

**BEFORE THE SOLE ARBITRATOR
MR. PRAVEEN KUMAR JAIN, ADVOCATE
INDRP CASE NO. 1939**

In the arbitration between:

Day Use, a simplified joint stock company

Registered with the Paris Trade and Companies Registry

Under the number 534 948 924

5 rue de Rochechouart - 75009 Paris (France)

and represented by its Authorised Signatory

Mr. David Lebee

...Complainant

and

Vinod Singh Negi

Tower No. IN-2, Flat No. 1901, Eldeco Aamantran

Sector-119, Noida

Uttar Pradesh - 201301

...Respondent

ARBITRAL AWARD DATED 27-04-2025

A. INTRODUCTION:

The above-titled complaint dated 11-11-2024 has been filed by the Complainant - **Day Use** for adjudication of the domain name dispute in accordance with the *.IN Domain Name Dispute Resolution Policy* (hereinafter referred to as "the Policy"), and the *INDRP Rules of Procedure* (hereinafter referred to as "the INDRP Rules") as adopted by the .IN Registry - *National Internet Exchange of India* (hereinafter referred to as "the Registry" for short). The disputed domain name <**dayuse.in**> is registered with the Registrar, namely GoDaddy.com



LLC. It was created on **2020-03-12** (YYY/MM/DD) and is set to expire on **2026-03-12** (YYY/MM/DD). The disputed domain name is registered by Mr. Vinod Singh Negi, the Respondent herein.

B. PROCEDURAL HISTORY:

Appointment of the sole Arbitrator:

1. *Vide* its email dated 20-01-2025, the Registry sought my consent for appointment as the Sole Arbitrator to adjudicate the above-stated domain name dispute between the above-said parties.
2. *Vide* my email dated 20-01-2025, I had furnished to the Registry my digitally signed 'Statement of Acceptance and Declaration of Impartiality & Independence' dated 20-01-2025 in the format prescribed by the Registry.
3. Thereafter, *vide* email dated 24.01.2025, the Registry informed the parties that the undersigned had been appointed as the Sole Arbitrator to adjudicate the dispute pertaining to the domain name <dayuse.in>, and accordingly, the matter was assigned INDRP Case No. 1939. Along with the said communication, the Registry also forwarded the soft copies of the Complaint, **Annexures A to M** and the undersigned's statement of acceptance.

Respondent's Voluntary Clarification:

4. *Vide* his email dated 24-01-2025, the Respondent submitted a detailed response to the Complaint, wherein he stated that he had been unable to access the documents sent to him *via* email. The Respondent further contended that the disputed domain name had

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been purchased by him five years ago in good faith for the purpose of operating a business in India. He submitted that the domain name is no longer in active use and affirmed that he has no present interest in retaining its ownership. The Respondent also emphasized that intellectual property rights are territory-specific, and that the Complainant does not hold any intellectual property rights in India in respect of the term “Dayuse”.

5. In the aforementioned email dated 24-01-2025, the Respondent further conveyed his willingness to transfer the ownership of the disputed domain name to the Complainant. However, he stated that, in light of the substantial investment made in developing and operating the associated business, he wished to explore the possibility of receiving compensation in connection with the transfer. The Respondent also asserted that he should not be held liable for any legal costs or fees should the matter be pursued further. Additionally, he reserved the right to seek reimbursement in the event he is required to participate in any subsequent proceedings.

Tribunal's Notice to the Parties:

6. *Vide* email dated 27.01.2025, this Tribunal issued a Notice of Arbitration under Rule 5(c) of the INDRP Rules, accompanied by the Statement of Independence and Impartiality in compliance with Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”), read with the Sixth Schedule thereto. As on date, no objections have been raised by either party

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with respect to my appointment as the Sole Arbitrator in the present proceedings.

7. *Vide* email dated 29.01.2025, the learned Attorney for the Complainant furnished to the Respondent a copy of the covering letter enclosing the Notice dated 27.01.2025, along with the domain name Complaint and the complete set of supporting documents.
8. *Vide* a separate email dated 29.01.2025, the Attorney for the Complainant informed the Tribunal that the soft copy of the Complaint had been duly served upon the Respondent. In support of the said submission, a copy of the relevant email evidencing such service was appended, which was accompanied by a letter addressed to the Respondent on the Complainant's letterhead. It was further submitted that the hard copy of the covering letter, enclosing the Notice dated 27.01.2025, along with the Complaint and annexures, had been dispatched to the Respondent through Registered Post A.D., and a copy of the postal receipt evidencing such dispatch was also annexed.
9. *Vide* email dated 20.02.2025, the Attorney for the Complainant addressed the Tribunal seeking an update on the status of the present proceedings.

Procedural Order dt. 25-02-2025:

10. *Vide* email dated 25-02-2025, the Tribunal issued a Procedural Order wherein it was acknowledged that the Respondent had

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submitted a response to the Complaint *vide* email dated 24-01-2025. The Tribunal also noted an error on the part of the Respondent, who had addressed the Sole Arbitrator as the representative of the Complainant—an apparent oversight or misunderstanding of the arbitral process. The Tribunal clarified that it is a neutral and independent adjudicatory body, consisting of the undersigned as the Sole Arbitrator, duly appointed by the Registry for the resolution of the present dispute between the parties. Both the parties were directed to file on or before 15-03-2025 their respective Statements of Admission/ Denial of Documents, if any, along with the suggested "Issues" to be framed by the Tribunal. The format for the Statements of Admission/ Denial of Documents was also provided to the parties.

11. *Vide* email dated 28-02-2025, the Attorney for the Complainant informed the Tribunal regarding compliance with the procedural order dated 25-02-2025, i.e., the re-sending of the copy of the complaint along with its documents and tracking report dated 28-02-2025, as sent to the Respondent by all modes - Registered Post A.D., email, and WhatsApp - as directed. Additionally, it was brought to the notice of the Tribunal that the Respondent had immediately acknowledged receipt of the complaint on WhatsApp. The screenshot of the same was attached to the said email. The Attorney for the Complainant further highlighted that the Respondent had been threatening to sell the domain name if the same was not purchased from him.

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12. *Vide* email dated 08-03-2025, the Attorney for the Complainant shared with the Tribunal the tracking report dated 05-03-2025, confirming the delivery of the INDRP complaint along with the complete set of documents.
13. *Vide* email dated 11-03-2025, the Attorney for the Complainant filed its Rejoinder to the Respondent's Response with a copy marked to all concerned. Thereafter, *vide* email dated 12-03-2025, the Attorney for the Complainant sent the soft copy of the Rejoinder to the Respondent with a copy marked to all concerned wherein it was stated that a hard copy of the Rejoinder had been dispatched to the Respondent's address *via* Registered Post A.D.
14. *Vide* email dated 12-03-2025, the Attorney for the Complainant informed the Tribunal of the service of the copy of the Rejoinder with exhibits upon the Respondent and indicated that the tracking report would be shared with the Tribunal shortly.

Complainant's Statement of Admission/ Denial and Proposed Issues:

15. In compliance with the Tribunal's Order dated 02-04-2025, *vide* email dt. 14-03-2025, the Complainant filed its proposed issues along with its *Statement of Admission and Denial of Documents*. Through the said statement, the Complainant has admitted all three documents annexed by the Respondent to its Response dated 01-03-2025, namely:

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- A. The Certificate of Incorporation dt. 04-05-2020 of *Day Use India Private Limited*;
- B. The Certificate of Recognition dt. 02-02-2022 under the *Startup India* initiative; and
- C. The email addressed to Ms. Katia.

16. *Vide* email dated 19-03-2025, the Attorney for the Complainant informed the Tribunal that the Rejoinder along with the exhibits, had been delivered upon the Respondent on 18-03-2025 and further attached the tracking records.

Procedural Order dt. 02-04-2025:

17. *Vide* email dated 02.04.2025, this Tribunal issued the order dated 02.04.2025, wherein the following issues were framed for adjudication, based on the pleadings of the parties, the reliefs sought, the respective statements of admission and denial, as well as the proposed issues submitted by the parties:

- i. Whether the Complainant is entitled to the relief of transfer of the disputed domain name from the Respondent? OPC
- ii. Whether the Complainant is entitled to get the costs of the proceedings from the Respondent? If yes, how much? OPC
- iii. Relief, if any.

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Respondent's Statement of Admission/ Denial:

18. Pursuant to the Tribunal's Order dated 02-04-2025 issued at 4.30 PM, the Respondent submitted a document titled *Statement of Admission and Denial of Documents* vide his email dt. 02-04-2025 received at 06.51 PM. However, upon examination, the said document is found to be in the nature of written submissions, rather than a substantive statement addressing the admissibility of documents. The Respondent has not denied any of the documents filed by the Complainant along with its pleadings. Accordingly, the Tribunal shall proceed by taking into consideration all documents submitted by both parties in support of their respective cases. In essence, the Respondent has reiterated the contentions previously raised in its Response dated 01-03-2025, which have already been taken on record. Furthermore, the Respondent has not suggested any issues for adjudication before this Tribunal.

