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BEFORE THE .IN REGISTRY OF INDIA

INDRP CASE NO. 1316

IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY ("INDRP" or "the Policy"); THE INDRP RULES OF PROCEDURE
("the Rules") AND THE ARBITRATION AND CONCILIATION ACT, 1996

FINAL AWARD

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IN THE MATTER OF

Fifth Gear Ventures Limited
Mahindra Towers,
2A, Bhikaji Cama Place, Krishna Puram
New Delhi – 110066

...Complainant

versus

Influence Inc.
269, Beverly Dr
PH 1432
CA 90212, USA

...Respondent

AND

IN THE MATTER OF

A DISPUTE RELATING TO THE DOMAIN NAME CARANDBIKE.IN

FINAL AWARD

Dated this the 16th day of March 2021

Venue: New Delhi, India



ROBIN RATNAKAR DAVID
SOLE ARBITRATOR

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant, Fifth Gear Ventures Limited is incorporated under the Indian Companies Act, 1956, having its address at Mahindra Towers, 2A, Bhikaji Cama Place, Krishna Puram, New Delhi 110066. The Complainant's representative is stated to be Mr. V. Janakiraman VENKATASUBRAMANIAN.JANAKIRAM@MAHINDRA.COM.

2. The Respondent

The Respondent is Influence Inc. having its address at 269 S Beverly Dr, PH 1432, CA 90212 USA; email: domreg@tq6.com.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. This arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (**the Policy**) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name www.carandbike.in with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 16.09.2020 (**the Rules**) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

Filing of the Complaint and Constitution of the Arbitral Tribunal

2. The Complainant filed a complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain



Name was carandbike.in to the Complainant on 22 December 2020. On 13 January 2021, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in the said matter. On 13 January 2021, Mr. David, gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator.

3. On 14 January 2021, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator was constituted under Rule 5(b) of the Rules in respect of the Complaint filed by Fifth Gear Ventures Limited against Influence Inc., the Respondent.
4. On 16 January 2021 the Arbitral Tribunal issued the **Notice of Arbitration** under Rule 5(c) of the Rules.
5. This Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

Domain Name: carandbike.in
Registry Domain ID: D5FE98D454ED449ED862BFB803B693C31-IN
Registrar WHOIS Server:
Registrar URL: <http://www.dynadot.com>
Updated Date: 2021-01-07T04:48:11Z
Creation Date: 2020-10-31T11:46:17Z
Registry Expiry Date: 2021-10-31T11:46:17Z
Registrar: Dynadot LLC
Registrar IANA ID: 472
Registrar Abuse Contact Email:
Registrar Abuse Contact Phone:
Domain Status: clientUpdateProhibited
<http://www.icann.org/epp#clientUpdateProhibited>
Domain Status: serverUpdateProhibited
<http://www.icann.org/epp#serverUpdateProhibited>
Domain Status: clientDeleteProhibited
<http://www.icann.org/epp#clientDeleteProhibited>
Domain Status: clientHold <http://www.icann.org/epp#clientHold>



IV. PROCEDURAL HISTORY

1. On 16 January 2021, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent with the Complaint and annexures by email. The Respondent was directed to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 27 January 2021. In addition, the service by the Arbitral Tribunal, the Complainant was directed to serve a hard copy and a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complainant failed to comply with this direction of the Arbitral Tribunal. The Complaint (including annexures) was sent at the email address of the Respondent shown in the WHOIS details and service on the Respondent was done in accordance with Rule 2 of the Rules. However, the Respondent did not file a response to the Complaint by 27 January 2021, the timeline set by the Arbitral Tribunal.
2. Thereafter, in the interest of justice, on 28 January 2021, the Respondent was granted a second and a final opportunity to file a response to the Complaint within a week that is on or before 04 February 2021. It was also mentioned that in case a response is not filed, the Complaint will be determined by the Arbitral Tribunal after considering the Complaint and evidence on record in accordance with the law.
3. On 29 January 2021, the Respondent sent an email stating that it was happy to transfer the domain to the Complainant. The email is as under –

*"Dear All,
Please note we have just registered this domain name and were not aware that it is part of any trademark. Therefore without further action we are happy to transfer the domain to the account of your client. Let us know the next steps or your client can send us a request for transfer and we will approve the same and transfer the domain. Hope this is to your satisfaction.
Influenc Team
domreq@tq6.com"*

Handwritten signature




4. Accordingly, the Complainant was directed to respond to the settlement offer of the Respondent on 05 February 2021. The Complainant was also directed file the Whois domain name information of carandbike.in. A final opportunity was granted to the parties to file the within three days. However, the Complainant did not respond to the directions of the Arbitral Tribunal. Thereafter, on 12 February 2021, the Complainant was directed to respond to the settlement offer by the Tribunal within three days. However, the Complainant failed to respond to the same in time.
5. The Complainant on 18 February 2021 sent a mail to the Respondent, with the Arbitral Tribunal in cc, which only shows that it made attempts to contact the Respondent unilaterally. The Respondent then by mail dated 23 February 2021 said that the domain name is under a URDP Lock and they are unable to transfer the same. The Tribunal, therefore, sought the confirmation of the settlement offer email dated 23 February 2021. The Respondent confirmed its intention to settle the matter by email dated 23 February 2021. However, the Complainant did not respond to the email of the Arbitral Tribunal dated 23 February 2021. The Arbitral Tribunal regretfully notes that the Complainant has not cared to comply or respond to the directions of the Tribunal dated 16 January 2021, 28 January 2021, 05 February 2021 and 23 February 2021.
6. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as NIXI.

