



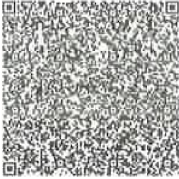
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Certificate No.	: IN-DL11300176160844S
Certificate Issued Date	: 27-Nov-2020 04:12 PM
Account Reference	: IMPACC (IV)/ dl916803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91680327520133006890S
Purchased by	: VIKRANT RANA
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: VIKRANT RANA
Second Party	: Not Applicable
Stamp Duty Paid By	: VIKRANT RANA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)**

**ARBITRATION AWARD
Disputed Domain Name: <MODERE.IN>**

Muranti Kane

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IN THE MATTER OF

Maple Mountain Group Inc., U.S.A.

588 South 2000 West, Springville,

Utah 84663,

United States of America

...Complainant

-----versus-----

Mr. Bharat Tulsiyani

D-201, Pushkar Homes,

B/h. Navneel Party Plot, Nana Chiloda,

Ahmedabad - 382330,

Gujarat

...Respondent No. 1

Mr. Sandeep Dhirajlal Sharma

t/a Modere,

Shop 4 and 5, Opposite Arya Samaj Mandir,

Navjeevan Society, Saijpur Bogha,

Ahmedabad 382345,

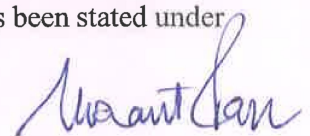
Gujarat

...Respondent No. 2

1. The Parties

The **Complainant** in this arbitration proceeding is **Maple Mountain Group Inc.**, which was incorporated in 1987 and is a company involved in designing, manufacturing and selling of wellness, personal, beauty and household care products. As per the documents placed on record by the Complainant, "**MODERE**" is the trade name of the Complainant, and the Complainant is also the owner of various **MODERE** formative marks in many countries, and has also filed an application for the mark **MODERE** in India.

The **Respondents** in this arbitration proceeding are **Mr. Bharat Tulsiyani (Respondent No. 1)** and **Mr. Sandeep Dhirajlal Sharma (Respondent No. 2)**. **Respondent No. 1** is a website and domain consultant, and **Respondent No. 2** is a sole proprietor engaged in the business of salon and cosmetic products, in Gujarat. The Respondents have their individual businesses and do not have any joint interest in the disputed domain name. As per the documents placed on record in this matter, **Respondent No. 1** is the Registrant of the disputed domain name, and **Respondent No. 2** is the actual user of the of the said domain name. This has been stated under affidavit by the Respondents.



The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**MODERE.IN**> with the .IN Registry. The Registrant in the present matter is “**Bharat Tulsyani**”, and the Registrar is **GoDaddy.com, LLC**.

2. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated October 22, 2020, had sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of his availability and gave his consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. October 22, 2020. Thereafter the Arbitrator received soft copies of the Domain Complaint and the annexures thereto (along with a copy of the complete/un-redacted WHOIS records of the disputed domain name) on October 26, 2020. The Complainant acknowledged receipt of the same via email on October 27, 2020, and shortly thereafter sent a soft copy of the final accepted complaint along with annexures, to the Arbitrator, and informed that they are taking steps to serve both soft and hard copies of the complaint with annexures to the Respondents. Shortly thereafter, vide email on the same date, the Complainant served a copy of the Complaint upon the Respondents via email (whilst keeping the Arbitrator and NIXI in loop) and informed that the hard copy is also being served upon them.

The Arbitrator then sent an email to the Complainant on November 02, 2020, inter alia requesting them to confirm whether the copy of the Complaint (along with annexures) has been served upon the Respondent, and if so, provide proof of service. The Complainant responded via email on the same date, and informed that the soft copy was received by the Respondent on October 27, and the hard copy was also received by both Respondents on October 29, and provided proof of service along with the same.

