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Sheetal vohra

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]
INDRP Case No: 1351
ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW)
ADVOCATE, DELHI HIGH COURT
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION POLICY**

IN THE MATTER OF

PUMA Way 1,
Herzogenaurach, 91074
German

Complainant

VERSUS

ERIN PRICE ERIN PRICE
Talstr., 12a Elzach
Deutschland 79215 DE

Respondent

ARBITRATION AWARD

COMPLAINT REGARDING DISPUTED DOMAIN NAME <PUMASALEINDIA.IN>

1. This Complaint has been submitted for decision in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) and INDRP Rules of Procedure (Rule 3(b)(i)) and details of parties is given herein below:-

2. Complainant's Information:
(Rule 3(b)(ii))

- a) The Complainant in this administrative proceeding is **PUMA SE** (hereinafter referred to as the 'Complainant') a company organized and existing under the laws of Germany at Puma Way 1, Herzogenaurach, 91074 Germany.

- b) Complainant's contact details are:

Sheetal Vohra

Contact Person: Ulla Sieber, Trademark Manager - Legal Affairs
Address: PUMA SE
Wuerzburger Strasse 13
91074 Herzogenaurach
Germany
Email: ulla.sieber@puma.com
Telephone: +49-9132-81-2122
Fax: NA

c) Complainant's authorized representative in this administrative proceeding is:

Name: Rahul Sethi
Address: RNA, Technology and IP Attorneys
401-402, 4th Floor, Suncity Success Tower,
Sector-65, Golf Course Extension Road,
Gurgaon-122005, Haryana
Telephone: +91 124 4296999
Fax: +91 124 2841144
Email: rsethi@rnaip.com

3. Respondent's Information:
(Rule 3(b)(iii))

- a)** According to the Domain Name Information as provided to Complainant by the NIXI, the Respondent in this administrative proceeding is Erin Price Erin Price. Copy of the e-mail including Domain Name Information of NIXI dated February 25, 2021 has been annexed as **Exhibit 1**.
- b)** The information known to the Complainant regarding how to contact the Respondent, as obtained from the WHOIS Search database, is as follows:

Registrant, Administrative and Technical Contacts:

Name: Erin Price Erin Price
Address: Talstr., 12a
Elzach
Deutschland 79215
DE
Phone: +49.07682
Email: to_jingxi8@yeah.net
Fax: +49.07682312

4. The Domain Name and Registrar
(Rule 3(b)(iv))

- a)** The following domain name is the subject of this complaint: www.pumasaleindia.in
b) The Registrar with whom the domain name is registered is indicated as:

Name: lAPi GmbH
Address: Im Oberen Werk 1
66386 St. Ingbert
Germany
Telephone: +49.6841.6984-200
Fax number: +49.6841.6984-299
Website: <https://www.lapi.net/>
Email address: legal@lapi.net
abuse@lapi.net

5. PROCEDURAL HISTORY

February 22nd 2021 : Date of Complaint.
March 2nd 2021 : The .IN REGISTRY appointed Dr. Sheetal Vohra as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence
March 4th 2021 : Date of Amended Complaint
March 4th 2021 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.
As the Respondent failed to file his response within the stipulated 15 days' time period intimated to all parties, the instant award is being passed.

6. Factual and Legal Grounds (Rule 3(b)(vi))

The factual and legal grounds given by Complaint are given herein below:

Complainant, Its Business and Its Mark-PUMA

- a) It has submitted that the Complainant is a company organized and existing under the laws of Germany headquartered at Puma Way 1, Herzogenaurach, 91074 Germany.
- b) It has submitted that the Complainant's Company, on its own and through its subsidiaries/affiliates world-wide, is engaged in the business of manufacturing and marketing a wide range of products, inter alia, sports shoes, apparel and accessories

including but not limited to track suits, T-shirts, shorts, polo shirts, Sports shoes, formal shoes chappals, Flip-flops, Slippers, Sandals, Socks, ladies purse, bags, wallets and other accessories and equipment of the highest quality. The Complainant and their subsidiaries and affiliates the world over are one of the world's leaders in the sporting goods industry with sports brands built on a passion for sports and a sporting lifestyle and providing highest value to consumers. Further, the Complainant is also engaged in the manufacturing and marketing of fashion products under the name "**PUMA**".

- c) It has submitted that the Complainant is one of the world's leading Sports brands designing, developing, selling and marketing footwear, apparel and accessories. For over 65 years, the Complainant has established a history of making fast product designs for the fastest athletes on the planet. It has been further submitted that the Complainant offers performance and sport-inspired lifestyle products in categories such as Football, Running, Training and Fitness, Golf, and Motorsports. It engages in exciting collaborations with renowned design brands such as Alexander McQueen and Mihara Yasuhiro to bring innovative and fast designs to the sports world. The

Complainant Group owns the brands **PUMA**, , Cobra Golf, Dobotex and Brandon.