V. PARTIES' CONTENTIONS

COMPLAINANT

1. The Complainant's position is that it is a company registered under the Indian Companies Act, 1956, and is engaged in the business of maintaining and operating a website in the name and style of www.carandbike.com. The said website is an e-commerce platform to facilitate sale and purchase of automobiles. The Complainant is the registered proprietor of the trademark CAR AND BIKE in India and holds the following registrations.



SR NO.	TRADE MARK	REGN NO	CLASS	DATE OF APPLICATION	STATUS
1.		4263942	37,38,39,41 and 42	13 th August 2019	Registered and valid upto 13 th August 2029
2.	CarandBike.com	3037533	37,38,39,41 and 42	20 th August 2015	Registered and valid upto 20 th August 2025
3.	CarAndBike	2912533	35 and 41	27 th February 2015	Pending
4.		1387122	9, 16 and 41	29 th September 2005	Registered and valid upto 29 th September 2025
5.	CAR AND BIKE SHOW	4327194	38,39,41 and 42	22 nd October 2019	Pending
6.		4263944	37,38,39,41 and 42	13 th August 2019	Pending

2. The Complainant states that it was previously controlled by the NDTV group and is now owned by Mahindra First Choice Wheels Limited. The Complainant has carried on its business activities under the trademark "car and bike". The Complainant states that its predecessors have taken steps to record the assignment of said trademarks in favour of the Complainant and the same are pending before the Trademarks Registry in India. The Complainant states that the said trademark is being continuously used since its inception.
3. The Complainant states that the Respondent has registered the domain name "carandbike.in" which incorporates in entirety the registered said Trade Mark "CAR AND BIKE" of the Complainant and is identical to the Complainant's domain name "www.carandbike.com".
4. The Complainant states that the disputed domain name was registered without consent or authorization from the Complainant and on www.whois.net global domain registration database it is revealed that the disputed domain name was initially registered in the year 2009 under the name of AJ Corp based in Great Britain. Thereafter, the Respondent renewed its registration on 31 October 2020 and on visiting the domain name no content was found and it only displayed "Coming Soon" along with a link to the privacy policy.



5. The Complainant's contention is that the domain name "*carandbike.in*" is identical and/or similar to said trademark and domain name. The Respondent's lack of rights or legitimate interest in the domain name.
6. It is also contended that the impugned domain name was registered in bad faith and the Respondent has no legitimate rights or interest in the disputed domain name.

RESPONDENT

7. The Respondent did not file a response or a reply to the Complainant's contentions, however; the Respondent has offered to transfer the domain name to the Complainant by email of 29 January 2021 and confirmed the same by email of 23 February 2021.

VI. DISCUSSIONS AND FINDINGS

1. Paragraph 4 of the Policy requires that the in order to obtain the transfer of the disputed domain name, the Complainant will have to prove that.
 - (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 interest in respect of the domain name; and
 - (iii) The Respondents' domain name has been registered or is being used in bad faith.
2. The Respondent has not filed a response to the Complaint and has consented to transfer the disputed domain name to the Complainant unconditionally and on the basis of the communication namely emails of 29 January 2021 and 23 February 2021. The Complainant has not given any response to the Arbitral Tribunal on the settlement offer even though the Arbitral Tribunal invited the Complainant to specifically respond to the offer. The Arbitral Tribunal is of the view that the consent of the Respondent to transfer the domain name *carandbike.in* to the Complainant is genuine and unilateral.




3. The Arbitral Tribunal notes that consent to transfer by the Respondent can provide the basis for an order for transfer without the need for consideration of the grounds required in paragraph 4 of the .INDRP Policy as held in the matter of *Merck Sharp & Dohome Corp. v Marketing Munch Pry Ltd* under the .IN Dispute Resolution Policy award dated 3 August 2011 by placing reliance on *The Cartoon Network LP, LLP v Mike Morgan* WIPO Case No D2005-1132 dated 5 January 2006. A similar view was rendered in *Celgene Corporation v Russel, Cloudcare* WIPO Case No. D2018-0461 dated 31 May 2018 wherein it was held that when there is a genuine unilateral consent to the Complainants requested remedy for transfer, the panel does not deem it necessary to render a substantive decision on the merits of the case and ordered that the disputed domain name be transferred to the Complainant.
4. Considering the above and in view of the fact that the Respondent has not controverted the Complaint and has consented to transfer the disputed domain name to the Complainant unconditionally and unilaterally, the Arbitral Tribunal holds that the consent to transfer by the Respondent can provide the basis for an order for transfer without the need for consideration of the grounds required in paragraph 4 of the .INDR Policy and directs that the disputed domain name *www.carandbike.in* be transferred to the Complainant in accordance with the .IN Domain Name Dispute Resolution Policy.

VII. DISPOSITIONS

The Arbitral Tribunal hereby directs that the disputed domain name *www.carandbike.in* be and is transferred to the Complainant, Fifth Gear Ventures Limited, Mahindra Towers, 2A, Bhikaji Cama Place, Krishna Puram, New Delhi – 110066.

Place of Arbitration: New Delhi

Date: 16th March 2021


Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal