



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

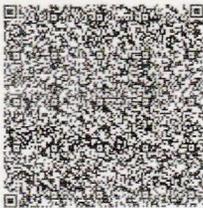
₹100

e-Stamp

Certificate No. : IN-DL09740803996444W
 Certificate Issued Date : 28-Jun-2024 12:38 PM
 Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
 Unique Doc. Reference : SUBIN-DL DL-SELF74871609789425W
 Purchased by : SANJEEV CHASWAL
 Description of Document : Article 12 Award - Movable
 Property Description : INDRP CASE 1872 IN THE MATTER OF JCDAUX IN
 Consideration Price (Rs.) : 100
 (One Hundred only)
 First Party : SANJEEV CHASWAL
 Second Party : NA
 Stamp Duty Paid By : SANJEEV CHASWAL
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

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₹100

SELF PRINTED CERTIFICATE TO BE VERIFIED BY THE RECIPIENT AT WWW.SHCILESTAMP.COM

IN-DL09740803996444W

In the matter of Arbitration Proceeding for the Domain name <jcdecaux.in> and in the matter of INDRP Case no: 1872

JCDECAUX SEComplainant
 Vs.
 JCD CAUX ADVERTISING Delhi Respondent



(Sanjeev Kumar Chaswal)

Sole Arbitrator

Under INDRP Arbitration Rules and Procedure [NIXI]

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.

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

In the matter of Arbitration Proceeding for the Domain name

<jcdcaux.in>

and in the matter of INDRP Case no: 1872

**JCDECAUX SE
17 rue Soyer
92200 Neuilly-sur-Seine
FRANCE**

....Complainant

Vs.

**JCD CAUX
ADVERTISING
A-55 G/F, NEAR SCHOOL
RADHEY SHYAM PARK
110051 Delhi**

..... Responden

ARBITRATIONAWARD

Disputed Domain Name: <jcdcaux.in>

History:

The undersigned has been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant in this administrative proceedings is M/s. JCDECAUX SE, 17 rue Soyer, 92200 Neuilly-sur-Seine, FRANCE e represented through its authorized representative seeking invoking of arbitration proceedings, against the Registrant / Respondent M/s. JCD CAUX Advertising, A-55 G/F, Near School, Radhey Shyam Park, 110051 Delhi Email id: kunalkumartechera@gmail.com in respect of registration of domain name <*sodexohr.in*>.

As the Complainant has filed the above arbitral complaint against the Registrant / Respondent for registering the domain name <jcdcaux.in> though complainant being actual user and owner of the domain name the Registrant / Respondent took the similar domain name thus complainant moved an complaint seeking a claim of relief for transferring the domain name to the Complainant herein. That the sole arbitrator had issued the directions to the complainant and the Registrant / Respondent to comply notice of 6th of June 2024 to file reply to file reply, detail statement, if any, **within 15 (fifteen) days from issue the date of this Notice**, the reply detail statement, if any should reach by **21st of June 2024**.

That as per the complainant, the complainant has been served with the due notice to the Registrant / Respondent and M/s. M/s. JCD CAUX Advertising, A-55 G/F, Near School, Radhey Shyam Park, 110051 Delhi Email id: kunalkumartechera@gmail.com in respect of registration of domain name <jcdcaux.in> to their email address as listed in WHOIS records. such the issued notice is duly served to the respondent / registrant.

That the Registrant / Respondent, who has obtained registration in respect of domain name <jcdcaux.in> and *has* failed to submit its reply, or any detail rebuttal statement to the above arbitral complaint reference after receipt of notice, wherein the said Registrant / Respondent was directed by the sole arbitrator to submit reply, detail statement, if any, on or before **21st of June 2024** under INDRP Rules and procedure.

In view of non-filing of reply on the part of present Respondent and Registrant of domain name <jcdcaux.in>, the sole arbitrator is of considered opinion that the respondent / registrant have been duly served through email address by the complainant herein and despite of receipt of this email notice, the respondent / registrant had failed to submit its reply or Statement to the sole arbitrator office within prescribed time.

Thus, it clearly proves that the registrant / respondent is not interested in pursuing or represent in the present arbitration proceedings pending before this tribunal, hence, the sole arbitrator has foreclosed the opportunity of the filing of reply or statement, further the undersigned as arbitrator reserves this domain dispute complaint <jcdcaux.in> for final orders on merits.

