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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1610

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.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.anantaraspa.in

Dated: 05 DECEMBER 2022

IN THE MATTER OF:

MHG IP HOLDING (SINGAPORE)

PTE. LTD.,

2, ALEXANDRA ROAD,

05-04/05, DELTA HOUSE,

SINGAPORE, 159919

..... Complainant

Vs.

PRIYANKA GUPTA

ANANTARA THE WELLNESS,

add 31 JUNIOR HIG OPPOSITE OF MANGAL

CITY MALL BAPAT ROAD, VIJ

INDORE, MADHYA PRADESH, 452010

..... Respondent

1. Parties

- 1.1 The Complainant in the arbitration proceeding is MHG IP HOLDING (Singapore) PTE. Ltd., having its registered office address 2, Alexandra Road, #05-04/05, Delta House, Singapore, 159919. The Complainant's authorised representative is Jesse Lieberman.

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1.2 According to 'WHOIS' database the details of the Respondent is Priyanka Gupta, Anantara the Wellness having its address at 31 Junior HIG Opposite of Mangal City Mall Bapat Road, Vij Indore, Madhya Pradesh, 452010. E-mail id of registrant is omnidomains@justdial.com. Registrant has registered the disputed domain name with Endurance Digital Domain Technology LLP. (As per Annexure A)

2. **The Dispute-** The domain name in dispute is www.anantarasp.in registered by the Respondent on 19th April, 2022. According to the .IN 'WHOIS' search, the Registrar of the disputed domain name is Endurance Digital Domain Technology LLP.

3. Important Dates

| S. No | Particulars | Dates (All Communication done in electronic mode) |
|-------|--|--|
| 1. | Date on which NIXI's email was received seeking consent for appointment as Arbitrator. | 12 September, 2022 |
| 2. | Date on which consent was given to act as an Arbitrator in the case. | 12 September, 2022 |
| 3. | Date of Appointment as Arbitrator. | 12 September, 2022 |
| 4. | Soft Copy of complaint and annexures were received from NIXI through email. | 12 September, 2022 |
| 5. | Date on which notice was issued to the Respondent | 13 September, 2022 |

| | | |
|----|---|--------------------|
| 6. | Date on which Complainant filed amended complaint and effected service of the complaint on Respondent | 13 September, 2022 |
| 7. | Date on which Award passed | 05 December, 2022 |

4. Procedural History

- 4.1 This is 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) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.
- 4.4 The Arbitrator issued notice to the Respondent on 13 September, 2022 at the email address omnidomains@justdial.com & postmaster@anantaraspa.in calling upon the Respondent to submit his reply to the complaint within fifteen (15) days of receipt of the

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Arbitrator's email. The Complainant also filed amended complaint and served a copy thereof electronically upon Respondent on 13 September 2022 and by hardcopy on 28 November 2022.

- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant, MHG IP HOLIDING (Singapore) PTE. Ltd. owns and runs resorts and spas. Complainant is a division of Minor International PCL, which manages over 530 hotels, resorts, serviced suites, and more than 2,000 restaurants in 56 nations throughout the Asia Pacific, the Middle East, Europe, South America, Africa, and the Indian Ocean.
- 5.2 The Complainant through their group companies operates Hotels, resorts, and spas, including those with the ANANTARA Trademarks.
- 5.3 The Complainant's hotels, resorts, and spas operating under the ANANTARA Trademarks have appeared in both regional and global lists of the best hotels produced by well-known travel publications around the world, including Conde Nast Traveler, Harper's Bazaar, Forbes, Destin Asian, Lonely Planet, Vogue US, Elite Traveler UK, Travel+Leisure, Tatler UK, The New York Times, Lonely Planet (Thailand), Time Magazine, CNN Traveler. (The Complainant has filed Annexure B to support its claim).
- 5.4 The Complainant has adopted the trademark ANANTARA in the year 2000. The Complainant has been using the ANANTARA logo and trademark (described in para 4(ii) of the Complaint)

continuously and extensively for use in connection with resorts and spas (hereinafter referred to as "ANANTARA Trademarks"). The Complainant through its dedicated website, www.anantara.com, which was registered on 8-11-2000 has made a significant online presence and reaches a large client base globally. (The Complainant has filed Annexure C in support its claim). Complainant owns the trademark ANANTARA by virtue of its long use in India and other countries around the world. (Details of registrations filed as Annexure E to the Complaint). The Complainant regularly promotes and advertises its ANANTARA Trademarks and related goods and services on a variety of social media sites/platforms, including Facebook, YouTube, Instagram, and Twitter. (To support its claim, Complainant has filed the extract of social media pages as Annexure D).

