is possessed of, the use of this mark or any other identical or deceptively similar mark, by any person other than the Complainant, would result in immense confusion and deception in the trade leading to infringement, passing off.

**5.18** The complainant mark is phonetically identical and/or confusingly similar to the Complainant's trademark 'FACEBOOK' in which the complainant has statutory as well as common law rights. The Respondent has registered the domain name <*facebookliker.in*> that solely incorporates in its entirety the Complainant's reputed trademark 'FACEBOOK' to just to cause confusion and deception in the minds of the public.

**5.19** In addition to the common law rights that have accrued to the Complainant in the trademark 'FACEBOOK' by virtue of the aforesaid laws, The Complainant is in particular the owner of the following trademark registrations in India.

Indian Trade mark No. 1622925, FACEBOOK, registered on 9 Nov 2011

EU Trade Mark No. 002483857, FACEBOOK, registered on 13 June 2003;

US TM Registration No. 3122052, FACEBOOK, registered on 25 July 2006 (first use in commerce in 2004); and International Registration No. 1280043,

FACEBOOK, registered on 16 July 2010.



**5.20** The Complainant is the registered proprietor of the many marks world over having word per se 'FACEBOOK'. The Complainant submits that as the domain name is <*facebookliker.in*> is clearly identical / confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

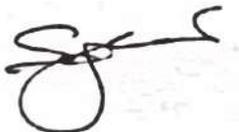
**5.21** The complainant with the registration of the disputed domain name, Respondent created a likelihood of confusion with Complainant's trademarks. It is likely that this domain name could mislead Internet users in to thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.

**5.22** The Complainant has not authorised, licensed or otherwise allowed the Respondent to make any use of its FACEBOOK trade mark, in a domain name or otherwise. Previous panels have already held that the lack of such prior authorisation would be sufficient to establish a prima facie case regarding the respondent's lack of rights or legitimate interests in the disputed domain name. *See Wacom Co. Ltd. v. Liheng, INDRP / 634 (<wacom.in>)* (*finding no legitimate interest where "the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name"*).

**5.23** The Complainant is required to make a prima facie case that the Respondent lacks rights or legitimate interest in the domain name at issue. Once the complainant establishes a prima facie case that the Respondent lacks rights or legitimate interest in a domain name, the burden shifts to Respondent to rebut Complainant's contentions.

If Respondent fails to do so, Complainant is deemed to have satisfied the second element. In the present case, the Respondent cannot demonstrate or establish any rights or legitimate interest in the infringing domain name.

**5.24** The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark **FACEBOOK**, in order to capitalize / profit from the goodwill associated with the famous mark.

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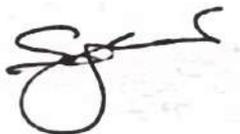
*Similarly in the INDRP matter of Velcro Industries B.V. v. Velcro Technologies [INDRP/858; Velcro Technologies.in]: “There is no showing that before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but has been parked with the Domain Registrar, Go Daddy LLC only. It has been held that merely registering the domain name is not sufficient to establish rights or legitimate interests. [Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO-D2000-1244].\*

**5.25** For all of the above-mentioned reasons, it clearly appears that the disputed domain name is identical to the trademark ‘FACEBOOK’ in which the Complainant has rights and given Complainant’s goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant’s trademark and virtually identical to the official domain name, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant’s rights. For all of the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests in respect to the domain name in dispute under Paragraph 4(a)(ii) of the Policy.

***III The Respondent's disputed domain name has been registered or is being used in bad faith.***

**5.26** The Complainant asserts that the Domain Name was registered and is being used in bad faith although the .IN Policy only requires that a complainant demonstrate that the disputed domain name was either registered or being used in bad faith.

**5.27** The Complainant's FACEBOOK trade mark is inherently distinctive and well known throughout the world in connection with its social media services, having been continuously and extensively used since the launching of its services, and acquiring considerable reputation and goodwill worldwide, including in India

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**5.28** Given the Complainant's renown and goodwill worldwide (including in India) and its trade mark rights established long before the registration of the Domain Name, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's FACEBOOK trade mark when it registered the Domain Name in 2022. *See Facebook, Inc. v. Ricky Bhatia, WIPO Case No. D2017-2542 (<facebook-customer-service.com> et al.);*

