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INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION

Sole Arbitrator: Neeraj Aarora

Red Bull AG Vs Shubham Sethi

Arbitration Award

Disputed Domain Name: 'redxbull.in'

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INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: Neeraj Aarora

Arbitration Award

Disputed Domain Name: **REDXBULL.IN**

In the matter of:

Red Bull AG

Poststrasse 3, 6341 Baar,
Switzerland.

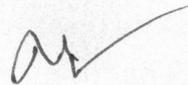
.....Complainant

Versus

Shubham Sethi

7C, Green 7,
Amritsar, Punjab - 143001.

.....Respondent



I. The parties

a. Complainant

Red bull AG
Poststrasse 3, 6341 Baar Switzerland

Represented by:

Advocate Mr. Sumit Prasad
ZeusIP Advocates LLP
Ph: +91-11-41370000; 41824330; 41824331
Direct No: +91-11-41370001
Fax: +91-11-41823444
Email: sprasad@zeusip.com; info@zeusip.com

b. Respondent

Shubham Sethi
7C, Green 7,
Amritsar, Punjab – 143001
Email: shubhamsethi11125@gmail.com

II. Disputed Domain Name & Registrar

a. Disputed domain name

'redxbull.in'

Date of Registration of Domain name: 15/02/2020

b. Registrar of the domain name:

Hosting Concepts B.V. d/b/a Openprovider
abuse@openprovider.com

Address: Kipstraat 3c, 3011RR Rotterdam, The Netherlands

c. The registry is the National Internet Exchange of India (hereinafter referred to as NIXI).

III. Procedural History

- a. That the Complainant, through his authorized representative, has submitted the Complaint dated 01/10/2020 to the INDRP for arbitration of domain name dispute.
- b. Shri Neeraj Aarora was appointed as Sole Arbitrator by NIXI vide email dated 20/10/2020 & Shri Neeraj Aarora has accepted the assignment and also given his statement of acceptance and declaration of impartiality and independence. The arbitration proceedings are deemed to have been commenced on 27/10/2020.
- c. That the notice was issued to the respondent on 27/10/2020, directing respondent to submit his reply to complaint by 11/11/2020.
- d. That on 28/10/2020, the Respondent vide his email offered to sell the domain name to the Complainant at reasonable price. However in response, vide email dated 30/10/2020, the Respondent was advised to submit the reply on merit.
- e. That on 01/11/2020, the Respondent again submitted his offer to sell the domain name to the Complainant at a reasonable price. However the Respondent was again advised to submit the reply on merit and regarding his offer to sell, it was mentioned that it is upon the Complainant to take a call. The Arbitral Tribunal will decide the matter on merits.

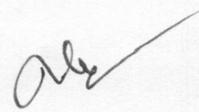


- f. That, since no reply was received from the Respondent till 11/11/2020 despite the fact that he has acknowledged the receipt of the complaint, on 12/11/2020, the Respondent was given another opportunity to file the reply by 19/11/2020 and it was specifically mentioned that in the event of failure of the Respondent to submit the reply, the matter will be proceeded ex-parte.
- g. That, despite various communication/ opportunities, no reply was received from the Respondent, hence, the proceeding was closed and vide email dated 21/11/2020, it was informed to the parties including Respondent, and the matter would be decided on the basis of documents and ex-parte against the Respondent.

IV. Parties Contention

A. Complainant

- a. That the Complainant 'Red Bull AG' is registered under the laws of Switzerland and the said company is a wholly owned subsidiary of Red Bull GmbH which is registered in Austria. The Complainant company also has wholly owned subsidiary in India i.e. Red Bull India Pvt. Ltd and all these companies have been termed collectively as Complainant company (used herein after)
- b. That the RED BULL energy drink, a product of Complainant company Red Bull GmbH which was launched in the year 1987 in Austria and



thereafter sold in 172 countries through Red Bull wholly owned subsidiaries or distribution partners.