- d) It has submitted that the trademark "**PUMA**" was coined way back in 1948 by Rudolf Dassler and was officially registered on October 1, 1948. Due to its massive popularity since it came into existence in 1948 and the continuous and extensive use, the **PUMA** word mark, device mark, trademark is synonym with every sport today. The Complainant's **PUMA** products are available in more than 120 countries worldwide, including India, and employ more than 10,000 people worldwide.
- e) It has submitted that the Complainant, on its own and through its subsidiaries worldwide, is famous for manufacturing one of the most sophisticated sportswear and athletic shoes in the world. The Complainant Company's soccer shoes are known for their durability and ground-breaking designs. The Complainant is the proud sponsor of more than 30 national soccer teams in five different FIFA confederations. Furthermore, the Complainant has also enjoyed endorsement of some famous soccer celebrities like Pelé, Diego Maradona, Johan Cruyff, Enzo Francescoli and Lothar Matthäus. Complainant's track suits and running shoes are simply one of the best in the world. More info on the Complainant's business can be found at the dedicated website www.puma.com and screenshots from the abovementioned website have been annexed as **Exhibit 2**.
- f) It has submitted that the mark **PUMA** being the umbrella brand of the Complainant has become a source identifier for the Complainant and its Group of companies. Needless to say, **PUMA** trademark / trade name is a valuable asset to the Complainant's business given the immeasurable reputation and goodwill amongst the purchasing public.

- g) The Complainant's consolidated sales for the financial year 2016 were € 3626.7 million. The following table has been given in paragraph 5 (g) of amended complaint stating that it is the reproduction of figures reflecting the Complainant (worldwide) net sales for the period 2012-2019:-

Year	Net Sales (€ in millions)
2012	3270.7
2013	2985.3
2014	2972
2015	3387.4
2016	3626
2017	4135.9
2018	4648.3
2019	5502.2

- h) It has submitted by the Complainant that due to the global success of its products, they are widely recognized all over the world. Further, due to the maintenance of exacting and constant high standards of quality and effectiveness, the Complainant goods have the distinction of being one of the Complainant's best known and popular products. The Complainant has reproduced in the table below, figures reflecting the Complainant (worldwide) advertisement and promotional figures for the period 2012–2019:-

Year	Advertisement and Promotional Figures(€ in millions)
2012	609.3
2013	544.1
2014	599.7
2015	697.6
2016	732.3
2017	822.9
2018	931.2
2019	1112.1

- i) It has submitted that the Complainant has spent huge sums of money on the advertisement and sales promotion of its products. As an advertisement method, the Complainant sponsors various prominent celebrities, teams & athletes such as:

Shreeta Wadia



Singer Rihanna, the new Face of PUMA



World Class Cricketers

Shreya Wale



Celebrity Jacqueline Fernandez launching PUMA flagship store




PUMA in Red

PUMA TRADEMARK- INDIA

- j) It has submitted that in India, the Complainant is carrying on its business activities under the company name 'Puma Sports India Private Limited'. The registered office of 'Puma Sports India Private Limited' is located at Bangalore and the company was incorporated in 2005. The details of Complainant's extensive business activities in India can be viewed online on its website <http://in.puma.com/>
- k) It has submitted that the Complainant's well known trademark **PUMA** is registered in a number of countries around the world, including India. The earliest registration for

the mark **PUMA** dates back to the year 1948.

D)T It has submitted that the Complainant is the registered proprietor of the **PUMA** trademarks for various goods/ services. The earliest registration of **PUMA** mark dates








back to the year 1977. Additionally, the mark  is registered in India since 1983. The Complainant has set out in paragraph 5 (j) of the amended complaint, the



Complainant's trademark registrations for the **PUMA** (word mark) and in India, details of which are given herein below:





Mark	Regn No./Class	Application Date	Goods	Valid Upto
PUMA	323053/ 18	February 15, 1977	Articles made of leather or imitations thereof, namely trunks and travelling bags and carrying bags and cases, not included in other classes	February 15, 2025
PUMA	323054/ 25	February 15, 1977	Clothing and footwear for sports, athletic and leisure purposes, including training suits, leisure suits training sweaters jerseys, shorts and football stockings, all- weather suits, tennis and ski - sportswear, gloves, caps and headbands bathing drawers and bathing costumes, boots, shoes and slippers	February 15, 2025
PUMA	323055/ 28	February 15, 1977	Games and playthings (other than ordinary playing cards), sporting articles and sport-balls	February 15, 2025