As the Registrant / Respondent, who had obtained registration of domain name <*jcdcaux.in*> in 2023-10-12 having validity of one year up to 2024-10-12 through the IN. registry Registrar's M/s. GoDaddy.com, LLC.

1. The Parties:

That the Complainant in this arbitration proceeding is. M/s. JCDECAUX SE, 17 rue Soyer, 92200, Neuilly-sur-Seine, FRANCE represented through its authorized representatives / attorneys seeking the complainant is a the public limited Company represented through its authorized representative has invoked this administrative domain arbitration proceedings against the Registrant / Respondent, in respect of registered domain name <*jcdcaux.in*>.

Registrant / Respondent M/s. JCD CAUX Advertising, A-55 G/F, Near School, Radhey Shyam Park, 110051 Delhi Email id: kunalkumartechera@gmail.com, in respect of registration of domain name <*jcdcaux.in*>. The Registrant / Respondent had obtained registration of domain name on 2023-10-12 having validity of one year up to 2024-10-12 through the IN. registry Registrar's M/s. GoDaddy.com, LLC.

2. The Domain Name and Registrar:

- 2.1 The disputed domain name <*jcdcaux.in*> is registered by the IN. registry, M/s. GoDaddy.com, LLC..

3. Arbitration Proceedings Procedural History:

- 3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP] adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

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

3.2 In accordance with the Rules,2(a) and4(a), NIXI formally notified the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act,1996,and the Rules framed there under.IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.

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

3.3 The present Arbitral Proceedings have commenced on 15th May 2024 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS..

3.4 Further as per the issued Notice of the sole arbitrator to the Respondent / Registrant herein was directed to file their reply vide the notice dated 6th of June 2024, with detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 21st June 2024 failing which the Complaint shall be decided on the basis of the merits.

3.5 Further as the Respondent / registrant has failed to submit its reply statement on or before 21st June 2024 hence, the, sole arbitrator foreclosed the right of Respondent / registrant to file reply or statement On non-receipt of reply as such the sole arbitrator now reserves this domain dispute complaint <jedcaux.in> for final orders on merits.




4 The Complainant's Factual Grounds and Contentions:

- 4.1 That the Complainant is a global leader in providing advertising services since the year 1964, JCDECAUX SA is the worldwide number one in outdoor advertising. Throughout the world, the company's success is driven by meeting the needs of local authorities and advertisers by a constant focus on innovation. For more than 50 years, JCDECAUX has been offering solutions that combine urban development and the provision of public services in more than 80 countries. The Complainant is currently the only group present in the three principal
- 4.2 All over the world, the digital transformation is gathering pace: JCDECAUX now have 1,056,833 advertising panels in Airports, Rail and Metro Stations, Shopping Malls, on Billboards and Street Furniture. The Group is listed on the Premier Marché of the Euronext Paris stock exchange and is part of Euronext 100 index. Employing a total of 11,650 people, the Group is present in more than 80 different countries and 3,918 cities and has generated revenues of €3,570 million in 2023.
- 4.3 The Complainant had been using the trademark/trade name '**JCDECAUX**' since its incorporation in the year 1964. However, in the year 2005, the Complainant changed its trade name and trademarks to '**JCDECAUX**'. The strength and goodwill of the Complainant's trademark / trade name '**JCDECAUX**' can be further reiterated from the fact that the Complainant has been honoured with many awards. A few of the awards recently received by the Complainant are named below:

JCDECAUX is also the owner of a large domain names portfolio, including the same distinctive wording JCDECAUX, such as <jcdecaux.com> registered since 1997-06-23, and <jcdecaux.co.in> registered since 2006-03-14.



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- 4.4 The Complainants with specific reference to India, the Complainant has been present in the country since the year 2005 and provides a bouquet service offerings to various corporate, organizations, JCDECAUX SA owns several trademarks containing the term “JCDECAUX” such as the Indian trademark JCDECAUX n° 1359098 registered since May 25, The disputed domain name <jcdcaux.in> was registered on October 12, 2023) and resolves to a parking page . Besides, MX servers are configured
- 4.5 The Complainant submits that the Complainant has spent considerable amount of resources on numerous activities to maintain and heighten the popularity of its trade name/trademark under the brand ‘JCDECAUX’..
- 4.6 The complainant has secured statutory protection for the trademark ‘JCDECAUX’ in India and has obtained many registered marks under different classes of goods as detailed. The said trademarks under the name ‘JCDECAUX’ are valid and subsisting.
- 4.7 The Complainant has devoted an enormous amount of time and energy in promoting and advertising the mark ‘JCDECAUX’ and the said mark is consequently identified solely with the Complainant. The Complainant has a significant online presence; in internet as well as in Google search results pages the complainant has also secured registration of domain name and the same is valid and subsisting.