- c. That 'RED BULL' mark is owned by the Complainant company which is protected in 188 jurisdictions throughout the world. The term 'BULL' which is registered as a trademark in approx. 112 trademark jurisdiction and used by the Complainant company to designate its product.
- d. That Complainant company owns the trademark registration for the 'Double Bull' Device in 184 trademark jurisdictions and for 'Single Bull' Device in 97 jurisdictions.
- e. That the word 'RED BULL' is part of the trade name of the Complainant as well as the trademark and due to extensive use of the 'Red Bull' marks, now it is associated exclusively with the Complainant and by virtue of extensive sale and promotional activities, it has acquired the worldwide reputation and goodwill associated with the goods and services of Complainant company.
- f. That Complainant has acquired various trademarks registrations in India as mentioned below.

S.No	Trademark	Reg. No.	Date of application	Class(es)
1	RED BULL	780143	28/11/1997	32

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2	Red Bull 	1375801	05/08/2005	30, 33, 34
3	Red Bull 	1925032	1925032	32
4	BULL	2144097	13/05/2011	32
5	Red Bull 	2657090	13/01/2004	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 28, 29, 31, 36, 37, 38, 39, 40, 42, 44 & 45
6	RED	2765945	01/07/2014	32
7	Red Bull	IRDI- 2976781	30/01/2015	1, 2, 3, 4, 5, 6, 7, 8,

abu

		(International Registration no. 1228358)		9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44 & 45
8	Red Bull	IRDI- 3273897 (International Registration no. 1228358A)	03/08/2015	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44 & 45

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9		IRDI- 3270378 (Internation al Registratio n no. 1215744B)	25/09/2014	25, 28, 32, 41, 43
10		IRDI- 3271910 (Internation al Registratio n no. 1228359A)	28/01/2015	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44 & 45

g. That Complainant company is registered as the owners of various domain names incorporating the term 'RED BULL' under both the genetic top-level domain and respective country wise top-level domain in as many as 196 countries. Red Bull also owns a domain name www.redbulls.com

which was registered on 12-Nov-1998 containing the business activities of the EC RED BULL Salzburg.

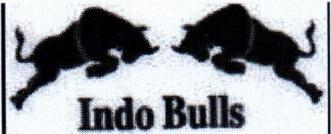
- h. That Complainant company is also the registered owner of domain name www.redbull.in in India.
- i. That the Complainant company sales volume has grown to 7.5 billion throughout the world in 2019 and in India itself it is 110 million serving units. Similarly the market share of the Complainant company for the said product is 69.1% in India and similar figures have been provided for the other countries as well.
- j. That the Complainant company has invested over 651.7 million Euros in media marketing throughout the world and has also spent huge amount as marketing expenses to develop its goodwill and reputation which was inter-alia to the extent of 1,811,300,000 Euros in 2019.
- k. That the Complainant company has got favorable decisions in domain name disputes worldwide and some of them are as follows:

Other Mark	Court	Country	Date
red-bull.boutique	WIPO Arbitration and Mediation Center	International	09.07.2015
redbull.wang	WIPO Arbitration and	International	27.11.2014

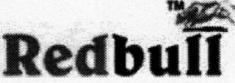
	Mediation Center		
redbullstaff.com	WIPO Arbitration and Mediation Center	International	18.12.2012
red-bull.com	WIPO Arbitration and Mediation Center	International	07.03.2011
redbullgames.com	WIPO Arbitration and Mediation Center	International	30.07.2007
redbull-jp.net	WIPO Arbitration and Mediation Center	Japan	19.09.2006
Red-bull.cc	WIPO Arbitration and Mediation Center	Austria	23.05.2004
Redbulls.com	WIPO Arbitration and Mediation Center	Hong Kong	13.08.2002

Redbul.com	WIPO Arbitration and Mediation Center	Turkey	24.10.2001
Redbull.tv	WIPO Arbitration and Mediation Center	Austria	22.10.2001
Redbull.org	WIPO Arbitration and Mediation Center	Germany	21.09.2000