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	412852/ 28	November 08, 1983	Games and plaything (other than ordinary playcards), gymnastic and sporting articles (except clothing), ornaments and decorations for christmas trees (except bulbs and candles), all being goods included in class 28	November 08, 2024
	424934/ 14	July 27, 1984	Watches, clocks, parts thereof and fittings thereof	July 27, 2025
	450142/18	February 25, 1986	Leather and limitations of leather and articles made from these materials and not included in other classes, skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddler	February 25, 2026
	450143/ 25	February 25, 1986	Clothing including boots, shoes and slippers	February 25, 2026
	449270/ 24	February 05, 1986	Tissues (piece goods) bed and table covers, textiles articles not included in other classes	February 05, 2027
	532578/ 28	July 03, 1990	Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for christmas trees	July 03, 2024
	559635/ 24	October 03, 1991	Tissues (Piece goods), bed and table covers; textile articles not included in other classes	October 03, 2028

	699153/09	February 22, 1996	Clothing for protection against accidents, including footwear, special clothing as life saving equipment, workmen's protective face shields, protective eye pieces and masks for workmen, helmets, including crash helmets for cyclists and motorcyclists, breathing apparatus for divers, swimming belts, water wings, special cases adapted to the apparatus and instruments falling into class 9, teaching, weighing, measuring, signaling and checking apparatus and instruments, contact lenses, lenses, sunglasses, spectacles, frames of sunglasses and spectacles, glasses of sunglasses and spectacles and parts and fittings for all the aforesaid goods	February 22, 2026
	699154/ 03	February 22, 1996	Bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumeries, essential oils, cosmetics, hair lotions, shower gels, body lotions, dentifrices, shoe creams, shoe polishes, included in class 3	February 22, 2026

	700541/16	March 04, 1996	<p>Brochure and literature in respect of educational and training services, organizing, conducting and staging of sporting competitions and events courses and programmes for strengthening the body, entertainment, sporting and cultural activities, physical training service, gym management, sports complex management, sports sponsorship and promotion, sports data supplying service, professional soccer team management, motion picture rental movie shows, cinema shows, music performance,</p> <p>organization of shows, music performances, organization of shows, sports instruction, operation of fitness and training, operation of gymnasium of exercise and other devices including paper, cardboard, stationery, office requisites,</p> <p>instructional and teaching material, plastic material for packaging, playing cards, advertising material</p>	March 04, 2026
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	1264294/41	February 03, 2004	Educational and training services, organizing, conducting and staging of sporting and cultural events including sports competitions and sports instruction, courses and programmes of instruction for strengthening the body, entertainment, sporting and cultural activities, gym management, sports complex management, sports sponsorship and promotion, sports data supplying services, professional soccer team management, physical training services, rental of sports equipment, motion picture rental, cinema services, presentation of musical performances, organization of shows, fitness centre and gymnasium services	February 03, 2024
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The aforementioned Indian trademark registrations alongwith online extracts for **PUMA** trademarks have been annexed as **Exhibit 3**. The aforesaid trademarks are valid and subsisting and in full legal force, conferring on the Complainant, the exclusive right to its use and to restrain use of any identical or deceptively similar mark(s) by unauthorized persons.

INDIAN SALES AND ADVERTISEMENT

m)The Complainant has given below the sales and advertisement figures in India pertaining to sale of **PUMA** goods:

Shubra Wala

Year	Sales Figures (in Indian Rupees)	Advertisement and Promotional Expenses (in Indian Rupees)
2009	8789,09,000	5,62,41,607.24
2010	11991,28,000	7,91,76,998.33
2011	16724,89,000	13,96,07,062.07
2012	4,40,56,10,398	22,18,05,990
2013	5,76,19,03,924	20,39,65,350
2014	6,671,772,965	334,274,944
2015	7,798,612,045	386,755,954
2016	8,407,635,086	404,673,032
2017	9,555,362,558	490,211,373
2018	11,438,904,846	595,666,007
2019	14,005,083,770	642,885,862

It has submitted by the Complainant that these sales and promotional expenses are an indicator of substantial goodwill and reputation earned by it in the **PUMA** trademarks.

- n) It has submitted that the Complainant has been extensively advertising its **PUMA** branded products, through various printed media including newspapers, magazines and trade journals, leaflets and other promotional literature and the said materials have been extensively distributed all throughout the country for several years now. In fact, the Complainant's marketing campaign for the goods bearing **PUMA** marks has been immensely popular among people of all age groups and has been widely appreciated. The advertisement and promotional material of the Complainant products under its distinctive **PUMA mark** are available everywhere.