Complainant Contentions:

- 4.8 The complainant has submitted many factual submissions with documents claiming to be prior adopter and user as well as legal submissions supporting the contentions of the complainant under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <jcdcaux.in> *illegally*.
- 4.9 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <jcdcaux.in> *is* stated as under:



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp contains the text 'SANKAR KUMAR ADVOCATE' around the top inner edge, 'DELHI' in the center, and 'REGISTERED' around the bottom inner edge. There are also small stars on either side of the word 'REGISTERED'.

A.Complainant Grounds for proceedings

- I. *The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*
 - II. *The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*
 - III. *That the disputed domain name has been registered or is/are being used in bad faith.*
- I. *The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*
- 4.10 The complainant submits that the Respondent's domain name <*jcdcaux.in*> is identical to the Complainant's trademark 'JCDECAUX'. The Complainant has overwhelming common law as well as statutory rights in its trademark 'JCDECAUX'. Therefore, the Complainant is the sole legitimate owner of the trademark 'JCDECAUX'.
- 4.11 The complainant submits that the Respondent's registration and use of the domain <*jcdcaux.in*> is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship, or approval of the Complainant when it is not so.
- 4.12 The domain name <*jcdcaux.in*> is identical to the 'JCDECAUX' trade name / trademark in which the Complainant has rights for the following reasons: The Respondent's registration of the said domain name is identical to the famous and registered trademark 'JCDECAUX' of the Complainant. The domain name of the Respondent is visually, conceptually and phonetically identical to the Complainant's famous and highly distinctive trademark 'JCDECAUX'.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp contains the text 'CHANDRA ADVOCATE' at the top, 'DELHI' in the center, and 'REGISTERED' at the bottom. There are also some smaller, less legible characters around the perimeter of the stamp.

- 4.13. The complainant submits that the sole element in the Respondent's domain name is the word 'JCDECAUX' and hence, the impugned domain name <*jcdcaux.in*> is identical to the trademark 'JCDECAUX' in which the Complainant has statutory and common law rights.
- 4.14 That by virtue of prior adoption, extensive and continuous use in respect of the 'JCDECAUX' mark, the Complainant is entitled to the exclusive proprietary rights there in and the public at large associate the said mark with the financial services offered by Complainant alone and no one else. As the services offered under the said trademarks conform to very high standards of quality.
- 4.15 As is evident from the aforementioned paragraphs, that the obvious misspelling of the Complainant's trademark (i.e. the deletion of the letter "E") is characteristic of a typo squatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain names. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant's trademark.

Please see WIPO Case No. D2020-3457, Arcelor Mittal (Société Anonyme) v. Name Redacted <arcelormltal.com> ("As the disputed domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of typo squatting – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website.

Furthermore, the Complainant contends that the addition of the ccTLD ".IN" is not sufficient to escape the finding that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.



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

4.16 The complaint submits that due to result of its long time, continuous use in commerce of the 'JCDECAUX', and has a sufficient cause to satisfy this element of the Policy as enumerated in INDRP Policy

4.17 The complainant submits that the disputed Domain Name incorporates Complainant's reputed word mark 'JCDECAUX' in its entirety and uses it as the first and most prominent element. The complete incorporation of Complainant's registered mark suffices to establish this element. "In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of the Policy." *In the case of Vertex Pharmaceuticals Inc. v. Private Data Domains Ltd./Anonymous Speech, Anonymous Speech, Michael Weber, Case No. Reliance Industries Ltd. et al. v. jiomartfranchise.in et al., Case No. INDRP/1264 (NIXI Oct. 7, 2020) (domain name identical and confusingly similar where complainant's registered trademark "entirely contained in the disputed domain name of the Respondent")*.