1. That the Complainant company has also obtained interim injunction from various courts for trademark infringement:

S.No	Suit Particulars
	<p>CS (OS) No. 2889/2014 before High Court of Delhi (Red Bull AG Vs. K. Sridhar)</p> <p>Third party impugned mark- INDO RED BULLS, INDO BULLS &</p> <p></p> <p>Impugned goods: Power Steering Oil.</p>
	CS (OS) No. 2484/2014 before High Court of Delhi (Red Bull

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	<p>AG Vs. Vinod Kumar & Ors.)</p> <p>Third party impugned marks- Red Bull, </p> <p>Impugned Goods: Shoes.</p>
	<p>CS (O.S.) No. 451 of 2015 before High Court of Delhi (Red Bull AG versus Tarun Hansraj Rambhia & Anr.)</p> <p>Third party impugned marks-Red Bull/ </p> <p>Impugned Goods: Clothing apparels.</p>
	<p>CS (O.S.) No. 2255 of 2015 (Red Bull AG versus J. Mohammed Rafi</p> <p>Third party impugned mark-Red Bulls/</p> <p>Impugned Services: Fitness Centre.</p>
	<p>CS (O.S.) No. 2187 of 2015 before High Court of Delhi (Red Bull AG versus Shabeer Abdulla)</p> <p>Third party impugned marks-RED BULL, </p> <p>Impugned Services: Health Centre & Gym.</p>
	<p>TM No. 1504/2016 before Saket District Court (Red Bull AG versus Mr.Vasant Raj M. Lunker)</p> <p>Third party impugned marks-Red Bull, / </p>



	 Impugned Goods: Ready Made Garments
	TM No. 7/2017 before Saket District Court (Red Bull AG versus Ms. Stanger Fashion Club) Third party impugned mark- Red Bull/  Goods & Services: Clothing.

B. Respondent

The Respondent has responded to the notice sent by this Arbitral Tribunal but the Respondent has not filed any reply on merit in response to the compliant. However the Respondent offered to sell its domain name 'www.redxbull.in' to the Complainant for a price to which the Arbitral Tribunal observed it was for the Complainant to take a call and the Arbitral Tribunal would decide the case on merit. Despite various opportunities, the Respondent did not submit any reply on merit.

V. Findings

A. Applicable Law and Rules

- a. The present dispute is being decided as per .IN Dispute Resolution Policy (INDRP) comprising of **The .IN Domain Name Dispute Resolution Policy (INDRP)** and **INDRP Rules of Procedure**. It is mentioned in **Para 5** of **The .IN Domain Name Dispute Resolution Policy (INDRP)** that *"The Arbitrator shall conduct the Arbitration Proceedings in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration & Conciliation (Amendment) Act,*



2015 read with the Arbitration & Conciliation Rules as well as the INDRP Policy and Rules, as amended from time to time.”

- b. In terms of Para 4 of **The .IN Domain Name Dispute Resolution Policy (INDRP)**, three premises are to be taken into consideration for deciding the dispute:

“(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

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

B. The Respondent's Default

- a. That the Respondent has received the notice but consciously chosen not to reply on merit despite being given various opportunities.
- b. The Rule 12 of INDRP Rules of Procedure provides as follows:
*“12. Default by Parties
In event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law.”*
- c. In view of the intentional conduct of the Respondent in not filing the reply to the complaint, Respondent is proceeded **‘ex-parte’**.

C. Identical/ Confusingly Similar

a. The domain name used by the Respondent is '**www.redxbull.in**' while the Complainant has registered trade name/ trademark 'RED BULL' registered in India and also in various countries and the Complainant has also its domain names/websites '**www.redbull.in**' and '**www.redbull.com**'.

b. The plain test to identify whether the domain name is identical or confusingly similar is the side by side comparison of the domain name.