- 5.5 The Complainant owns numerous trademark registrations and exclusive rights in the ANANTARA Trade marks in various countries around the world including India. In India, the mark ANANTARA is registered under Classes 03, 36, 43, 44 as on date as shown at para 4 (xiii) of the Complaint and few of registration certificates therefor are annexed as (Annexure E of the Complaint). The application 5175782 (device mark) in class 35 has also been filed by the Complainant and is in process.
- 5.6 According to 'WHOIS' database, the Respondent registered the disputed domain name www.anantaraspain.in to run an identical service being spa and wellness. The Respondent herein is Priyanka Gupta Anantara the Wellness 31 Junior HIG Opposite of Mangal City Mall Bapat Road, Vij Indore, Madhya Pradesh, 452010. The said disputed domain was registered on 19th April, 2022.

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However, as per the Complainant, it has neither granted any authorisation to register the disputed domain name nor has any association with the Respondent.

6. Parties Contention

6.1 Complainant's Submissions

6.1.1 The Complainant has been using its ANANTARA marks extensively and continuously for its hotels, resorts and spas, not only in India but across various other countries. Due to its established reputation across various other countries and in India, the word "ANANTARA" has been exclusively associated with the Complainant and no one else.

6.1.2 The Complainant submits that since 2006, Complainant has been a part of the "Global Hotel Alliance," an organisation of hotels. This organization's membership includes around 570 hotels from 78 different nations. Additionally, it is mentioned that the "Global Hotel Alliance" has a rule that directories with information on all of their member hotels are kept in each guest room of any hotel that is a member through which its mark ANANTARA has been widely advertised. The Leela Hotels in Delhi, Gurugram, Goa, Mumbai, Bengaluru, Chennai, and Udaipur are currently among this group's members from India.

6.1.3 The Complainant submitted that besides the off-line presence the Complainant has wide online presence to global customer base, through its dedicated website www.anantara.com. The aforementioned website has Indian citizens as consumers who regularly access the website to make reservations for stays at the Complainant's ANANTARA resorts. Indian residents have had access to the said website since 2000 when it became operational.

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(The Complainant has filed screenshots of the websites as Annexure C to support its claim).

- 6.1.4 The Complainant submitted that in addition to being included on the websites of www.minorhotels.com, which has an enormous audience, ANANTARA hotels and spas may be found in a number of online trade directories. Many millions of people use these services to make online reservations, including those in India.
- 6.1.5 The Complainant avers it also promotes its trademark ANANTARA under various social media platforms such as Facebook, YouTube, Instagram, Twitter etc. The Complainant Facebook page has over one lakh follower and YouTube page has around eighteen thousand subscribers. (The Complainant has filed Annexure D to support its claim).
- 6.1.6 The Complainant has acquired statutory rights in the ANANTARA marks in India (as per Annexure E of the Complaint). In addition, the Complainant also holds numerous trade mark registrations around the world including Australia, New Zealand, Indonesia, Malaysia, Philippines etc.
- 6.1.7 The Complainant has succeeded in obtaining injunction orders and decrees from Indian Courts prohibiting the use of its brand, ANANTARA, by infringers. (The Complainant has filed a copy of such decree passed by the Karnataka High Court as Annexure F in the Complaint).
- 6.1.8 The disputed domain name is identical to and is clear imitation of "ANANTARA" trademark and the Respondent has actively used it with an intention to pass off the mark as its own and infringe Complainant's statutory rights in the ANANTARA trademark.
- 6.1.9 The Complainant alleges that the Respondent has no legitimate interest in the domain name or the mark "ANANTARA" except to

mislead consumers and thereby infringe the "ANANTARA" trademarks and deceive consumer as to affiliation, connection or association of the dispute domain name with the Complainant, which is incorrect, illegal and injures the Complainant's interests.

6.2 Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 13(b) that the Arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 13(b) reads as follows:

"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

6.2.3 Further, the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 17 reads as follows:

"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 with law."

6.2.4 In present arbitration, despite due service, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been

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conducted ex-parte in accordance with Rule 17 of the INDRP rules and decided on merits ex-parte.

7. Discussions and Finding

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right, and
- b) The Respondent has no rights or legitimate interest in the domain name, and
- c) The Respondent's domain name has been registered or is being used in bad faith.