4.18 The Respondent's action amounts to cyber squatting which is unlawful. It is pertinent to note that the impugned domain name is a mere copy of the Complainant's registered trademark 'JCDECAUX'. The Respondent has no plausible reason to adopt the domain <jcdcaux.in> other than to exploit the commercial goodwill and reputation of the Complainant's trademark

4.19 Considering the blatant infringement caused to the Complainant's trademark rights, it is obvious that the sole purpose of the Respondent maintaining the Registration of the disputed domain <jcdcaux.in> is to misappropriate and usurp the reputation and goodwill of the Complainant's trademark 'JCDECAUX'. The Respondent should be considered as having no right or legitimate interest in respect of the domain name <jcdcaux.in>.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp with a double border. The text inside the stamp reads "SANJEEV KUMAR CHHABWAL, ADVOCATE, STATE ARBITRATOR, DELHI".

- 4.20 The Respondent's use of the trademark/trade name 'JCDECAUX' as his domain name does not satisfy the test for bona fide use. There is no license, consent or other right by which the Respondent would have been entitled to register or use an identical domain name as that of the Complainant's trademark/trade name 'JCDECAUX'.
- 4.21 The use of the disputed domain name by the Respondent is solely with mala fide intentions in order to deceive people browsing on the Internet into believing that the disputed domain name is associated with the Complainant whereas such association does not exist. There is no doubt that the Respondent is aware that the trade name/trademark 'JCDECAUX' corresponds to excellent services and disputed domain name has been registered to ride on the goodwill enjoyed by the trademark of the Complainant.

III. That the disputed domain name has been registered or is/are being used in bad faith.

- 4.26 The Respondent was well aware of the Complainant's business in India and has deliberately registered the domain name in order to capitalize on the stellar reputation and goodwill associated with the Complainant's mark. Considering the incessant use, reputation, and well-known status of the Complainant's mark, the Respondent cannot feign ignorance of the Complainant's mark. The illegitimate registration and use of the impugned domain name will result in Complainant's brand dilution which cannot be compensated monetarily. The Respondent had very much prior constructive knowledge of Complainants' prior user n has prior rights in its 'JCDECAUX' Mark, further the use by the respondent is fully under bad faith and is with bad intent.
- 4.27 The Respondent has no prior right and no authorization to use the trademark/trade name 'JCDECAUX'. The Respondent's is very well aware that the trademark/trade name 'JCDECAUX' is popular and famous world over including in India.

- \4.28 The use of the domain name with.IN identical to the trademark / trade name 'JCDECAUX' of the Complainant will mislead the Internet users and make them believe that it is the related website of the Complainant. The disputed domain name used by the Respondent is not even in use as no information is available on this page. Therefore, no loss will happen to the Respondent if the said domain name is transferred to the Complainant.
- 4.29 By contrast, serious injury would be caused to the Complainant if the said domain name is not transferred to it or the respondent id not stopped to usurp renowned trademarks and domain names to unfairly benefit from such acts.

Brief Contention of the Complainant:

- 4.30 Firstly the Complainant submits that the Respondent has used the Complainant's well-known trademark 'JCDECAUX' as part of the impugned domain name <*jcdcaux.in*> in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amount to an infringement of the complainant's rights as are vested in the trademark 'JCDECAUX'.

It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy.

a) Brief Contention of the Respondent:

- 4.31 The Respondent / Registrant had failed to file its detailed reply /statement rebutting the claim of the Complaint. Rather the respondent has not bother to submit the reply to the arbitrator. The respondent / ot file the reply rebutting the claim of the complainant that the respondent domain does not come ambit within the conditions laid down in IDRП of the policy.

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5 Discussion and Findings:

- 5.1 It is clear from the record of NIXI/WHOIS the Respondent / registrant is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.
- 5.2 It is evidently clear that the Respondent knowingly chose to registered and use the disputed domain name <*jedcaux.in*> to confuse customers from the Complainants' official website and to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.
- 5.3 As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

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

(i) the Respondent's 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 domain name; and

(iii) the Respondent's domain name has been registered or is being used in bad faith.

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



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

5.5 The complainant submits that the Respondent's domain name <*jcdcaux.in*> is identical to the Complainant's trademark 'SODEXO'. The Complainant has overwhelming common law as well as statutory rights in its trademark 'JCDECAUX'. Therefore, the Complainant is the sole legitimate owner of the trademark 'JCDECAUX'. The complainant further submits that the Respondent's registration and use of the domain is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship, or approval of the Complainant when it is not so.