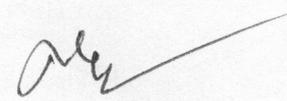
As also referred in the **WIPO Jurisprudential Review 3.0:**

"The standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

c. The domain name of the Complainant and the Respondent are shown in the table for side by side comparison:

Domain name of Complainant	Domain name of Respondent
'redbull.com'	'redxbull.in'
'redbull.in'	



- d. The registration and use of a identical/ confusingly similar domain name as that of trademark of the Complainant is a direct infringement and it was also observed in the matter of **F Hoffman-La Roche AG vs Relish Enterprises (WIPO) D2007-1629:**

“If the Complainant owns a registered trademark, then it satisfies the threshold requirement of having the trademark rights and the domain name is confusingly similar to Complainant’s trademark because the disputed domain name looks and reads like Complainant’s trademark.

- e. The comparison of the domain name is substantial as the Respondent has merely added the alphabet ‘x’ in between ‘RED’ & ‘BULL’ which is insignificant and sufficient to be identical or deceptively similar to the Complainant’s registered trademark ‘RED BULL’. In such circumstances, it would give the impression that the domain name of the Respondent has some connection with the Complainant. In the similar scenario it was observed by the Hon’ble High Court of Delhi in the matter of **Thoughtworks Inc. Vs Super Software Pvt Ltd & Ors (MANU/DE/0064/2017)**

“With the domain name taking up the entire name of the Petitioner, there could be no doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of Respondent No 1 with the Petitioner where there is none.

- f. In case of trademarks with well-built goodwill, reputation & wide spread presence on internet, any re-arrangement with substantial similarity was to encash the goodwill of the reputed trademarks by creating closer imitation. It was observed in the matter of **Forest Laboratories Inc Vs Natural Products Solutions LLC Case No.**

D2011-1032.; Forest Laboratories Inc. Vs Clark Grace Case No. D2011-1006 (WIPO):

“Typosquatting involves the intentional rearrangement or change of a few letters in the mark to make a nonsensical but close imitation deliberately intended to catch a tired or careless typist’s search for the mark wonder’s website. Usually, the added or substituted letter or addition involves a character immediately adjacent to the replaced one” - [Eg. Amazon.com Vs Steven Newman Aka Jill Waserstein AKA Pluto Newman (WIPO)]”

- g. In terms of **Para 3 of INDRP Rules of Procedure**, it is the obligation of the Respondent to ensure that the domain name registered by him does not violate upon the Right of any other person. **Para 3** provides as follows:

“3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.”*

- h. In the facts and circumstances of the present case, where the trademark/ trade name ‘RED BULL’ of the Complainant is registered

across the world and enjoy a wide reputation and goodwill & as such, the Respondent fails to discharge his obligation in terms of **Para 3(b)** referred above and hence this tribunal is of the view that the disputed domain name is confusingly similar to Complainant's Mark.

D. Rights and Legitimate Interest

- a. The Respondent is required to prove any of the circumstances provided under **Clause 6** of INDRP (Policy) in order to prove legitimate interests:
 - i. Before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
 - ii. The Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
 - iii. The Registrant is making a legitimate non – commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

- b. That this requirement to be proved by the Complainant is the negative one and as such the Complainant is required to establish a prima facie case in respect of lack of right or legitimate interest of the Respondent in the disputed domain name and thereafter the burden of proof will shift to the Respondent.

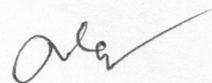
c. The Complainant is able to prove its rights and legitimate interest in the trademark 'RED BULL' and has also produced the evidence of its registration across the world and amount spent by it as media and marketing expenses for generating goodwill and reputation, while the Respondent despite acknowledging the claim of the Complainant has not denied the claim and in fact made an assertion in reply '*that Respondent offered to sell domain name to Complainant*' which supports the contention of the Complainant and contradicts the contention of the Respondent as to the right or legitimate interest in the domain name '**www.redxbull.in**'.

d. That in reply to the Complainant claim, Respondent vide its e mail dated 01/11/2020 submitted:

"We have gone through your email and soft copy provided by NIXI. We want to clarify you that we have no intentions to hurt anyones sentiments. So if the complainant wants to own the domain "REDXBULL.in", we can transfer the domain to the party on a reasonable price. We have no objection in reselling our domain."