19. *Vide* email dated 07-04-2025, the Attorney for the Complainant replied to the contents of the above-stated document titled: 'Statement of Admission & Denial of Documents' filed by the Respondent *vide* his email dt. 02-04-2025. The Attorney for the Complainant also stated that the contents of the INDRP Complaint and Rejoinder were sufficient to prove the merits of the case and that the Complainant did not wish to request a hearing but was willing to participate and make submissions against the Respondent if the Respondent would request an oral hearing. The above email dated 07-04-2025 has been taken on the record as written submissions of the Complainant.

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20. *Vide* his email dated 08-04-2025, the Respondent reiterated his earlier position and opposed the submissions made by the Complainant *vide* its email dated 07-04-2025.
21. *Vide* email dated 10.04.2025, the Attorney for the Complainant responded to the Respondent's email dated 08.04.2025, stating that the Complainant did not consider it appropriate to engage in repeated correspondence with the Tribunal, especially when detailed submissions had already been made. It was further stated that the Complainant would rely entirely on the Complaint, the Rejoinder, and the supporting evidence on record to refute the Respondent's alleged falsehoods and distortion of facts. Accordingly, neither party made any request for the conduct of arbitral hearings for the purpose of leading evidence or making oral arguments.

C. FACTS OF THE CASE:

C.1: COMPLAINANT'S COMPLAINT:

The Complainant has stated the following facts in its complaint dated 11-11-2024:

Introduction of the Complainant:

1. The Complainant has stated its address for service of summons, notices, etc. from the Tribunal as is shown in the cause title. The Complainant has further stated that it could be served through its Counsel Ms. Lynn Bout Lazaro (Bar Council Enrolment No. KAR/3556/08), Arun Babu and Aparna Venkat and all other

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advocates of Kochhar & Co. No. 201, Prestige Sigma, No. 3, Vittal Mallaya Road, Bangalore-560001.

2. The Complainant has stated that it is a simplified joint stock company, duly registered with the Paris Trade and Companies Registry in the year 2010. It is further submitted that the Complainant is a recognized leader in the hospitality sector, particularly in the niche market of “day hotels.” The Complainant operates through various digital platforms that enable customers to locate hotels within their vicinity and to book rooms for a few hours or for the duration of a day, in accordance with individual preferences. It is further averred that the Complainant’s objective is to transform traditional hotel usage into functional living spaces, thereby fostering a new lifestyle trend.
3. The Complainant has further stated that it has 3 subsidiaries, namely :
 - i. Day Use Hong Kong Limited, Hong Kong
 - ii. Day Stay LLC, USA, and
 - iii. USAGE DE JOUR , Canada
4. The Complainant has further stated that it operates in collaboration with over 7,000 hotels, offering its unique services across more than 27 countries, including the United States, Canada, the United Kingdom, France, Australia, Switzerland, Ireland, Italy, Spain, Brazil, Singapore, Hong Kong, the United Arab Emirates, and Thailand, among others. It has been submitted

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that the Complainant continues to pursue its objective of expanding its global presence. As of the year 2023, the Complainant has reported a turnover of €21,100,000 and has recorded a total of 2,230,573 bookings.

5. The Complainant has further submitted that it has incurred substantial expenditure towards the promotion and marketing of its brands, trademarks, and associated services across various media platforms and distribution channels. This sustained promotional activity has significantly contributed to the Complainant's global visibility and outreach. In support thereof, the Complainant has cited, by way of illustration, its expenditure on Google Ads, which amounted to €7,225,000 in the year 2022. It is contended that such advertising efforts have enabled the Complainant to effectively engage its target audience, build substantial goodwill, and establish a strong brand recall, resulting in its recognition as one of the "front-runners" in the hospitality industry for the nature of services it provides.

6. The Complainant has placed on record evidence of its lawful and exclusive proprietorship over the trademark "DAY USE" and its variants, totalling 44 registrations pending/ secured across various jurisdictions. Collectively, these trademarks are referred to as the "Complainant's Mark" for the purposes of the present proceedings.

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Domain Names owned by the Complainant:

7. The Complainant has further stated that it is also the registered proprietor of the domain name <dayuse.com> as well as many other domain names containing “DAY USE” with the geographical extensions in dayuse.fr, qa.dayuse.com, dayuse.es, dayuse.au, dayuse.hk, dayuse.sg, dayuse.tw, dayuse-hotels.hk, etc. The Complainant has further stated that it predominantly operates and regulates its business through www.dayuse.com.

Grounds of the Complaint:

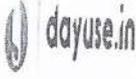
8. The Complainant has submitted that it is the prior adopter and user of the mark “DAYUSE”. Further that, the first use of the same can be traced back to 2010. It is further submitted that the mark “DAYUSE” is not only a trademark/ brand of the Complainant, but it is also its trade and corporate name.

Respondent's prior knowledge and his mala fide intention:

9. The Complainant has further submitted that the Respondent was aware of the Complainant, its brands, and its services prior to the registration of the domain name <dayuse.in>. It is asserted that the Respondent, with mala fide intent, registered the disputed domain name on 12-03-2020. The Complainant has also stated that the Respondent contacted it in or around February 2021, claiming that it had attempted to reach out to the Complainant in May 2020 with the intention of collaborating and expanding the Complainant’s business in India. However, the Complainant has contended that it did not respond to the Respondent's proposal and did not accept

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any of the proposals or collaboration offers made by the Respondent. To substantiate its claim, the Complainant has annexed an extract of the Respondent's message as **Annexure A**.

10. The Complainant has submitted that the Respondent had filed a trademark application bearing no. 4494751 in his name on 2nd of May 2020 to register the mark  (referred to as "Impugned Mark"). Further that, the Respondent filed the said trademark application under class 43 with respect to "Accommodation at Hotels and Boarding House, Rental for temporary accommodation, rental for tents, Hotel reservation, Holiday camp services, rental for meeting rooms, tourist homes, restaurants, snack bar, food & drink, catering, cafeteria) which is identical to the Complainant's services.
11. The Complainant has submitted that the Respondent has incorporated a company under the Companies Act, 2013 on 4th May 2020 under the name "Day Use India Private Limited". The Complainant has submitted that such unauthorised use of the Complainant's mark, prior adopted and used, that was in widespread global use, amounts to passing off.
12. The Complainant has further submitted that it was discovered through the Ministry of Corporate Affairs ("MCA") portal that the Respondent has not filed any documents or annual returns/

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balance sheets related till date. The extract from the MCA has been attached as **Annexure B**.

13. The Complainant has submitted that the Disputed Domain Name <dayuse.in>, which appears to be operational on the face of it, and that the Respondent has listed a few popular hotels across Indian cities namely in cities Bengaluru, Delhi, Gurugram, Greater Noida, Agra, Rishikesh, Mumbai and Faridabad. It is further submitted that the status of a few listed hotels is always displayed as "Sold Out". The snapshot of the homepage of the website has been attached as **Annexure C**.
14. The Complainant has submitted that when it tried using the website connected to the Disputed Domain Name to understand its functionality, the website did not process the selected details to move to the next step. A screenshot recording the jammed website with highlighted content in yellow has been attached as **Annexure D**.
15. The Complainant has submitted that based on the above-mentioned grounds, it is undoubtedly established that the Respondent's website is a hoax and that the Respondent has no legitimate interest with respect to the Disputed Domain Name and must be considered ineligible for related rights. It was further submitted that the Respondent is unnecessarily holding onto the Impugned Domain Name and deterring the Complainant from establishing a *bona fide* business in India. The Complainant has

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submitted that such acts of bad faith by the Respondent would certainly obstruct the Complainant's contribution to the local business and creation of solid partnerships with local companies in India.

16. The Complainant has further submitted that it apprehended the damage to its goodwill and reputation and had informed the Respondent of its offensive acts through separate legal notices on 8th December 2020 and 9th March 2021. The Complainant had adduced snapshots of the Respondent's impugned website. The said notices have been annexed as **Annexure E** and **Annexure F**.
17. The Complainant has submitted that the Respondent failed to respond to the notice issued on 8th December 2020. However, it is further submitted that the Respondent responded to the second notice issued on 9th March 2021 in a blunt manner, the extracts of which have been attached as **Annexure G**. The Complainant has argued that the correspondence and the Respondent's reply clearly demonstrate that the Respondent was fully aware that his actions were infringing upon the Complainant's rights by adopting and using the impugned mark. Despite this, the Respondent continued to maintain the impugned trademark application before the Indian Trade Mark Registry. Additionally, the Complainant has contended that the Respondent, having previously declared the impugned mark to be generic, is estopped from now claiming otherwise in any suit or proceeding, including the present complaint.