Paragraph 3 of the INDRP is reproduced below:

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

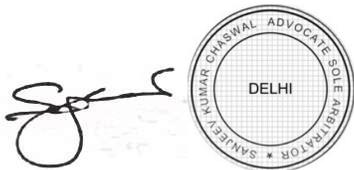
5.6 The Respondent / Registrant has failed in his responsibility in submission of its detailed reply as discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <*jcdcaux.in*> is identity theft, identical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

5.7 The Respondent by choosing to register and use a domain name, which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. The Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO-D2005-0321 – mtvbase.com*]

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

- 5.8 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 5.9 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.
- 5.10 The domain name in dispute was registered this year, which is many years later than the time of the Complainant and its affiliates' earliest use and registration of the trademarks 'JCDECAUX' and the domain name <*jcdcaux.in*> and there is no relationship between the Complainant and the Respondent. The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to 'JCDECAUX' reasons justifying that the impugned domain name is being registered and/ or used in bad faith.



5.11 The Respondent has not submitted its reply and has failed to rebut how the respondent has created the right over the domain name, when as a trademark it is registered and domain name by third party as such mere absence of contentions of the Respondent does not establish his/ her interest in protecting right and interest in the domain name. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

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

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

5.12 It has been contended by the Complainant that the Respondent / Registrant has registered domain and used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough and requires that either bad faith registration or bad faith use be proved.

Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the mark 'JCDECAUX' from reflecting in the domain name and that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'JCDECAUX'.

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

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

The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp has a double border. The outer border contains the text "SARVESH KUMAR CHANDEL" at the top and "ARBITRATOR" at the bottom, separated by small stars. The inner border contains the text "ADVOCATE" at the top and "DELHI" at the bottom.

or to a competitor of the complainant \for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

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

5.15 Moreover, use of similar disputed domain name *<jdcaux.in>* by the Respondent / Registrant would certainly result in confusion and deception of the trade, consumers and public, who would assume a connection or association with the Complainants, and is associated exclusively with the complainant, by the trade and public in India and all over the world.

Further The Respondent / Registrant has illegally registered the domain name *<jdcaux.in>* that is is deceptively identical to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'JCDECAUX'.

5.16 Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

DECISION:

- 6.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein.
- 6.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further, the Respondent's registration of the domain name is dishonest and malafide.
- 6.3 That the complainant further submits that the Respondent is not affiliated with, nor authorized/licensed by Complainant to use the 'JCDECAUX' Marks yet the Disputed Domain Name give the false impression that it is so affiliated and authorized the corresponding domain <*jcdecaux.in*> of the Respondent / registrant,.
- 6.4 The document attached by the complainant here in clearly shows that the thus it clearly shows that the domain owner of <*jcdecaux.in*> is a squatter and does not have legitimate right claim over the domain name and the present respondent cannot claim or derive right of the third party, who is owner of the trademark 'JCDECAUX'.
- 6.5 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. in *Trivago N.V. is. Shiv Singh (INDRP/1 171) and WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767*.
- 6.8 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp with a double border. The text inside the stamp reads "SANJEEV KUMAR CHHABWAL ADVOCATE SOLE ARBITRATOR * DELHI *".

- 6.9 Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie the case* is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is very much clear that the Respondent / Registrant, who is actually squatter is using the disputed domain name in bad faith and has registered the domain name. ***[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupod.d. v. WACHEM d.o.o. D2004-011.***
- 6.10 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant have no right or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 6.11 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element. ***FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesel Ischaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304.***
- 6.12 The prior decision of a Panel in ***M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705*** wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <*americaneagle.co.in*>by the Respondent, ***It*** was held that

"The disputed domain name is very much similar lo the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier.

A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant.

- 6.13 It was observed and is settled principle that *“it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights”* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

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

- 6.14 As the Registrant / Respondent, who had obtained registration of domain name *<jcdcaux.in>* un-authorisedly on 2023-10-12, through the IN. registry Registrar's and the impugned registration is valid up to 2024-10-12 in the records.
- 6.15 The validity of the said registration obtained by the Respondent / registrant for is only one year and is for renewal in the month of October 2024, as such no financial loss will occur to the Registrant / Respondent, if the impugned registration is cancelled and is restored back to the complainant herein but in the case, if the impugned registration is not restored to back complainant then monetarily as well as reputation, goodwill loss will certainly occur to the complainant herein as the impugned domain *<jcdcaux.in>* will be open to misuse and misappropriation by any third party.



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As such, it is clearly proved from the documents submitted and attached as annexure with the complaint against the respondent herein that the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy for relief.

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



**SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI**

NEW DELHI

DATE 28th of June 2024