**5.29** As described above, the Domain Name previously resolved to a website purportedly offering SMM panel services, in violation of the Facebook Terms of Service and the Facebook Developer Policies. The Complainant submits that the Respondent's previous use of the Domain Name, which is confusingly similar to the Complainant's FACEBOOK trade mark, to attract Internet users to its website providing services for a fee, obviously for commercial gain, constitutes strong evidence of the Respondent's bad faith in accordance with paragraph 7(c) of the .IN Policy. *See Amazon Technologies Inc. v. Mr. Alex Parker, INDRP/1166 (<amazonemi.in>)(where the panel found that the use of the disputed domain name to point to a website selling products related to Amazon constitutes use in bad faith).*

**5.30** The Complainant further submits that the Respondent's prior use of the Domain Name was in bad faith, not only because the Respondent was seeking to unduly profit from the Complainant's reputation and goodwill, but also because this was destroying the authenticity of the user experience provided by the Complainant's social network by pointing the Domain Name to a website selling false "followers" and "likes" and therefore damaging the Complainant's reputation and goodwill. Furthermore, the Respondent's activities likely involved some type of fraudulent operation, such as the creation of fake accounts, or hacking into existing accounts, which is also clearly illegitimate and therefore also constitutes an additional strong indication of the Respondent's bad faith. *See Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Yan Jiang and Whois Domain Admin / Li Dan, WIPO Case No. D2020-2092 (<instagosu.com>):*

*"Secondly, the disputed domain names are being used with bad faith by the Respondents to redirect Internet users to their websites offering Instagram 'followers' and 'likes' for sale.*

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*Here, the Respondents' sale of purported Instagram 'likes' and 'followers' is likely to involve some type of fraudulent operation and constitutes bad faith use of the disputed domain names. In addition, such sale of Instagram 'likes' and 'followers' is also destroying the authenticity of the user experience provided by the Complainant's social network and breaches Instagram's Terms of Use."*

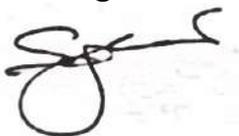
**5.31.** The fact that the Domain Name does not currently resolve to an active website does not cure the Respondent's bad faith. Indeed, it is a well-established principle that it is not necessary for a disputed domain name to be associated with an active website for a finding of bad faith to be made under the Policy. *See Aditya Birla Management Corporation v. Chinmay, INDRP / 1197 (<adityabirla.in>).*

**5.32.** Given the overwhelming renown and explosive popularity of the Complainant's FACEBOOK trade mark worldwide, and the nature of the Domain Name, which is confusingly similar to the Complainant's trade mark, there simply cannot be any actual or contemplated good faith use of the Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. *See Emirates v. Inshallah Ltd., INDRP / 485 (<emiratesholidays.in>).*

**5.33.** Despite the Complainant's efforts to contact the Respondent prior to submitting the present Complaint, the Respondent has failed to engage with the Complainant or otherwise come forward with any actual or contemplated good-faith use of the Domain Name. *See Volkswagen AG v. Privacy Protection Services, WIPO Case No. D2012-2066 (<www.volkswagen.com>).*

Finally, given the renown of the Complainant's FACEBOOK trade mark worldwide, it is simply not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent (or a third party) that would not be illegitimate, as it would inevitably result in misleading diversion and taking unfair advantage of the Complainant's rights. *See Voltas Limited v. Sergi Avaliani, INDRP/1257 (<voltasac.in>):*

"As to use in bad faith, whilst the disputed domain name has not been put to any substantial use in connection with an active website, non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding."

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*See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 (<telstra.org>).*

**5.34.** In view of the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith in accordance with Paragraph 4(c) of the .IN Policy.

#### **B. Contention of the Complainant:**

**5.35** Firstly the Complainant submits that the Respondent has used the Complainant's registered well-known trademark 'FACEBOOK' as part of the impugned domain name <*facebookliker.in*> in which the Complainant has legitimate right under common law as well as under statutory rights.

The said acts of the Respondent, therefore, amounting to a infringement of the complainant's rights as are vested in the trade/service: mark 'FACEBOOK'

**5.36** Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's trade and service mark 'FACEBOOK' which insures and continue to insure its legitimate right to Complainant only.

**5.37** The Complainant has a long and well-established reputation in the Complainant's mark. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [*Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)*].

**5.38** It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where: a) *Complainant's name was famous at the time of registration: Cho Yong Pil v. Sinwoo Yoon, WIPO-D2000-0310.*

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b) The Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: *America Online Inc. v. Chinese ICQ Network*, WIPO-D2000-0808.

c) The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: *America Online Inc. v. Chinese ICQ Network*, WIPO-D2000-0808.

d) Thus, the Respondent is guilty of registering and using the disputed domain name <*facebookliker.in*> in bad faith in terms of Para 7 of the INDRP

### **C. Contention of the Respondent:**

**5.39** The Respondent had not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

### **6. Discussion and Findings:**

**6.1** It is evident that the Respondent knowingly chose to register and use the disputed domain name <*facebookliker.in*> to divert customers from the Complainant's official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

**6.2** It is further clear the Respondent / registrant redacted private policy to conceal their identity. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

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**6.3** 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 it has some legitimate interest in the domain name to rebut this presumption.