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18. The Complainant has further submitted that as per the Trade Marks Act 1999, the Complainant filed an opposition notice on 8th September 2023 to challenge the Respondent's impugned mark, the same has been attached as **Annexure H**. It is further stated that the Respondent has not filed its counter statement as per the Trade Marks Act, 1999; hence, his impugned application stands to be 'abandoned'. The copy of the order of abandonment and status page reflecting the 'abandoned' status have been annexed as **Annexures I and J** respectively.
19. The Complainant has further submitted that with a view to safeguard its trademark rights in India, the Complainant has filed a trademark application bearing 6298933 under class 43 to register the device mark **DAYUSE**. Copy of the E-register status page has been annexed as **Annexure K**.
20. It is further submitted that the Respondent, despite of abandoning the trade mark right over the Impugned Mark, has continued to maintain the Disputed Domain Name <dayuse.in>. The Complainant has further submitted that it had issued a cease-and-desist notice on 12th August 2023 demanding the Respondent to transfer the disputed domain name to the Complainant, the rightful owner. The said notice has been attached as **Annexure L**.
21. The Complainant has further submitted that in view of the facts mentioned above, the public at large is highly likely to assume that

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the parties herein are either part of the same group of companies or are business collaborators which is not the case in reality. The lack of respondents' reply to the complainant's repeated correspondence has forced the Complainant to file the present complaint.

22. The Complainant has further submitted that it is established by law that the domain name serves as a source identifier of an entity, and its products/ services. The Complainant's domain name is entitled to the same protection as that of a trademark. The Complainant has submitted a few leading judgments in respect of this, which are listed below:

- a. In the case of *Acqua Minerals Ltd v. Pramod Bose*, 2001 PTC 619 (Del), it was held with the advancement of internet communication, a domain name has attained as much legal sanctity as a trade name. Since the services rendered by the internet are crucial for any business, a domain name needs to be preserved, so as to protect such provider of services against anyone else trying to traffic or usurp a domain name.
- b. In the case of *Satyam Infoway Ltd v. Sifynet Solutions Pvt. Ltd.*, (2004) 6 SCC 145, the Supreme Court held that the use of a same or similar domain name may lead to diversion of users, which could result from such users mistakenly accessing one domain instead of another.

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c. In the case of *Arun Jaitely v. Network Solutions Private Limited*, 2011 SCC Online Del 2660, the Supreme Court laid down a few important points regarding domain names as trademark:

i. That a domain name is not just as an address but is used for a known person or the prospective customer to visit the webpage and immediately connect with that particular individual's services.

ii. Domain names are the personality goodwill of the company in the virtual world, which is similar to the Goodwill in the physical world.

iii. It is important to have protection for domain names to protect them from cybersquatting or trafficking like trademark.

23. The Complainant has further submitted that while the Complainant has law fully secured trademark registration in several countries, on the other hand, the Respondent has adopted the impugned mark <dayuse.in> (that stands abandoned as on date) with a malicious intention to hamper and frustrate the peaceful enjoyment of the complainant's mark/ trademark/ corporate name and damage the goodwill of the Complainant which has been built globally, over the last 14 years.

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Reliefs Sought by the Complainant:

24. The Complainant has prayed for cancellation of the Respondent's registration with respect to the disputed domain name <dayuse.in> with immediate effect and to transfer the disputed domain name <dayuse.in> with all rights, interests and title to the Complainant.

C.2: RESPONSE BY THE RESPONDENT:

The Respondent herein has filed his Response *vide* email dt. 01-03-2025 which is as under:

Absence of Trademark Rights in India:

1. The Respondent has submitted that the Complainant does not possess a registered trademark for the term “Dayuse” in India, which, according to him, is a fundamental requirement under the INDRP. He has further contended that, as per the INDRP Rules, a Complainant must establish enforceable rights within the territory of India in order to successfully claim a domain name. In the absence of any such Indian trademark registration, the Respondent argues that the Complainant’s claim is not legally sustainable under the INDRP framework.

Registration of Disputed Domain in Good Faith:

2. The Respondent has further submitted that the domain name <dayuse.in> was registered in good faith with the *bona fide* intention of establishing a business in India. In support of this claim, the Respondent has stated that his company, *Day Use India Private Limited*, was duly incorporated and registered under the

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Government of India's *Startup India* initiative, thereby evidencing a genuine and legitimate commercial interest in the domain name. He has further asserted that the domain was not registered with any intent to target the Complainant's business or to sell the domain name to the Complainant or any third party.

Joint Venture Initiative:

3. The Respondent has further submitted that, prior to registering the domain name <dayuse.in>, he had approached the Complainant with a proposal for a potential joint venture in India. He has stated that despite having reached out with a *bona fide* intent to collaborate, the Complainant failed to respond or express any interest in pursuing such a partnership. In view of the Complainant's inaction and apparent lack of interest in the Indian market at that time, the Respondent contends that he proceeded independently and lawfully registered and used the domain name in furtherance of his own business venture.

No Bad Faith Intent:

4. The Respondent has further contended that the Complainant's allegation of bad faith is unfounded, as he has never attempted to sell the disputed domain name to the Complainant or to any third party for profit. He has asserted that the only communication initiated with the Complainant pertained to a proposal for business collaboration, and not an offer to sell the domain. The Respondent has further submitted that, under the INDRP Rules, a domain

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name registration cannot be deemed to be in bad faith merely because the Complainant now desires to acquire it.

Passive Ownership:

5. The Respondent has further contended that the mere '*passive holding*' of a domain name does not amount to bad faith. He submitted that although the domain may not currently be in active use, the INDRP does not penalize passive ownership. The Respondent has additionally asserted that the domain name <dayuse.in> was previously used in connection with his Startup India-recognised business, thereby evidencing legitimate prior use. In support of this claim, the Respondent has annexed a certificate issued under the Startup India initiative.

First-Come, First-Serve Principle in Domain Registration:

6. The Respondent has further contended that domain names are allocated on a first-come, first-served basis. He submitted that if the Complainant genuinely valued the term "Dayuse" in the Indian market, it had ample opportunity to register the domain name prior to him. The Respondent argued that the Complainant's failure to secure its rights in India at the relevant time precludes it from now asserting exclusive ownership over the domain name.

Global Reputation of Complainant's Mark:

7. The Respondent has contended that the Complainant's claim of enjoying a "global reputation" in the mark "Dayuse" does not, in itself, confer any enforceable rights within the jurisdiction of

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India. He has argued that, under Indian domain name law, rights in foreign trademarks do not automatically extend to India without specific recognition or registration within the country. The Respondent further submitted that there is no evidence to establish that the term Dayuse was a well-known mark in India prior to the registration of the disputed domain name by him.

Unexplained Delay in Initiating INDRP Proceedings:

8. The Respondent has also raised the issue of delay, stating that the domain name dayuse.in was registered by him several years ago. He questioned the Complainant's inaction over an extended period and argued that, had the Complainant genuinely believed that its rights were being infringed, it would have taken timely legal action. The Respondent contends that this delay indicates a lack of urgency or legitimate concern at the relevant time, and instead reflects a belated attempt to acquire a domain name that the Complainant failed to secure earlier through lawful means.

Conclusion and Prayer for Dismissal:

9. In conclusion, the Respondent has reiterated that the Complainant does not hold a registered trademark for the term Dayuse in India, which renders its claim unsustainable under the INDRP Rules and the Policy. He has maintained that the disputed domain name was registered and used in good faith, without any intention to mislead users or sell the domain for profit. He further submitted that passive ownership does not constitute bad faith under the INDRP, and that his recognition under the Startup India scheme further

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affirms his legitimate business interest. Accordingly, the Respondent has prayed that the complaint be dismissed in its entirety and that he be permitted to retain lawful ownership of the domain name dayuse.in.

C.3 COMPLAINANT'S REJOINDER:

The Complainant's Rejoinder to the Respondent's Response is stated as follows:

1. The Complainant, in its Rejoinder, has stated that for the sake of brevity, it refrained from reiterating the facts as mentioned in the complaint dated 11-11-2024. The contentions and statements made by the Respondent were denied unless specifically admitted.
2. Before countering the Respondent's contentions, the Complainant challenged the following:
 - a. The Complainant has challenged the Respondent's *locus standi* to participate in the present proceedings without filing a Power of Attorney as per Rule 3(b) of the INDRP Rules.
 - b. The Complainant pleads that the Respondent's contentions sent *via* email be discarded and not admitted as it is not in accordance with the Policy and the INDRP Rules.
3. The Complainant's Rejoinder to the Respondent's email dated 01-03-2025 is as below:

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POINT 1: On the issue of the Domain name being identical or confusingly similar to a Trademark in which the Complainant has rights:

- a. The Complainant has submitted that the Point 1 of the Respondent's submission is utterly misplaced and not backed by law. It is explained that a registered trademark is not a fundamental requirement under the INDRP.
- b. The Complainant has further submitted that it has applied for trademark registration before the Trade Marks Registry and is awaiting a hearing.
- c. It is additionally submitted that the Respondent has no pending application or trademark registration before the Indian Trademark Registry (referred to as "ITMR" in the Rejoinder). The Complainant has also detailed its opposition to the Respondent's trademark application before the ITMR, with supporting documents annexed as **Annexures I and J** to the Complaint.
- d. Emphasis is laid on the fact that the Respondent's trademark (referred to as the "Impugned Mark" in the Rejoinder) is nearly identical to the Complainant's mark. In this regard, the Complainant has requested that reference be made to paragraph 8 of the Complaint, which sets out all variants of the trademark "DAYUSE" owned by the Complainant in several jurisdictions.