RECOGNITION OF PUMA TRADEMARK WORLDWIDE INCLUDING INDIA

- o) It has submitted that the Complainant has extensively used the **PUMA** trademark in India since the year 1982. **PUMA** brand of the Complainant is ranked at position 5th in the Top 10 shoe brands of India. By virtue of extensive use, the PUMA products are immensely popular in India.
- p) It has submitted by the Complainant that **PUMA** trademarks are being used extensively by them and their affiliates in respect of all its products since 1948. Therefore, **PUMA** mark is identified and distinguished with the Complainant's goods and no one else. The **PUMA** mark has been used in India by the Complainant from 80's and with passage of time created a niche in the market and the same is inextricably associated with the Complainant. It is submitted that the trade and consumers recognize the **PUMA** mark as source identifier of the Complainant's products. Any use of the said distinctive **PUMA** mark by any other person without the express permission of the Complainant in any manner whatsoever tantamount to misrepresentation and confusion in the eyes of the gullible consumers. The purchasers


of the Complainant's products bearing its distinctive **PUMA** mark include men, women and children of all age groups thereby covering all segments of the society at large. Therefore any use of the said **PUMA** mark by anyone without the authorization of the Complainant would amount to violation of the Complainant's intellectual property rights in the said mark.

- q) It has submitted that with passage of time the Complainant has built up an unparalleled reputation and goodwill in its **PUMA** mark having used the same openly, continuously and extensively in relation to high quality products in practically all parts of the world including India. By virtue of immense popularity and worldwide presence, the Complainant's **PUMA** accessories bearing **PUMA** mark have come to exclusively associated with the Complainant. The degree of such association and familiarity of the aforesaid marks with the Complainant is so immense that any use of the said marks in relation to any goods and services whatsoever by any third party would automatically be looked upon by the consuming public and members of trade as that originating from the Complainant. The Complainant submits that owing to the highly distinctive character, **PUMA** mark with span of time has become one of the most recognized symbols in the world and in India.
- r) It has submitted that the Complainant also uses the ubiquitous medium of the Internet to render and advertise its products and services. The Complainant owns the domain name www.puma.com, which is accessible throughout the world. The domain name www.puma.com was registered by the Complainant on September 19th, 1997. Extract from WHOIS Search database for the said domain name is annexed as **Exhibit 4**. The details and/or information about the Complainant's business activities related to **PUMA** products in various jurisdictions around the world is available on its website located at www.puma.com. For India specifically, the details of Complainant's extensive business activities in India can be viewed online at <http://in.puma.com/>
- s) The Complainant has submitted that it is worth mentioning that the online searches for the Complainant's name/mark '**PUMA**' on popular search engines such as Google, Yahoo, Bing, etc. show only its products among the top-most hits or results. The Complainant has extensive presence over the social networking websites *inter alia* Facebook and Twitter. It is apparent that the Complainant has widespread presence over the internet through its websites and also through various online public forums, blogs, discussions, reviews, etc. Thus, the public at large identifies the Complainant through its trademark/ trade name '**PUMA**' even on the internet.
- t) It has submitted that the popularity and the fame of the Complainant's **PUMA** trademark have also transcended the physical boundaries and have acquired trans-border reputation in India. The reputation and fame of the Complainant trademarks has also extended throughout the territory of India on account of goods bearing the **PUMA** mark being available in every city in India and the world over and due to

the extensive advertisements and other promotional activities by the Complainant for the past several years.