7.2 The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))

The Complainant has filed documents of its registered trademarks in India and other countries to prove its rights in the trademark "ANANTARA". The Trademark "ANANTARA" (word) is registered in India in class 03, 36, 43, 44 & application under class 35 (device mark) is in process of registration. The Complainant has filed supporting proof of registration of "ANANTARA" trademark in other countries too (annexed as Annexure E of the complaint). The Complainant has filed sufficient proof to substantiate that the Trademark "ANANTARA" is registered in India and has been in use since 8-11-2000. Therefore, it is established that the Complainant has statutory protection in the trademark "ANANTARA" in India. The Arbitrator finds that the disputed name www.anantaraspa.in , is

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clearly identical and deceptively similar to the Complainant's trademark in which the Complainant has exclusive trademark rights.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for purposes of UDRP standing. (*Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. D2008-0923, *Tesco Stores Limited v. Mat Feakins*, WIPO Case No. DCO2013-0017, *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. D2014-1747, *Dell Inc. v George Dell & Dell Net solutions*, case no. D2004-0512 (WIPO Aug 24, 2004), *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000).

The disputed domain name consists of "ANANTARA", the Complainant's trademark in entirety and "spa" which depicts competing nature of services Complainant provides and the ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125 (2010))

Also, use of a mark for several years by a Complainant establishes its rights in the mark. Evidence of long use of the mark, particularly in India, is filed by the Complainant which undoubtedly shows its

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rights in the mark. (*Starbucks Corporation v. Mohan Raj*, INDRP/118 (2009))

As the Respondent's disputed domain name is exactly same as Complainant's registered trademark and the Respondent failed to file any reply to rebut the contentions of the Complainant, the Arbitrator finds that the Respondent's domain name is identical to Complainant's registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interests in respect of the domain name (Paragraph 4(b))

Under paragraph 6 of the policy, a Respondent or a Registrant can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to the 'ANANTARA' trademark, in which Complainant enjoys substantial reputation and goodwill including web shots of its website (annexed as **Annexure C** to complaint) and registration of trademark in India and several other countries (annexed as **Annexure E** to complaint). The Respondent has failed to submit its reply to prove any rights or legitimate interests in the disputed domain name/trademark 'ANANTARA.' The same is also identical to the Complainant's prior registered trademark, 'ANANTARA' in use in India since 2000 and domain name www.anantara.com (registered since 2000). Complainant has also submitted that it has not authorized Respondent to use its ANANTARA mark and Respondent has failed to rebut the same. The burden of proof thus shifts to Respondent to demonstrate the rights or legitimate interests it holds in the mark as per WIPO Overview

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3.0, section 2.1. Despite notice, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show its interest or right in the disputed domain name. Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name.

Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. The fact that the disputed domain name has not been put to legitimate non-commercial fair use or commercial/business use shows Respondent holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy 4(b).

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence and extensively used when disputed domain was registered by the Respondent (registered on 19th April 2022), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. However, despite notice Respondent failed to reply and also failed to discharge this onus.

The Respondent also failed to file any reply to show that it is making any legitimate, non-commercial or fair use of domain name without intent for commercial gains nor is likely to divert consumers or tarnish trademark by registering the disputed domain name. The

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Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4 (c))

For the purposes of Paragraph 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has secured registration of the mark "ANANTARA" in India (word mark) in classes 03, 36, 43, 44 & application under class 35 is in process. The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name or proof of its honest adoption and legitimate active use. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.anantaraspain.in and is actively using it to run an identical competing business despite prior knowledge to make unfair gains which amounts to bad faith registration.

Further, the Complainant provided sufficient evidence showing widespread use, goodwill and trademark registrations of the 'ANANTARA' mark in India and other countries which long predates Respondent's registration of the disputed domain name which incorporates completely the registered trademark ANANTARA of the Complainant. (WIPO overview 3.0 notes in section 3.14 "*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar*")

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(particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

The same principle is relied on in *Adobe Inc. v. Amin Mohammadsalehi, Uranos*, case No. DIR2020-0006.)

Thus, Arbitrator finds that Respondent’s adoption of mark identical with Complainant Trademark and its active use on disputed website to run a competing business is likely to mislead the consumers by creating a likelihood of confusion with the Complainant’s name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). It is a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).

For the aforesaid reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395, *Atos IT Services UK Limited v Above.com Domain Privacy/Nish Patel* WIPO case No. D2013-0655, *Michael Patrick Lynch v. Steve Nicol* (Stephen Joel Nicol), WIPO Case No. D2015-0933).

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8. DECISION

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.anantaraspa.in to the Complainant.

The Award is passed on this 05 December, 2022

Place: Noida

Dr. Karnika Seth

Sole Arbitrator