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**POINT 2: Adoption of the Impugned Domain Name and *Malafide*
Intent**

- a. In response to the Respondent's submissions under Point 2 of its Reply, it is not in dispute that the Respondent adopted the Complainant's registered trade mark and corporate name in India by incorporating a company under the name "*Day Use India Private Limited*" and proceeded to register the domain name <dayuse.in> (hereinafter referred to as the "Disputed Domain Name").
- b. The Complainant submitted that while the fact of registration is not disputed, the *intent* behind such registration is. The Respondent has candidly admitted to having knowledge of the Complainant's trade mark ownership and services in the hospitality sector prior to registering the Impugned Domain Name. Despite such knowledge, the Respondent proceeded to establish a business that is not only identical in concept but also uses the same mark, thereby meeting the essential ingredients of "passing off" under Indian common law and Section 27 of the Trade Marks Act, 1999.
- c. It is the Complainant's submission that the core grievance herein lies in the Respondent's deliberate attempt to deceive the Indian public by misrepresenting an affiliation or connection with the Complainant. This falls squarely within the scope of trade mark

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infringement and bad faith under the INDRP. The Complainant has annexed documentary evidence marked as **Annexure E**, which evidences that the Respondent also copied the content from the Complainant's website. The Complainant has relied on the precedent laid down in *ITC Limited v. Travel India* (INDRP Case No. 065), wherein it was held that: "*The fact that a disputed domain name wholly incorporates a Complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of INDRP.*"

Lack of *Bonafide* Use of a Corporate Identity:

- d. The Complainant further disputes the Respondent's claim that the registration and use of the corporate name and domain was in good faith. It is submitted that since its incorporation in 2020, the Respondent company has neither filed its statutory financial statements nor conducted Annual General Meetings. The Complainant submits that a *bona fide* commercial entity intending to operate a legitimate business would not allow its corporate structure to become non-compliant or effectively defunct.

Threats to Sell Domain to Third Party:

- e. In response to the Respondent's contention that it never registered the domain with an intention to target the Complainant's business or to sell it back, the Complainant drew attention to 'Exhibit B' filed with the Rejoinder dt. 11-03-2025, a snapshot of a WhatsApp conversation dated 28th February 2025, wherein the Respondent

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threatened to sell the Impugned Domain Name to a third party unless the Complainant purchased it.

Cyber-Bullying and Intimidation of Legal Counsel:

- f. The Complainant has also submitted that on 28th February 2025, at approximately 10:10 PM, the Respondent sent a series of derogatory and demeaning WhatsApp messages to the Complainant's legal counsel. These included personal attacks wherein the counsel was referred to as a "child" and their actions—carried out pursuant to this Tribunal's instructions—were termed "childish." The relevant conversation has been annexed as EXHIBIT C with the Complainant's Rejoinder. It is the Complainant's submission that such communication is not only in contempt of the arbitral process but also constitutes an act of cyber-bullying, revealing the Respondent's blatant disregard for the rule of law and the decorum expected in legal proceedings.

POINT 3: Prior Knowledge and Deliberate Infringement of Complainant's Intellectual Property Rights:

- a. In response to the Respondent's submissions under Point 3, the Complainant has submitted that the Respondent has admitted to having *prior knowledge* of the Complainant's existence and operations. Despite this knowledge, the Respondent chose to proceed with the registration of the Impugned Mark, incorporation of the company *Day Use India Private Limited*, and the registration of the Impugned Domain Name. It is the

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Complainant's case that such actions, when viewed cumulatively, clearly establish a deliberate and calculated attempt to misappropriate the Complainant's intellectual property for unlawful commercial gain.

POINT 4: False Submissions and Contradictions by the Respondent:

- a. With reference to Point 4, the Complainant has submitted that the Respondent has contradicted his submissions by falsely asserting that it never attempted to sell the Impugned Domain Name to the Complainant. This assertion is directly refuted by EXHIBIT B filed with the Complainant's Rejoinder, which contains a WhatsApp conversation wherein the Respondent threatens to sell the Impugned Domain Name to a third party unless the Complainant agrees to purchase it. This is clear and unequivocal evidence that the primary motive behind the registration of the Impugned Domain Name was to profit by coercing the Complainant into purchasing the same. The Complainant submits that this conduct is entirely inconsistent with any claim of good faith and, on the contrary, establishes the Respondent's malicious intent and commercial opportunism in bad faith.

Misinterpretation of the INDRP Rules by the Respondent:

- b. In response to the Respondent's submission that "Under INDRP Rules, a domain registration cannot be declared as bad faith solely because the complainant wants it now", the Complainant submits

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that the Respondent has demonstrated a fundamentally flawed and erroneous understanding of the Indian Domain Name Dispute Resolution Policy (INDRP) and its applicable Rules of Procedure. The Complainant clarifies that under the Policy and INDRP Rules a domain registration may be declared unlawful when the following three elements are satisfied:

- (i) The Impugned Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the Impugned Domain Name; and
- (iii) The Impugned Domain Name has been registered or is being used in bad faith.

The Complainant submitted that all three elements have been satisfactorily demonstrated and substantiated through detailed submissions and documentary evidence provided in both the Complaint and present Rejoinder.

POINT 5: Passive Holding of the Impugned Domain Name and Lack of Legitimate Use:

- a. With reference to Point 5 of the Response, the Complainant has submitted that the Respondent has admitted to passively holding

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the Impugned Domain Name. As demonstrated by the facts, evidence, and submissions adduced hereinabove, the Respondent secured registration of the Impugned Domain Name with the sole objective of profiteering by selling it either to the Complainant or a third party. The Complainant asserts that such conduct is indicative of bad faith and violates the principles of lawful domain name ownership under the INDRP framework. Therefore, the Respondent's submissions in this regard stand defeated by its own admission and the surrounding facts. Furthermore, the Complainant called upon the Respondent to furnish cogent and unimpeachable documentary proof demonstrating the legitimate commercial use of the Impugned Domain Name in connection with its stated business activities. The Complainant submitted that the Start-Up India certificate adduced by the Respondent held no evidentiary value as the Respondent had failed to demonstrate any genuine or ongoing business operations under the Impugned Domain Name or its corporate entity.

- b. In this regard, the Complainant drew the attention of the Tribunal to the case of *Fashnear Technologies Pvt. Ltd. Vs. LinQing (Award dated 06th February 2025)*, where it was held by the Arbitrator that while domain name reselling in itself is not unlawful, it is permissible only when the domain name is lawfully held by its legitimate owner.
- c. It is further submitted by the complainant that in the instant case, the Complainant is the rightful and legitimate proprietor of the

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trademark "DAYUSE". The Respondent, by its own conduct and lack of legal justification, has no lawful right or entitlement to register or use a domain name incorporating the Complainant's Mark, much less to attempt to sell it to the Complainant or any third party.

POINT 6: The Complainant's Established Rights and Good Faith Intent to Operate in India:

- a. In response to Point 6 of the Response, the Complainant has categorically denied the Respondent's contention that it failed to secure its rights in India. The Complainant stated that it is an internationally recognised business operating across twenty-seven (27) countries, with concrete steps already initiated to commence operations in India. Further that in anticipation of its entry into the Indian market, the Complainant has filed a trademark application for its well-known brand "DAYUSE" in India. Notably, the Complainant operates through its primary domain www.dayuse.com, which has global reach, and had previously launched its services through the French domain dayuse.fr, later expanding to include dayuse.com. This international expansion strategy also includes localised domains such as dayuse.es, dayuse.hk, dayuse.sg, dayuse.tw, dayuse-hotels.hk, and others.
- b. It is further submitted that it is standard industry practice for global companies to operate under a central domain name rather than acquiring every country-specific domain. This approach does

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not diminish the Complainant's legitimate interest or reputation in a given jurisdiction. In support of this, the Complainant has submitted EXHIBIT D with its Rejoinder, a Google Analytics report demonstrating substantial Indian user traffic on its website, www.dayuse.com, with approximately 55,000 Indian users between March 2024 and March 2025, and a cumulative count of over 2,17,000 Indian users since 2022.

- c. It is further submitted by the Complainant that this significant user base in India demonstrates the Complainant's growing goodwill, reputation, and recognition in the Indian market. The Complainant had every intention of acquiring the ".in" domain name for its operations in India. However, before it could do so, the Respondent, with full knowledge of the Complainant's mark and goodwill, maliciously registered the domain in question after its proposal for a joint venture with the Complainant was rejected.
- d. The Complainant further submitted that the Respondent's reliance on a "first come, first serve" principle is misplaced and erroneous. Domain name registration under INDRP carries an implied duty to ensure non-infringement of third-party intellectual property rights. The Respondent, despite acknowledging the Complainant's prior rights in the DAYUSE mark, proceeded to register the disputed domain name in blatant disregard of these rights.