- u) It has submitted that the Complainant's rights in the trademark **PUMA** have been recognized by the Hon'ble Courts in India who have pronounced judgments in favour of Complainant restraining other parties from using the marks in India. That by virtue of long, continuous and extensive use all over the world and promotion of the **PUMA** mark, the Complainant has earned substantial goodwill and reputation worldwide. The Complainant products under **PUMA** mark are one of the most well-known and sought after in the world. As a result thereof, the public and the members of the trade have come to associate **PUMA** trademark with the Complainant to the exclusion of all others. Moreover, factors such as the consistently superior quality, proven efficacy of the product, the strict quality control and the high technical standards applied by the Complainant in the course of their business have also contributed tremendously in building an enduring public trust for the Complainant business and products. The Complainant's trademark **PUMA** is the well-known mark as envisaged under the provisions of Section 2(1) (zg) and Section 11 of the Trade Marks Act, 1999. In view of the above, the trademark **PUMA** is entitled to protection against any misappropriation by third parties. Further the Complainant **PUMA** mark has been recognized as well-known in various jurisdictions across the world. Through extensive sponsorship of athletes and sporting events by the Complainant, **PUMA** mark has been worn by thousands of prominent athletes and been highly visible at thousands of major sporting events over the last several decades.
- v) It has submitted that by virtue of prior international and Indian registrations, actual use and sales in India, immense reputation, spill-over of the said reputation into India, long-standing use, vast publicity and promotion, the trademark **PUMA** of the Complainant has earned substantial goodwill and reputation and members of the trade and the public associate the said trademarks with the Complainant and no one else. The use of trademark/s, identical with or similar to **PUMA** mark by any person other than the Complainant will give rise to confusion. In all likelihood, such use will lead to deception amongst the purchasing public and trade that such products and/or services are connected or otherwise related to the Complainant.
- w) It has submitted that in India, the Complainant's products bearing **PUMA** trademarks are also sold online through various third-party websites such as Amazon India, Flipkart, Jabong, Snapdeal, Myntra, Rediff etc. Further as the internet is accessible across the world including in India, the knowledge and awareness of the Complainant products under the **PUMA** trademarks is a foregone conclusion and even more so to the relevant trade.
- x) It has submitted that in addition to the above, the Complainant's trade mark **PUMA** has also been declared as well-known trade mark in India by the Trade Mark Registry and the same was published in Trade Marks Journal No: 1942, 24/02/2020. Further,

in the matter titled a) Puma Vs Uniqlo-TM 128/2018, the Ld. ADJ of Saket District vide its order dated 31.07.2018 while passing an interim order against the Defendant

observed that the Plaintiff's **PUMA** and  logo are well-known. Copies of the Trade Marks Journal extract and court order have been annexed as **Exhibit 5**.

Registrant/Respondent, its activities and registration of the Domain Name

- y) It has submitted that the Respondent has registered the nearly identical disputed domain name www.pumasaleindia.in as shown in Exhibit 1 with .In Registry. The disputed domain name shows the registration date as December 6, 2019 which is several decades subsequent to the adoption and use of the mark **PUMA** by the Complainant. It has been by the Complainant that the disputed domain name incorporates the Complainant's well-known and prior used mark **PUMA** and prior registered domain www.puma.com in entirety. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well-known trademark in any manner.
- z) It has been submitted by the Complainant that the Respondent has not only registered a nearly identical domain name, but is also offering products identical with those offered by the Complainant through the said website.
- aa) It has been submitted by the Complainant that the Complainant hasn't authorized the Respondent to register the disputed domain name. It is explicitly evident that the Respondent has registered the disputed domain in a sly attempt to prevent the Complainant from reflecting the said mark in a corresponding domain name. Screenshots of the Respondent's webpage as on February 15, 2021 has been annexed as **Exhibit 6**.
- bb) It has been submitted by the Complainant that on account of its extensive use and popularity of **PUMA** products all across the world, including India the Respondent can have no plausible explanation for adoption of a domain name which is phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trademark and domain name **PUMA**. The disputed domain name being nearly identical to the Complainant's domain name and trade mark, there is strong likelihood that a web browser looking for **PUMA** products in India would mistake the Respondent's website, www.pumasaleindia.in for the Complainant's India specific website, and once there, would assume the Respondent's business is sourced by the Complainant which is not the case. It is clear that the Respondent is attempting to gain visitors to its illegitimate website by registering the nearly identical domain name with an explicit intention to trade off its products and services.

Therefore, the Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trade mark/domain name **PUMA**.

cc) It has been submitted by the Complainant that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. In the present case, copying by the Respondent is evident from its adoption of a nearly identical domain name. The Respondent was clearly aware of the existence of prior trade mark/ domain name rights in favour of the Complainant when it adopted the said domain name. In the circumstances, the present case is clearly that of cyber- squatting.

dd) It has been submitted by the Complainant that it was first in the business to adopt the mark/domain name "**PUMA**" as its house mark and brand name. It was conceived in the year 1948. By registering the disputed domain name with no possible links with the Complainant, the intention of the Respondent is definitely to attract internet traffic by using .in GTLD and gain advantage from Complainant's business and reputation. The customers and businesses are likely to believe that the Respondent is a part of Complainant's global network and that its services are licensed and/or authorized by the Complainant, or they enjoy some affiliation, association, sponsorship or any legal relationship with the Complainant, which is absolutely false.

ee) It has been submitted by the Complainant that the registration of disputed domain name www.pumasaleindia.in amounts to infringement of the Complainant's IP rights vested in the **PUMA** mark. The Respondent's intention is clearly to ride on the Complainant's goodwill, divert the Complainant's business in an illegal manner and thus to make unjust monetary gains. Thus the Respondent's activities are unlawful and likely to jeopardize the Complainant's reputation and goodwill accrued in favour of the Complainant under **PUMA** mark.

ff) A true and correct copy of the .IN Domain Name Dispute Policy that applies to the domain name in question has been provided as **Exhibit 7**.