**[a] The Respondent's Default:**

6.4 As per INDRP Rules of Procedure, it require as defined under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) is read 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."*

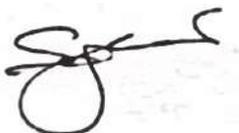
**6.5** Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:

*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

**6.6** The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

**6.7** As previously indicated; the Respondent had failed to file any reply to the Complaint and has not sought to answer nor presented its assertions, evidence or contentions in any manner against complainant. The undersigned as being arbitrator opined



that the Respondent has been given a fair opportunity to present his case, thus non submission of the reply by the Respondent to the Arbitrator, entail the sole arbitrator to proceed on the Complaint in accordance to its merit.

**6.8** The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable.

In accordance with the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

**[b] The issues involved in the dispute:**

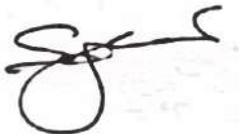
As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

**"Brief 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

**6.9** The Respondent / registrant was required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules there under."

**6.10** According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case

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***I The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.***

**6.11** The mark 'FACEBOOK' has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations: By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

**6.12** The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <facebookliker.in> is identity theft, identical with or deceptively similar to the Complainants <FACEBOOK> mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

**II The Respondent has no rights or legitimate interests in respect of the disputed domain name:**

**6.13** The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

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**6.14** Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and 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 evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.

**6.15** The Respondent has failed to submit reply thus not rebutted the contentions of the Complainant and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name <facebookliker.in>

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

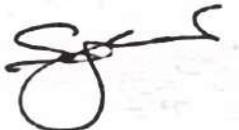
### **III The disputed domain name has been registered or is being used in bad faith.**

**6.16** It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back.

The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

**6.17** The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

*"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant,*

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*for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order 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 by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line 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 of a product or service on its Website or location."*

**6.18** From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.

**6.19** Moreover, use of similar disputed domain name by the Respondent / Registrant would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, as disputed domain name *<facebookliker.in>* is associated exclusively with the complainant, by the trade and public in India and all over the world.

**6.20** Further the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark 'FACEBOOK' from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'FACEBOOK' as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the Respondent / Registrant have redacted private policy to conceal its actual identity details and have not been replied to the communications sent by the complainant.

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## 7. DECISION:

7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein.

7.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide. The Respondent / Registrant had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to encash Complainant goodwill, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

7.3 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

### **[Relevant WIPO decisions:**

*Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. Sanchai Aree D2002-0358; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-06611*

7.4 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. Some notable cases reaffirming this proposition are INDRP decisions as in the matters of *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve Clicquot Ponsardin, Maison Fortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163 and Adidas-Solomon AG v. Domain Locations Case No D 2003 0489*



7.5 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

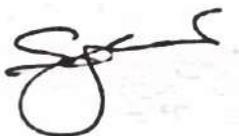
Thus it is very much clear that the Respondent / Registrant is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

*[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupo d.d. v. WACHEM d.o.o. D2004-01101*

7.6 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant have no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

7.7 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

*MATRIX Sons Ltd v. mmt admin / Ok MATRIX byebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304*

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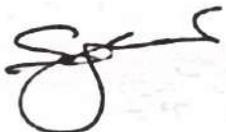
**7.8** The prior decision of a Panel in M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705 wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent,

*it was held that "The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier. A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."*

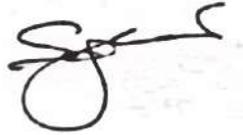
**7.9** It was observed that "it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights" and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. *In the present dispute as well, the Respondent, in registering the disputed domain name, has done so in clear violation of the exclusive rights of the Complainant in the MATRIX name and mark. In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)*

The WIPO Administrative Panel in Veuve Clicquot Ponsardin, Maison Fondee en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163 has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

**7.10** The Registrant / Respondent's registration and use of the Domain Name is abusive and in bad faith. The Registrant / Respondent have no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

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In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <*facebookliker.in*> be transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.

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**SANJEEV KUMAR CHASWAL**  
**SOLE ARBITRATOR**  
**INDRP ARBITRATION NIXI**  
**NEW DELHI    DATE 15-01-2023**