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Legal Notices and Non-Compliance by the Respondent:

- e. The Complainant has further stated that it issued legal notices to the Respondent on 08th December 2020 and 09th March 2021, but received no response. Instead, the Respondent sent an abusive email on 09th March 2021, demonstrating not only non-cooperation but disrespect for the legal process. A third legal notice was issued prior to filing this Complaint, which the Respondent also ignored.
- f. The Complainant drew the Tribunal's attention to **Annexure G** of the Complaint (with redactions for privacy), which contains the said abusive response. These legal efforts, being ignored without justification, compelled the Complainant to file the present Complaint in good faith and with full regard for due process.
- g. Additionally, the Respondent failed to comply with the Arbitrator's directions dated 27th January 2025 and 25th February 2025. Nonetheless, the Respondent's emails dated 24th January 2025 and 01st March 2025 and WhatsApp message dated 28th February 2025 confirm that he was in receipt of all relevant communications regarding the present matter but has deliberately refrained from responding appropriately.

Abuse of INDRP Procedure and Judicial Process:

- h. In light of the foregoing, the Complainant has submitted that the Respondent has shown a pattern of deliberate evasion, non-

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cooperation, and abuse of INDRP procedures. The Respondent has treated these proceedings with disdain, and its conduct is tantamount to mockery of the legal process.

POINT 7: No Rights in India

a. In response to Point 7, the Complainant strongly disputes the Respondent's contention that it holds no rights in India. The Complainant's mark "DAYUSE" has acquired transborder reputation through continuous use, online presence, and international recognition. Notably, it is through the Complainant's international website (registered under the .com domain) that the Respondent became aware of the Complainant's business and trademark—ironically using the same to its advantage. The Complainant's notice of opposition (**Annexure H**) clearly establishes the reputation of its trademark in India. For clarity, it has been reiterated that the Complainant began use of the mark in 2010 and has since built considerable goodwill over 14 years. A significant section of the Indian public is aware of the "DAYUSE" brand due to several factors, including:

- Global travel by Indian residents who may have experienced the Complainant's services abroad;
- Online visibility and use of the Complainant's services through its website;
- Approx. 217,000 Indian users since 2022, evidencing substantial awareness and recognition of the mark in India.

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b. On these grounds, the Complainant has sought to enforce its *passing off* rights against the Respondent's unauthorized use of the "DAYUSE" mark in India. In support of the claim of transborder reputation, the Complainant has relied on the following leading judicial precedents:

1. ***Centron Industrial Alliance Ltd. v. Gillette UK Ltd.*** (1986): Gillette's trademark was protected despite no imports into India post-1958, relying on international publicity and Indian consumers' overseas exposure.
2. ***Kamal Trading Co. v. Gillette UK Ltd.*** (1988): The Court upheld reputation in India despite the absence of local availability, extending protection to related products.
3. ***Apple Computer Inc. v. Apple Leasing*** (1991): Injunction granted against a local entity despite Apple's absence from the Indian market due to import restrictions.
4. ***Blue Cross and Blue Shield Assn. v. Blue Cross Health Clinic*** (1990): Injunction granted solely on account of the international reputation of the foreign mark.
5. ***N.R. Dongre v. Whirlpool Corp.*** [(1996) 5 SCC 714]: The Supreme Court recognized that a trademark may have a

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reputation in India through international advertising, even in the absence of local sales.

6. *Calvin Klein Inc. v. International Apparel Syndicate* (1996 PTC 16): Protection granted to prevent respondent from encashing on global goodwill, despite no usage in India.
7. *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.* [2001 PTC 300 (SC)]: Reaffirmed the importance of media-based goodwill acquisition across borders.
8. *Soliaon Ink v. Doctor and Co.* [2002 (25) PTC 29]: Injunction granted based on international advertising and sales figures alone.
9. *Milmet Oftho Industries v. Allergan Inc.* (2004): Supreme Court ruled in favour of the first global adopter even though there was no use or registration in India.
10. *Enterprise Holdings Inc. v. Enterprise Auto Rentals* (2014): Recognition of evolving passing off jurisprudence in the context of technology and global reputation.
11. *Cadbury UK Ltd. & Anr. v. Lotte India Corp. Ltd.* [2014 (57) PTC 422]: Delhi High Court extended transborder reputation to include recognition from foreign webpages and social media, even without physical presence in India.

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- c. In view of the above authorities, the Complainant has submitted that it is the first global adopter and user of the mark “DAYUSE,” entitling it to trademark protection under the doctrine of transborder reputation. The Respondent’s adoption of the same mark is dishonest and intended to ride on the goodwill of the Complainant’s well-established brand.

- d. The Complainant further submitted that as established, the Complainant’s mark “DAYUSE” enjoys significant international and Indian recognition, and is a well-known trademark. The Respondent’s repeated defense is that it registered the disputed domain before the Complainant's entry into India is untenable in light of the demonstrated bad faith, supported by clear precedents. The Complainant has also reiterated that it is entitled to protection under Indian trademark law and common law principles of passing off due to its prior use, reputation, and goodwill.

POINT 8: No Delay in Enforcement of Rights:

- a. In response to Point 8, the Complainant has submitted that the Respondent registered the Impugned Domain Name on 12th March 2020. Upon discovering the Respondent’s infringing use, the Complainant issued its first legal notice on 8th December 2020. This discovery and subsequent action occurred promptly upon the Complainant coming across the Respondent’s domain name and associated website. Thereafter, the Complainant made several attempts to communicate with the Respondent and resolve

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the matter through legal notices and alternative remedies. The Complainant has thus emphatically denied that there has been any delay or inaction on the part of the Complainant in enforcing its rights. On the contrary, the Complainant has diligently exhausted all alternative avenues for redressal before invoking the jurisdiction of the present forum. Furthermore, the Complainant has submitted that, under Entry 88 of the Schedule to the Limitation Act, 1963, a fresh cause of action arises with each continuing contravention or infringement of a right. The Complainant has further submitted that in the present case, the Respondent's continuous holding and use of the Impugned Domain Name constitutes a recurring infringement of the Complainant's trademark rights. Therefore, the cause of action against the Respondent is ongoing and active, and the present Complaint is well within the limitation period.

Finally, the Complainant has reiterated the prayers and reliefs originally sought in its Complaint.

C.4: Reiteration of Submissions by the Parties:

As noted above, the Respondent, *vide* his email dated 02-04-2025, the Attorney for the Complainant, *vide* email dated 07-04-2025, the Respondent again, *vide* email dated 08-04-2025, and subsequently the Attorney for the Complainant, *vide* email dated 10-04-2025, have reiterated the submissions made in their respective pleadings which have already been noted above. The Tribunal has duly examined the contents of the aforementioned emails

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along with the documents annexed thereto but avoiding reiterating the same for the sake of convenience and brevity.

D. REASONING AND FINDINGS OF THE TRIBUNAL:

I have carefully examined the Complaint dated 11-11-2024 along with **Annexures A to M**, the Respondent's Response dated 24-01-2025 and 01-03-2025 along with three Annexures, the Complainant's Rejoinder dated 11-03-2025 along with seven documents, the Complainant's Statement of Admission/ Denial dated 14-03-2025, the Respondent's written submissions received *vide* his email dt. 02-04-2025 (titled as "Statement of Admission/ Denial of documents"), Email dt. 07-04-2025 sent by the Attorney for the Complainant, the Respondent's email dated 08-04-2025 along with 5 documents and the email dt. 10-04-2025 sent by the Attorney of the Complainant. I have also reviewed the *.IN Domain Name Dispute Resolution Policy*, the *INDRP Rules of Procedure* as adopted by the .IN Registry, and the relevant provisions of the *Arbitration and Conciliation Act, 1996*. My issue-wise finding is as under:

ISSUE NO. 1

Whether the Complainant is entitled to the relief of transfer of the disputed domain name from the Respondent? OPC

ANALYSIS AND FINDING:

Rules of Procedure and Rules Applicable to the Substance of the Dispute:

This Arbitral Tribunal is mindful of the law that as per Section 19(1) of the Arbitration and Conciliation Act, 1996, it is not bound by the Code of Civil

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Procedure, 1908 or the Indian Evidence Act, 1872 (now replaced with the BSA) and section 19(3) of the Act provides that failing any agreement referred to in sub-section (2) of Section 19, the arbitral tribunal may conduct the proceedings in the manner it considers appropriate. Section 19(4) of the Act further provides that the power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence. Rule 13(d) of the INDRP Rules also provide that the Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence. It may be noted that the Tribunal has not insisted on the hyper-technical requirement under the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as "the BSA) to file a certificate for electronic evidence, even though both parties have primarily submitted electronic documents along with their pleadings. However, it has been held by the Courts of law in several cases that the arbitral tribunal is bound by the basic provisions of the Indian Evidence Act, 1872 and the principles of natural justice.