Thus the Respondent has nowhere asserted any right or legitimate interest in the domain name.

a. In the facts and circumstances of the case, when the trademark of the Complainant is well known, enjoys international reputation and trade name is known across the globe and the Respondent creates a deceptive domain name incorporating the entire trademark, the Respondent cannot be said to have a right or legitimate interest. It was



also observed in the matter of **Wockhardt Ltd vs Kishore Tarachandani: (INDRP Dispute Case no: INDRP/382)**

“The Respondent cannot have a right or legitimate interest in the disputed domain name when it incorporates the entire mark of the Complainant - Clear case of abusive registration of a well-known mark.”

- e. That in the fact and circumstances, this Tribunal is of the view that Respondent does not have legitimate rights and interest in the domain name.

E. Registered or Use in Bad Faith

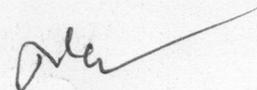
- a. That in order to prove that the Respondent has ‘Registered or used in bad faith’ the impugned domain name, Complainant has to prove one of the conditions provided under clause 7 of INDRP which are as follows:

“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."

- b. That the reply of the Respondent with an offer to sell the domain name to the Complainant without asserting any legitimate right or interest or explanation for adoption of the impugned domain name itself indicates that the Respondent has registered the domain name in bad faith.

- c. That as the trademarks/ trade names of the Complainant are so famous & also distinctive that the Respondent must have had actual knowledge of the trademark prior to registering the disputed domain name. There cannot be any doubt from the evidence put before this Arbitral Tribunal that the Complainant's marks are well known and that the Respondent intended to capitalize on this confusion. By registering the disputed domain name with actual knowledge of the Complainant's trademark, which was further reinforced by the chain of events above, the Respondent acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the intellectual property rights of another entity, which is the scenario of the present case.

d. That considering the well built reputation of the Complainant at National/ International level, its registration as trademark in India and abroad and conduct of the Respondent in registration of the domain name with an minor addition of alphabet 'x' between 'RED' & 'BULL' itself lead to irrebuttable conclusion that the Respondent was aware about the complainant trademark and its similar domain '**www.redxbull.in**' and have registered the disputed domain name in bad faith.

e. That it was held in the matter of **Viacom International Inc & MTV Networks Europe vs Web Master (Case No. D2005-0321-WIPO)**

“Given long and widespread reputation of the Complainant’s mark, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant’s widely known and distinctive mark but identical thereto, 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. Potential partners and end users are led to believe that the website is either the Complainant’s site, especially made up for bearings, or the site of the official authorized partners of the Complainant, while, in fact, it is neither of these.”

f. That the Hon’ble High Court in the matter of **ITC Ltd vs Travel India (Case No, L-2/5/R4 OF 2008 - NIXI):**

“Registration of domain name which is identical to trademark, with actual knowledge of the trademark holder’s rights is strong evidence that the domain name was registered in bad faith. “

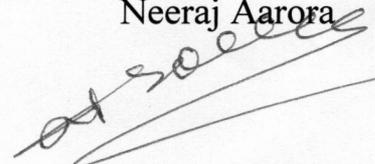
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g. Therefore the entire facts and circumstances lead to irrefutable conclusion that the disputed domain name has been registered by the Respondent in bad faith.

I. Decision

In view of the aforesaid facts and reasons, the Complainant has proved its case and therefore this Arbitral Tribunal directs that the disputed domain name 'redxbull.in' is to be transferred to the Complainant.

Neeraj Aarora



Sole Arbitrator

Date: 22/12/2020