7. Legal Grounds

The Complainant has based its Complaint on the following legal grounds:

A) The domain name www.pumasaleindia.in is nearly identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

1. It has been submitted by the Complainant that the Complainant was prior in conceiving the trademark **PUMA** in the year 1948. Since its adoption, the Complainant has continuously used **PUMA** mark much prior to December 6, 2019, the registration date for the disputed domain name. The Complainant owns the domain name www.puma.com dating back to the year 1997 as contained in **Exhibit 4**. The Complainant had obtained trademark registrations for **PUMA** (as contained in **Exhibit 3**) much prior to the year 2019, the registration date of the Respondent's domain. Each

of these registrations remain valid and in full force. The registration of **PUMA** mark dates back to the year 1977 in India where the disputed domain name stands registered. Thus, the Complainant has rights in the **PUMA** mark that predates registration date of the domain name. The Complainant has relied on [*Uniroyal Engineered Products Vs Nauga Network Services D 2000-0503 (WIPO July 18, 2000)*] the Panel determines that Complainant has rights in the trademarks "NAUGA", "NAUGAHYDE", "NAUGALON" and NAUGAFORM". Based on the September 9, 1969 date of Complainant's registration of the trademark "NAUGA", and without prejudice to Complainant's earlier-arising rights in the marks (e.g., "NAUGAHYDE"), the Panel determines that Complainant's rights in the trademark arose prior to Respondent's registration, on October 21, 1998 and January 15, 1999, respectively of the disputed domain names "nauga.net" and "naugacase.com".

2. It has been submitted by the Complainant that it is immediately obvious in the present case that disputed domain name www.pumasaleindia.in is nearly identical to the Complainant's **PUMA** mark, save for the .in generic top level domain which is required for technical reasons and does not serve to distinguish the disputed domain name from the Complainant's trademark. The Complainant has relied on [*Robbie Williams v. Howard Taylor, WIPO Case No. D2002-0588 and Expedia Inc. and Hotels.com L.P. v. Arabia Horizons Tours LLC Case No. DAE2014-0005*]. It has been submitted that the Complainant owns several country specific domain names (ccTLDs) constituting **PUMA** mark namely; www.puma.jp, www.puma.de, www.puma.fr, etc. All these domain names resolve to the official websites of the Complainant in the respective countries namely Japan, Germany and France. In such situation, it is obvious that the Respondent's website at the disputed domain name will confuse Internet users, visitors or potential customers to believe that the same is Complainant's India specific website which is not true. The Complainant further submits that it has not licensed or otherwise permitted the Respondent to use the trademark/domain consisting of or incorporating the **PUMA** trademark.
3. It has been submitted by the Complainant that the Complainant has established its lawful rights in the mark **PUMA** by virtue of prior adoption and prior registrations around the world including in India. The Complainant has filed sufficient evidence to show that it has prior trademark rights in the mark **PUMA**. It has been submitted that thus the first condition is clearly satisfied.

B) The Respondent has no rights or legitimate interests in respect of the Domain Name

4. It has been submitted by the Complainant that the Respondent registered the Domain Name in the year 2019; several decades after the Complainant invested millions of dollars in popularizing and seeking registration of **PUMA** mark and domain name www.puma.com. Moreover, by the time Respondent registered the disputed domain name, the Complainant had generated hundreds of millions of euros in revenue under

the **PUMA** mark and had already attained the status of well-known/famous mark. Accordingly, it is evident that the Respondent was well aware of Complainant's prior rights in the **PUMA** mark and domain name www.puma.com at the time of registering the disputed domain name in the year 2007. The Complainant has relied on [*Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, *WIPO Case No. D2005-0179* and *Accord Young Genius Software AB v. MWD, James Vargas*, *WIPO Case No. D2000-0591*], it was held that "Where a Respondent has constructive notice of a trademark, and yet registers a confusingly similar domain name thereto, the Respondent cannot be said to have a legitimate interest in the domain name."