Vide procedural order dated 02-04-2025, the Tribunal had made it clear to both parties that the issues would be examined as per the provisions of the Arbitration & Conciliation Act, 1996 (as amended up to date), the INDRP Rules of Procedure and .IN Domain Name Dispute Resolution Policy as well as the well-established principles of natural justice and basic principles of Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 (The BSA) which have been held to be applicable in the arbitral proceedings by the Courts of law. It was further made clear that the Tribunal was of the view that Clause Nos. 4, 6 and 7 of the Policy covered the issues proposed by the Complainant and the limited relief would be granted by the Tribunal as per

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Clause 11 of the Policy. None of the parties had objected to the above-stated direction of the Tribunal. Moreover, Clause No. 5 of the Policy and Rule No. 18(a) of the INDRP Rules may also be referred to in this regard, as they provide the guidelines to the Tribunal for conducting the arbitral proceedings and passing the award.

Clause 5 of the Policy provides as under:

5. Dispute Resolution Process

The .IN Registry shall appoint an Arbitrator from the list of empanelled Arbitrators maintained by the Registry. The List of the Arbitrators shall be published on line by the .IN Registry on its website at www.registry.in. *The Arbitrator shall conduct the Arbitration Proceedings in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration & Conciliation (Amendment) Act, 2019(as amended upto date) read with the Arbitration & Conciliation Rules as well as the INDRP Policy and Rules, as amended from time to time.*

(emphasis added)

Rule 18 of the INDRP Rules provides as under:

18. Arbitral Award:

1. An Arbitrator shall decide a Complaint on the basis of the *pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2019 (as amended up to date) read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.*
2. An Arbitrator shall give his/ her award in writing, mentioning the name of the parties; the complete name of the Arbitrator; the impugned domain name; the date of passing of the award and observations made while passing such award.

(emphasis added)

With regard to the Rules applicable to substance of dispute, Section 28(1)(a)(i) of the Arbitration & Conciliation Act, 1996 provides that where the place of arbitration is situate in India, in international commercial

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arbitration, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute. The Tribunal notes the provision of Section 28(1)(a)(iii) of the Arbitration and Conciliation Act, 1996, which stipulates that, in the absence of a designation of applicable law by the parties under clause (a), the arbitral tribunal shall apply such rules of law as it deems appropriate, having regard to all the circumstances surrounding the dispute. In the present matter, the Tribunal observes that both parties have, through their pleadings and written submissions, referred to the substantive law currently in force in India. Notably, the Complainant, a simplified joint stock company duly registered with the Paris Trade and Companies Registry, has made extensive reference to judicial precedents laid down by Indian Courts. In view of the foregoing and considering the consensus of the parties in relying upon Indian law, this Tribunal is persuaded to be guided by the substantive laws of India in adjudicating the present dispute.

Burden of Proof:

Burden of proving the Issue No. 1 is on the Complainant. To decide the Issue No. 1 in the present case, the Clause No. 4 of the Policy may be referred which provides as under:

4. **Class of Disputes:** Any Person who considers that a registered domain name conflicts with his/ her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/ or confusingly similar to a name, trademark or service mark *in which the Complainant has rights*; and
- (b) the Registrant has *no rights or legitimate interests* in respect of the domain name; and

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- (c) the Registrant's domain name has been *registered or is being used in bad faith*.

(Emphasis added)

Thus, for the maintainability of its complaint, the Complainant has to first prove that it has a right in a particular name, trademark or service mark. Thereafter, the Complainant has to prove that the Registrant's domain name is identical and/ or confusingly similar to its name, trademark or service mark; the Registrant has no rights or legitimate interests in respect of the domain name; and the Registrant's domain name has been registered or is being used in bad faith.

Further, Rule 7 of the Policy clarifies the meaning of 'bad faith' as used in Rule No. 4(c) as under:

7. Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, *if found by the Arbitrator to be present*, shall be *evidence* of the registration and use of a domain name in bad faith:

- (a) *circumstances indicating* that the Registrant has registered or acquired the domain name primarily for the purpose of *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 in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- (b) the Registrant 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 Registrant has engaged in a pattern of such conduct; or
- (c) by using the domain name, *the Registrant has intentionally attempted to attract Internet users to the Registrant's website* or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

(Emphasis added)

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Remedy under the Trade Marks Act:

It may be noted that the domain name disputes in India are primarily addressed through the lens of trademark law, particularly under the Trade Marks Act, 1999, which provides remedies for trademark infringement and passing off. Although there is no standalone legislation governing domain name disputes, legal principles drawn from trademark jurisprudence are routinely applied to prevent the registration and misuse of confusingly similar domain names. In the case of *Satyam Infoway Ltd. v. Siffynet Solutions Ltd*, (2004) SCC OnLine SC 638, the principal question raised was whether internet domain names were subject to the legal norms applicable to other intellectual properties, such as trademarks. The Hon'ble Supreme Court held as follows:

"25. As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But *although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off.*"

(Emphasis added)

Further, in the case of *World Book Inc. v. World Book Company (P) Ltd.* 215 (2014) DLT 511, Hon'ble High Court of Delhi has laid down as under:

"48. ...So far as the issue of protection of domain names is concerned, the law relating to the passing off is well settled. The principle underlying the action is that no one is entitled to carry on his business in such a way as to lead to the belief that he is carrying on the business of another man or to lead to believe that he is carrying on or has any connection with the business carried by another man. *It is undisputed fact that a domain name serves the same function as the trade mark and is not a mere address or like finding number on the Internet and, therefore, is entitled to equal protection as a trade mark.* A domain name is more than a mere Internet Address for it also identifies the Internet site to those who reach it, much like a person's name identifies a particular person, or as more relevant to trade mark disputes, a company's name identifies a specific company."

(Emphasis added)

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The Complainant, in support of its claim over the trademark "Day Use," has furnished details in paragraph 8 (pages 5 to 13 of the Complaint) regarding a total of 44 pending and/or globally registered trademarks incorporating the said mark, and this assertion has not been denied by the Respondent. Furthermore, as stated in paragraph 9 at page 13 of the Complaint, the Complainant is also the registered proprietor of the domain name <dayuse.com> along with various other domain names containing the expression "Day Use," including, *inter alia*, dayuse.fr, qa.dayuse.com, dayuse.es, dayuse.au, dayuse.hk, dayuse.sg, dayuse.tw, and dayuse-hotels.hk, through which it primarily conducts and regulates its business. This fact too remains uncontroverted by the Respondent. It is further observed that at no point in the emails, responses, or written submissions has the Respondent denied that the Complainant has been engaged in the business of renting hotel rooms for short durations under the mark "Day Use" since 2010 on a global scale. Significantly, the Complainant's very name is "Day Use," thereby further reinforcing its association with the said mark. In light of the above undisputed facts and material on record, I am of the considered view that there exists no dispute with respect to the Complainant's rights in the trademark "Day Use."

Now, the following issues arise for consideration:

1. Whether the Respondent's domain name <dayuse.in> is identical and/or confusingly similar to a name or trademark in which the Complainant has rights?

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2. Whether the Respondent has no rights or legitimate interests in respect of the disputed domain name <dayuse.in>?
3. Whether the Respondent's domain name <dayuse.in> has been registered or is being used in bad faith or for illegal/ unlawful purpose?

These are the cumulative requirements under Clause 4 of the Policy and must be established by the Complainant.

1. Analysis of Domain Name Similarity:

It is observed that the name and trademark of the Complainant is "Day Use," and it is also the registered proprietor of the domain name <dayuse.com>. The Respondent, on the other hand, has acquired the domain name <dayuse.in>, which is, without any doubt, identical to the Complainant's name, trademark, and domain name. The Complainant has specifically asserted that the Respondent's domain name is identical to its own, and notably, the Respondent has not denied this contention. Furthermore, the Respondent has not disputed the authenticity or content of the screenshots of the website <www.dayuse.in> submitted by the Complainant as Annexures C and D to the Complaint, which clearly demonstrate that the Respondent has been engaged in the same line of business—namely, offering hotel rooms for short-term or hourly use. These facts, having remained uncontroverted, further support the Complainant's claim of identity and use in connection with the disputed domain.

Hon'ble High Court of Delhi in the case of *Info Edge (India) Pvt. Ltd. and Anr. v. Shailesh Gupta and Anr.*, 98 (2002) DLT 499; 2002 (24) PTC 355

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(Del.), where the plaintiff was carrying on business under the domain name 'Naukri.com' and the defendant had begun using the domain name 'Naukari.com', held that if two contesting parties are involved in the same area, there is a grave and immense possibility for confusion and deception, and both marks were deceptively similar.

Finding: Upon a consideration of the material placed on record and the submissions advanced, I am of the view that the Complainant has successfully established the requirement under Clause 4(a) of the Policy. The domain name <dayuse.in> registered by the Respondent is identical and confusingly similar to the Complainant's trademark "DAYUSE," in which the Complainant has demonstrably established prior rights.