Thereafter, the Arbitrator, vide email dated November 03, 2020, announced that the Complaint along with Annexures had been duly served upon the Respondents, and the Respondents were granted a period of **fourteen (14) days** from the date of receipt of the email dated November 03, 2020, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from November 03, 2020.

Thereafter the Respondents responded via email on November 19, 2020, inter alia collectively undertaking to amicably resolve this matter and to surrender the disputed domain name and claim no right or interest or any title over the same. In this regard, the Respondents also

Vikrant Rana

submitted a notarized Joint Affidavit to this effect, and requested the Arbitrator to take the same on record and pass an appropriate order to transfer the disputed domain name to the Complainant.

The Arbitrator acknowledged receipt of the above correspondence and affidavit via email on November 20, 2020, and reserved the award to be passed on the basis of all material on record and in accordance with the law as applicable .

3. Factual Background and Complainant's Contentions

The Complainant has inter alia submitted that **MODERE** is its primary trademark, and the same is used in respect of hair-care products, weight-loss products, etc. The said mark also acts as the trade name of the Complainant. Complainant has submitted that its products are sold under the mark **MODERE** in several countries, including in India. The Complainant has submitted that it uses the below marks in relation to their business and products:



The Complainant has submitted that it operates an official website at **WWW.MODERE.COM**, and has annexed excerpts from the said website as **Annexure "1"**. The Complainant has further submitted that its brand and products have been featured in various third party (news/media) articles, and has provided copies of some such specimens as **Annexure "2"**.

The Complainant has also submitted that it has obtained registrations for its trademark **MODERE** in various countries, including but not limited to in Japan, South Korea, Thailand, Philippines, Mexico, Indonesia, Canada, Malaysia, Singapore, Australia, Israel, New Zealand, USA, Switzerland, China, the European Union, etc., and has provided excerpts of the said registrations from the website of WIPO's Global Brand Database as **Annexure "3"**. The Complainant has also provided information about its trade mark application in India, namely application no. **4300662** in classes 3, 5, 30, 32, 35, 41 and 44 for the mark **MODERE**.

The Complainant has submitted that it has been using its mark **MODERE** in India for a long time, and that its products have been shipped to India via e-commerce websites, even before it started direct sale in India via independent distributors.

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As regards the present matter and the Respondents, the Complainant has submitted that its Indian trade mark application was objected by the Trade Marks Registry on grounds of a prior application being on the Register, specifically application no. **4016441** in class 03 for the mark



in the name of **SANDIP DHIRAJLAL SHARMA (Respondent No. 2)**. The Complainant had conducted its own due diligence in this regard, and had discovered that Respondent No. 2 was operating a website on the disputed domain name **<MODERE.IN>**. The Complainant however discovered that the said domain name was registered in the name of the **Respondent No. 1**. Hence both the Respondents were impleaded in this matter. The Complainant has submitted that it had sent letters to the Respondents in respect of this matter (annexed as **Annexures "8"** and **"9"**) and the Respondents, via their counsel, had responded, inter alia expressing their intention to voluntarily surrender the disputed domain name (response attached as **Annexure "10"**). The Complainant has submitted that subsequent talks were conducted regarding settlement of the matter, but the matter of transfer of the domain name got delayed due to the outbreak of COVID-19, and the Respondent's counsel stopped responding, and hence the Complainant was constrained to file the present complaint.

Other Legal Proceedings

The Complainant has submitted that there are no other legal proceedings that have been commenced against the Respondents in relation to the domain name **<MODERE.IN>**.

Reliefs claimed by the Complainant

The Complainant has claimed for the disputed domain name, i.e. **<MODERE.IN>** to be transferred to it.

A handwritten signature in blue ink, appearing to read 'Narant Kana', is located in the bottom right corner of the page.

4. Respondent's Contentions

The Respondents vide their email dated November 19, 2020, has inter alia submitted the below:

"Dear sirs,

With respect to the captioned INDRP Case No. 1286, we the respondents Mr. Bharat Tulsiyani and Mr. Sandip Sharma collectively undertake to resolve the matter amicably. We undertake to cooperate and surrender the impugned / disputed domain name and further claim no right or interest or any title over the same.