5. It has been submitted by the Complainant that there is no credible legitimate reason for the Respondent to have chosen to adopt the nearly identical domain name consisting of **PUMA** mark. The Respondent's purpose in selecting the disputed domain name was plainly to use fame of the Complainant's **PUMA** mark to generate web-traffic and to confuse internet users visiting the Respondent's website/domain name www.pumasaleindia.in when looking for the Complainant and their famous products. In plenty of cases, UDRP panels have found that domain names nearly identical to a Complainant's trademark carry a high risk of implied affiliation.
6. It has been submitted by the Complainant that on information and belief, the Respondent is not commonly known by the name or nickname of the disputed domain name or any name containing Complainant's **PUMA** mark. The information listed on Whois Search Database for the disputed domain name makes no mention of the **PUMA** mark as Respondent's name or nickname. The Respondent has not been authorized by the Complainant to register or use the mark/domain name PUMA. The Complainant has relied on [*SAP Systeme/ SAP India Systems v. Davinder Pal Singh Bhatia*, *WIPO Case No. D2001-0504*, *June 8, 2001*], the panel finds force in contentions of the Complainant that the Respondent is not, either as an individual, businesses or other organization, commonly known by the name SAP. Secondly, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark SAP or to apply for any domain name incorporating this mark. Thus the Respondent has no legitimate interests in respect of the disputed domain names <sapmaster.com> and <sapwizard.com>. Thus, registration of the disputed domain name by the Respondent is a typical example of "cybersquatting". The Respondent is trading off its goods and services through the website www.pumasaleindia.in and such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the domain name.
7. It has been submitted by the Complainant that the aforementioned facts establish a *prima face* case that the Respondent has no right or legitimate interest in the disputed domain name and that pursuant to the Policy, the burden shifts to the Respondent to show it does have a right or legitimate interests. The Complainant has relied upon *Croatia Airlines d.d. v. Modern Empire Internet*

Shreeta Wale

Ltd., WIPO Case No. D2003-0455 and Clerical Medical Investment Group Limited v. Clericalmedical.com (Clerical & Medical Services Agency), WIPO Case No. D2000-1228.

C) The Domain Name was registered or is being used in bad faith

8. It has been submitted by the Complainant that in order to prove bad faith under Paragraph 4(iii) of .IN Domain Name Dispute Resolution Policy (INDRP), one or more of following circumstances, can be established:

- i) 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*
- ii) 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*
- iii) 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.*

9. It has been submitted by the Complainant that the evidence submitted by the Complainant overwhelmingly supports the conclusion that Respondent registered and is using the disputed domain name in bad faith. The fame and prior use of the Complainant's **PUMA** mark make it extremely unlikely that the Respondent created the nearly identical disputed domain name independently or that it just mere coincidence. It is relevant to mention that:

- The Complainant has been continuously using the **PUMA** brand since 1948 and is presently the registered proprietor of the trademark '**PUMA**' across several countries in the world.
- The earliest trade mark registration for the **PUMA** mark in India dates back to 1977 which is the same country where the Respondent has registered the disputed domain name with .IN Registry
- The Complainant had registered the domain name www.puma.com in the year 1997 which is several years before Respondent's registration of the disputed domain name www.pumasalesindia.in.
- The Respondent's domain name www.pumasaleindia.in shows the products of the Respondent without the Complainant's authorization.

It has been submitted by the Complainant that the Respondent could have adopted any other domain name instead of adopting the domain name containing Complainant's **PUMA** mark in identity. The abovementioned facts clearly show that the disputed domain name was registered and is being used in bad faith. Therefore, it is construed that Respondent was aware of Complainant's **PUMA** mark at the time of securing registration for the disputed domain name.

It is clear that the Registrant has registered the disputed domain name in order to prevent the Complainant from reflecting the **PUMA** trademark in a corresponding domain name. Further, it has been submitted that the Complainant is in all its legal rights to file the INDRP complaint against the disputed domain name. The Complainant has placed reliance on Tom Cruise v. Network Operations Center / Alberta Hot Rods, WIPO Case No. D2006-0560, it was observed by Three Panelists that "...the Panel considers that it would be relevant to its decision if there was some firm indication, express or tacit, that Complainant had consented to Respondent's use of its trademark in the disputed domain name (cf., 2001 White Castle Way, Inc. v. Glyn O. Jacobs, WIPO Case No. D2004-0001). In this proceeding, there is no indication of any correspondence between Complainant and/or any representative of Complainant, on one side, with Respondent, on the other, or similar evidence, to suggest or imply that Complainant may have approved of or condoned Respondent's use. Without some substantial evidence to indicate that Complainant approved of or condoned Respondent's use of his mark in the disputed domain name, the Panel is not prepared to import a bar against his cause of action."