2. Analysis of Respondent's Rights or Legitimate Interests:

Clause 4(b) of the Policy mandates that the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name <dayuse.in>. In this regard, Clause 6 of the Policy sets out specific circumstances under which a Registrant may be deemed to have legitimate rights or interests in a domain name. These include:

- (a) The domain name was used or prepared for use in connection with a genuine offering of goods or services before any dispute arose.
- (b) The Registrant has been commonly known by the domain name, even without owning trademark rights.

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- (c) The domain name is used legitimately for non-commercial or fair purposes, without intent to mislead consumers or harm the trademark's reputation.

Let me now proceed to analyse the facts of the present case in light of the requirements under Clause 4(b) of the Policy. It is pertinent to note that the Respondent has neither denied the Complainant's longstanding use of the mark "Day Use" in connection with the business of renting out hotel rooms on an hourly basis since the year 2010, nor has he furnished any evidence to demonstrate pre-existing rights or legitimate interests in the term "Day Use." The Respondent's claim of having incorporated a company under the name "Day Use India Pvt. Ltd." on 04.05.2020, the filing of a trademark application dated 02.05.2020 (which has since been abandoned), and the subsequent acquisition of the disputed domain name <dayuse.in> are all events that occurred much after the Complainant's prior and global use of the mark "Day Use." These facts, taken together, clearly indicate that the Respondent lacks any *bona fide* rights or legitimate interests in the disputed domain name.

The Respondent's own conduct further reinforces the absence of any legitimate rights or interests in the disputed domain name. His attempt to initiate contact with the Complainant in May 2020 with a proposal to form a joint venture, as evidenced by Annexure A, clearly demonstrates that he was aware of the Complainant's prior and well-established reputation in the mark "Day Use." This, coupled with the fact that no license, authorization, or consent was ever granted by the Complainant permitting the Respondent to use the said mark, underscores the lack of any legitimate claim. Moreover, the Complainant's undisputed documentary evidence establishes that the

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Respondent's website was not functionally operational; several features were non-responsive, and the recurring display of "Sold Out" messages appears to have been deliberately employed to create an illusion of commercial activity, as seen in Annexure C. The records obtained from the Ministry of Corporate Affairs (Annexure B) further reveal that the Respondent's entity, "Day Use India Pvt. Ltd.," has made no statutory filings nor exhibited any indication of actual business operations. Significantly, the Respondent himself has admitted in his representations before this Tribunal that the business is not functional. At no stage has the Respondent disclosed the date of commencement or cessation of any business activity under the name "Day Use," nor has he placed on record any material to establish that such business was ever operational. These facts, taken cumulatively, lead to the inescapable conclusion that the Respondent has no rights or legitimate interests in respect of the disputed domain name <dayuse.in>.

Finding: In view of the foregoing analysis and the uncontroverted evidence on record, I find that the Complainant has successfully established that the Respondent has no rights or legitimate interests in the domain name <dayuse.in>, as required under Clause 4(b) of the Policy.

3. Analysis of Bad Faith Registration or Use:

As noted above, Clause 7 of the Policy stipulates that a domain name shall be considered to have been registered and used in bad faith if any of the following circumstances are established:

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- (a) the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor of the Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (b) the registration was undertaken to prevent the trademark owner from reflecting the mark in a corresponding domain name, particularly where such conduct forms part of a pattern; or
- (c) the domain name has been intentionally used to attract, for commercial gain, internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the site or of a product or service on the site.

To establish that the disputed domain name <dayuse.in> has been registered or used in bad faith, the Complainant has placed reliance on Annexure A, which consists of correspondence wherein the Respondent approached the Complainant in May 2020 with a proposal for a joint venture, thereby demonstrating his awareness of the Complainant's prior rights and international reputation in the mark "Day Use." This unsolicited approach, coupled with the timing of the Respondent's registration of the domain <dayuse.in> shortly thereafter, strongly suggests that the domain name was registered with full knowledge of the Complainant's trademark and with the intent to either derive commercial benefit or leverage the Complainant's goodwill, falling squarely within the scope of bad faith under Clause 7 of the Policy. The Annexure A is reproduced as under for ready reference:

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The Respondent has not denied this document. Further, the Complainant has also filed **Annexure G** (undisputed by the Respondent), which is the Respondent's reply to the Complainant's legal notice:

What is wrong with you guys? Dayuse is generic term.
Get a life. There is no misuse of this name and your trademark is not enforceable everywhere and for any use. It is for particular jurisdiction and categories.
If you try to threaten us unnecessarily, we will sue you for our reputation, and damages.

Moreover, in his email dated 24-01-2025, the Respondent has indicated that he would be open to transferring the domain ownership to the Complainant, subject to the payment of fair compensation for what he claims to be a substantial investment made in developing and operating the business. In this regard, the Tribunal finds it difficult to comprehend how the Respondent could reasonably seek compensation for the development and operation of a business, especially considering the lack of any demonstrable evidence that the business was ever functional or operational. The Respondent has failed

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to provide any documentation, such as financial records, business activity reports, or other supporting materials, to substantiate his claim of having made such an investment.

Furthermore, in his email dated 01-03-2025, the Respondent has stated the following:

3. I Approached the Complainant for a Joint Venture *Before Registering the Domain*
 - *Before registering Dayuse.in, I contacted the complainant regarding a potential joint venture in India.* However, they never responded.
 - Since they did not express interest in operating in India, I proceeded independently, lawfully registering and using the domain.
(emphasis added)

The Tribunal shall now consider the implications of the above statements and the overall context of the Respondent's actions in relation to the issue of bad faith registration and use of the domain name <dayuse.in>.

Prior Knowledge: The Respondent contacted the Complainant shortly after registering the domain, seeking a business partnership (**Annexure A**). This indicates awareness and targeting.

Trademark Application in Similar Services: The Respondent applied for the same mark under Class 43, which includes hotel and accommodation services—identical to those of the Complainant.

Passive Holding: The website is non-functional and deceptive. Passive holding of a domain may amount to bad faith where other indicia (such as prior knowledge and trademark infringement) are present. The Respondent has admitted in his email dated 24-01-2025, that the domain is no longer in active use and he does not have any current interest in retaining ownership.

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Intention to sell: Making an offer to transfer the domain *vide* his email dated 24-01-2025 on payment of fair compensation, even before issuance of the Notice by the Tribunal, leaves no doubt that the disputed domain was registered primarily to sell or transfer it to the Complainant or their competitor for profit beyond actual costs.

Use of Corporate Name: The Respondent's adoption of the corporate name "Day Use India Pvt. Ltd." without engaging in any genuine or independent business activities under that name constitutes a misrepresentation, which amounts to passing off. It is noteworthy that while the Respondent has incorporated the company under the name "Day Use India Pvt. Ltd.," he has deliberately chosen the domain name <dayuse.in>, omitting the word "India" from the corporate name. This selective use of the name, combined with the lack of any substantiated business activity under that name, suggests an intent to exploit the established reputation and goodwill associated with the Complainant's mark "Day Use." By doing so, the Respondent creates a misleading impression that his business is either affiliated with or authorized by the Complainant, thereby infringing upon the Complainant's rights and potentially diverting business from the Complainant.

Such actions are indicative of bad faith, as they are designed to take unfair advantage of the Complainant's reputation and brand value, without any legitimate basis for the use of the domain name <dayuse.in>. This conduct further supports the Complainant's claim of passing off and establishes that the Respondent's actions are in bad faith, as per the relevant provisions of the Policy.

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Cease-and-Desist Notices Ignored: The Complainant issued legal notices on 08-12-2020 and 09-03-2021 (**Annexures E and F**), which were either ignored or dismissively responded to (**Annexure G**). The kind of reply sent by the Respondent is certainly unprofessional.

Trademark Abandonment: The Respondent failed to respond to the opposition and allowed his application before the Trade Mark Registry to lapse (**Annexure I**). Yet he continued to maintain the domain <dayuse.in>, suggesting bad faith retention. It may be noted that the Respondent has admitted that he has no current interest in retaining the ownership of the disputed domain.

Finding: For the aforesaid reasons, I am of the view that the Complainant has successfully proven that the Respondent's domain name <dayuse.in> has been registered and is being held passively in bad faith.

Analysis of Respondent's Defenses:

- **Absence of Indian Trademark:** As discussed, Indian law does not mandate registration. Goodwill from international use and reputation is relevant under the doctrine of *trans-border reputation*.
- **First-Come, First-Served Principle:** This principle is not absolute under INDRP. A registration made with knowledge of an existing mark and with bad faith is not protected by mere chronology.
- **Startup India Recognition:** Recognition under Startup India is not conclusive proof of legitimacy in domain name disputes, particularly

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where deceptive adoption of a globally recognized mark is evident. Further, the Respondent has stated that his business is no longer subsisting.