It is to bring under your kind notice and good record that we have executed a short affidavit wherein we submit before the Hon'ble tribunal/ office our undertaking and wish to settle the matter amicably without prejudice to the rights of any party involved in the present matter.

Kindly take the affidavit on record and you may pass an appropriate order to transfer the domain to the complainant and withdraw any rights if left over in our title subject to cost and damages are not awarded as we never initiated with the use till now and undertake to not to use the same again.

Anticipating a just and equitable order.

Kindly extend the delivery of order to us by any mode or medium convenient to this Hon'ble Forum.

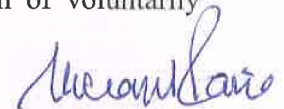
Thank You

Bharat Tulsiyani"

Vide their joint affidavit, the Respondents have submitted that **Respondent No. 1** is a "website and domain consultant", whereas **Respondent No. 2** is a sole proprietor engaged in the business of salon and cosmetic products in the state of Gujarat, and that they have their separate businesses and have neither any collusion nor any joint interest in the disputed domain name.

The Respondents have reiterated the settlement grounds and have agreed/confirmed that the domain name may be transferred to the Complainant.

The Respondents have submitted that they had already ceased use of the domain name, prior to the initiation of the present proceedings, and always had the intention of voluntarily surrendering the domain.



The Respondents have stated that they claim no proprietorship or ownership or any sort of title or interest over the disputed domain name and have further undertaken to cooperate in this regard.

5. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- a. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- b. The Registrant has no rights and legitimate interest in respect of the domain name;
- c. The Registrant's domain name has been registered or is being used in bad faith.

However, based upon the facts and circumstances and further relying on the materials as available on the record, as the Respondents herein have agreed to voluntarily surrender the disputed domain name to the Complainant and has requested that the same be transferred to the Complainant, I feel no need to substantially deliberate upon the merits of the case.

i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights
(Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)

Notwithstanding the Respondent's commitment towards surrendering the disputed domain name to the Complainant, it is necessary to analyze the first element of the Policy, to inter alia ascertain whether the Complainant has rights in a mark which is identical or confusingly similar to the disputed domain name.

In this regard, the Complainant has established its rights in the mark **MODERE**, by way of trademark registrations, in India as well as globally, and common law rights arising out of longstanding use thereof.

The domain name in question, <**MODERE.IN**>, incorporates the mark **MODERE** in toto (barring the necessary ccTLD suffix, .IN).

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy, and that the disputed domain name <**MODERE.IN**> is confusingly similar to the Complainant's trade mark(s).



- ii. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)

As the Respondents have voluntarily agreed to surrender the disputed domain name, I will not be addressing this element of the Policy.

- iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)

As the Respondents have voluntarily agreed to surrender the disputed domain name, I will not be addressing this element of the Policy.

6. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, I am of the view that the Complainant has established legitimate proprietary rights over the name/mark **MODERE**.

In view of the Respondents' response/affidavit/undertaking, and in accordance with the Policy and Rules thereto, I hereby allow the prayer of the Complainant and direct the .IN Registry to transfer the domain <MODERE.IN> to the Complainant.

As the Respondents have no-objection to the transfer and have undertaken as much vide their response and affidavit, the Arbitrator directs the .IN Registry to immediately facilitate the transfer of the disputed domain name to the Complainant, without waiting for the standard implementation period of ninety (90) days, as has been held by prior INDRP panels in *World Wrestling Entertainment Inc. v. Watch Wrestling [INDRP/1208]* and *Your Holding B.V. v. Mr. Jibu James [INDRP/821]*.

The Award is accordingly passed and the parties are directed to bear their own costs.


Vikrant Rana, Sole Arbitrator

Date: November 30, 2020.

Place: New Delhi, India.