- **Delay in Filing Complaint:** Delay in filing complaint is not a defence under the Policy; particularly when bad faith is proved. The Complainant had, in fact, issued cease-and-desist notices and taken legal action under trademark law before the Trade Marks Registry.

Hence, I am of the view that the defences raised by the Respondent are meritless in light of the evidence and applicable Laws and Rules.

Complainant's Two Preliminary Objections:

Before proceeding to determine Issue No. 1, I deem it appropriate to first address the two preliminary objections raised by the Complainant in its Rejoinder dated 12.03.2025. These objections are as follows:

(a) **Locus Standi of the Respondent:** The Complainant challenges the Respondent's *locus standi* to participate in the present proceedings, arguing that the Respondent has failed to submit a Power of Attorney as required under Rule 3(b) of the INDRP Rules.

(b) **Submission of Contentions via Email:** The Complainant has further argued that the Respondent's contentions, having been submitted *via* email, should not be admitted, as this mode of submission is not in accordance with the Policy and the INDRP Rules.

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Consideration of the First Objection:

Having carefully considered the first objection, I find no merit in the Complainant's submission. The Respondent is participating in these proceedings in person and has not engaged any authorized representative or counsel. In such circumstances, the requirement to submit a Power of Attorney, as stipulated under Rule 3(b) of the INDRP Rules, does not apply. Therefore, the objection is hereby rejected.

Consideration of the Second Objection:

With respect to the second objection, I note that the Complainant has failed to specify which particular clause of the Policy or INDRP Rules has allegedly been violated by the Respondent in submitting his contentions *via* email. While it is true that the Respondent has submitted his response and written submissions through email and attachments, it is also a fact that the Respondent is unrepresented in these proceedings. The Arbitrator, being the master of procedure under the INDRP framework as well as the Arbitration & Conciliation Act, 1996, has the discretion to waive or condone procedural irregularities in the interest of justice. In this instance, and to avoid undue technicalities, I am inclined to allow the Respondent's email submissions. Accordingly, the second objection is also rejected.

The Tribunal shall now proceed to return its findings on the merits of the dispute in Issue No. 1.

Findings on Issue No. 1:

The Complainant has provided sufficient evidence to show that it is the lawful owner of numerous registered trademarks incorporating the term

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“DAYUSE” across several jurisdictions. The Complainant is also the owner and operator of the domain name <dayuse.com> and other geographically extended domains such as dayuse.fr, dayuse.hk, etc., since 2010.

While the Complainant only applied for trademark registration in India under Application No. **6298933 (Annexure K)**, the lack of registration in India is not fatal to its claim under the Policy or INDRP Rules or Trade Marks Act. Indian courts have recognized the protection of *unregistered trademarks* under the common law doctrine of *passing off*, and INDRP does not impose a statutory requirement for Indian registration. The Complainant has referred to and relied upon a number of judgments passed by the Hon'ble Supreme Court of India and various Hon'ble High Courts in India in support of its claims. These precedents are cited to reinforce the legal position and arguments regarding the protection of trademark rights, the concept of bad faith registration, and the issue of domain name disputes under the relevant laws, including the Arbitration and Conciliation Act, 1996, and applicable intellectual property laws in India.

The Complainant has particularly drawn attention to judicial decisions that elucidate the principles of *passing off*, *bad faith*, and *confusing similarity*, as well as the scope of protection afforded to well-known marks. These rulings are pertinent to the present dispute as they underscore the importance of safeguarding the goodwill and reputation of established trademarks, particularly in the context of domain names that may create confusion or lead to the wrongful exploitation of another's mark.

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The Tribunal has carefully considered the relevance and applicability of these judgments in the context of the facts before it. It is evident that the principles laid down by the Hon'ble Supreme Court and High Courts in these cases align with the Complainant's position that the Respondent's actions, including the registration of the disputed domain name <dayuse.in> and his failure to demonstrate legitimate rights or interests, amount to bad faith under the provisions of the Policy.

This Tribunal is, however, not referring to and relying upon any of the awards passed by other arbitrators under the INDRP Rules or WIPO, as these do not constitute judicial precedents. While the awards under INDRP or WIPO may be persuasive and offer useful guidance, they do not hold the same weight as decisions rendered by the Hon'ble Supreme Court of India or the Hon'ble High Courts, which are binding judicial precedents. The Tribunal, therefore, has relied solely on the relevant legal provisions, applicable statutory laws, and binding precedents from Indian courts in arriving at its findings on the merits of the dispute.

Based on these judicial precedents, the Tribunal finds that the Complainant's reliance on these rulings is well-founded and supports the determination that the Respondent has acted in bad faith, thereby justifying the Complainant's claims in this case.

The Complainant's extensive global use of the mark and brand recognition establishes its prior rights and goodwill, including potential cross-border reputation in India. If the above-stated facts of the present case are examined in light of Clause 7 of the Policy, it becomes evident, beyond doubt, that for

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the purposes of Clause 4(c) of the Policy, there exists clear and convincing evidence of both registration and passive holding of the disputed domain in bad faith by the Respondent.

Having considered all the relevant facts, legal arguments, and judicial precedents, the Tribunal concludes that the Complainant has successfully established its claims under the Policy, including demonstrating that the Respondent's domain name <dayuse.in> is identical to the Complainant's well-established mark, and that the Respondent has no legitimate rights or interests in the domain. Furthermore, the Tribunal finds that the Respondent's actions constitute bad faith registration and use of the domain name. Accordingly, the Tribunal rules in favour of the Complainant and against the Respondent on Issue No. 1.

ISSUE NO. 2:

Whether the Complainant is entitled to get the costs of the proceedings from the Respondent? If yes, how much? OPC

REASONING AND FINDING:

As far as the issue of awarding the costs of proceedings to the Complainant is concerned, a reference may be made to Section 31A of the Arbitration & Conciliation Act, 1996, which is as under:

31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and

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- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;
 - (ii) legal fees and expenses;
 - (iii) any administration fees of the institution supervising the arbitration; and
 - (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.
- (2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—
 - (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
 - (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.
 - (3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—
 - (a) ***the conduct of all the parties;***
 - (b) whether a party has succeeded partly in the case;
 - (c) ***whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings;*** and
 - (d) ***whether any reasonable offer to settle the dispute is made by a party and refused by the other party.***
 - (4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—
 - (a) a proportion of another party’s costs;
 - (b) a stated amount in respect of another party’s costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs from or until a certain date.
 - (5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.

(emphasis added)

In light of the detailed reasoning given and findings returned for Issue No. 1, the Tribunal is of the view that the Complainant has suffered undue hardship and harassment due to the Respondent's deliberate and misleading

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conduct. This proceeding was necessitated solely due to the Respondent's actions, and the Complainant has incurred time, effort, and expense in seeking redress. However, I note that none of the parties have filed the Statement of Costs to enable the Tribunal to determine the amount of costs. The Complainant has not claimed any specific amount in its Complaint towards the costs of the proceedings. The legal maxim *Vigilantibus Non Dormientibus Jura Subveniunt*—"The law assists only those who are vigilant, and not those who sleep over their rights"—seems relevant here. In the absence of such detailed cost disclosures, the Tribunal considers it appropriate to award a reasonable and quantified sum as costs based on the facts and circumstances of the case. Since it is a matter of record that the Complainant has paid at least the fee of Rs. 35,400/- (Administrative fee of Rs. 10,000/- + Arbitrator's fee of Rs. 20,000/- along with 18% GST); hence, in exercise of its powers under Section 31(8) read with Section 31A of the Arbitration and Conciliation Act, 1996, this Tribunal is inclined to award Rs. 35,400/- in favour of the Complainant towards the costs of present proceedings.

Thus, Issue No. 2 is decided in favour of the Complainant and against the Respondent as above.

ISSUE NO. 3: Relief, if any.

REASONING & FINDINGS:

In light of the foregoing issue-wise findings, this Tribunal holds that the Complainant is entitled to have the disputed domain name <dayuse.in>

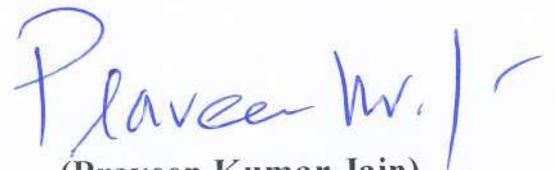
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transferred from the Respondent along with the costs of Rs. 35,400/- (Rs. Thirty-Five Thousand Four Hundred only) from the Respondent.

In view of Rule 20 of the INDRP Rules, the original signed copy of the award shall be provided to the Registry, which shall, in turn, communicate the same to the parties *via* email and by uploading it on the Registry's website. The parties may obtain a certified copy of the arbitral award, if required, from the Registry. The award has been executed on stamp paper of ₹100/-, and any deficiency in stamp duty, if applicable, shall be paid by the concerned party before the appropriate authority in accordance with the applicable laws

New Delhi

27-04-2025


(Praveen Kumar Jain)

The Sole Arbitrator

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