10. It has been submitted by the Complainant that despite prior knowledge, the Respondent has registered the disputed domain name which is nearly identical to the Complainant's **PUMA** mark with no intention of using the same for legitimate business. Such conduct amounts to clear evidence of bad-faith registration and use. In so doing, the Respondent has intentionally attempted to attract for commercial gain the Internet users to the web site, by intentionally misleading them and creating a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of the website. The Complainant has placed reliance on [SAP AG v. Peifang Huang [WIPO Case No. D2014-0928, July 28, 2014]], the Panel finds that the Respondent more likely than not was aware of the Complainant and had the Complainant's Trademark in mind when registering the disputed domain name. The evidence demonstrates that the disputed domain name has been registered and used in order to attract Internet users to the Website for commercial gain, by creating a likelihood of confusion with the Trademark. This falls squarely within the example of bad faith registration and use under paragraph 4(b)(iv) of the Policy."
11. It has been submitted by the Complainant that the Respondent's choice of nearly identical disputed domain name is not a co-incidence and is definitely directed to illegally encash upon goodwill and reputation of the Complainant. Accordingly, the disputed domain name was registered and has been used in bad faith.

7. Remedies Requested
(Rules 3(b)(vii))

In accordance to the reasons described above, the Complainant has requested the Administrative Panel appointed in this administrative proceeding to issue a decision that the disputed Domain Name www.pumasaleindia.in be transferred to the Complainant.

8. Other Legal Proceedings
(Rules 3(b)(viii))

The Complainant has stated that it is unaware of any other legal proceedings that have been commenced or terminated in connection with or relating to the Domain Name.

9. Certification
(Rules 3(b)(ix))

The Complainant certified and undertaken that by submitting the complaint agrees to the settlement of the dispute, or the disputes regarding the domain name which is the object of the Complaint by final and binding arbitration in India in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any Bye-laws, rules or guidelines framed thereunder. The Complainant has agreed that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain- name holder and has waived all such claims and remedies against the .IN REGISTRY, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute.

10. DISCUSSION AND FINDINGS:

I have given considerable thought to the totality of the circumstances in this case and considered all relevant factors in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the domain name may be put. I thereafter have no hesitation to hold that in the present case, all factors are satisfied.

I have gone through all the case laws cited by the Complainant as well as the Annexures / Exhibits filed with the Complaint.

I note that despite the Complaint being served on the Respondent, the Respondent has preferred not to file any reply or put forth any reply. The Respondent has failed to even otherwise come forward with any actual or contemplated good-faith use of the Domain Name the Respondent 'knew or should have known' of the registration and use of the

Complainant's well-known trademarks and trade name prior to registering the disputed domain name <www.pumasaleindia.in>.

I note that the trademark PUMA was coined as early as 1948 and was officially registered on October 1, 1948. The Complainant's products are sold in more than 120 countries. The Complainant has prior registered domain name www.puma.com on which it hosts its website. This domain has been registered on September 19th, 1997. I further note that the Complainant's consolidated sales for the financial year 2016 were € 3626.7. The Complainant's trademark has been endorsed by celebrities.

Regarding India, I note that the complainant has been carrying business activities under the company name Puma Sports India Pvt. Ltd which was incorporated in the year 2005. The Complainant's earliest registrations in India dated back to the year 1977 as can be seen from registration numbers 323053 in class 18, 323054 in class 25 and 323055 in class 28. The Complainant has filed and obtained registrations in other classes also. I have taken due note of impressive Indian sales figures. The Complainant's trademark PUMA is well-known trademark can be seen from the fact that the Complainant's trade mark PUMA has also been declared as well-known trade mark in India by the Trade Mark Registry and the same was published in Trade Marks Journal No: 1942, 24/02/2020. I further note that in the matter titled a) Puma Vs Uniqlo-TM 128/2018, the Ld. ADJ of Saket District vide its order dated 31.07.2018 while passing an interim order against the

Defendant observed that the Plaintiff's **PUMA** and  logo are well-known.

I hold that The Respondent's domain name is deceptively similar to the trademark/ trade name and domain name in which the Complainant has rights.

That the disputed domain name registered by the Respondent incorporates the Complainant's well-known PUMA trademarks in a deceptively similar fashion. The Respondent has merely added suffixes "SALE" and "INDIA" which are generic. In fact, these two words add to confusion and deception. Hence, hence it is apparent that adoption and use of "PUMASALEINDIA.IN" is *malafide* and dishonest.

That the above instance of use of the Complainant's registered trademark is unauthorized and misleading. The mere presence of the descriptive suffix "SALE" and "INDIA" right after the Complainant's registered trademark, "PUMA" will not distinguish the Respondent's disputed domain name as it simply amounts to an assertion that the goods and / or services available on this domain is either the Complainant's 'brand' or is licensed by the Complainant. Due to the fame and reputation associated with the trademark PUMA, the first impression in the minds of the consumers / end users shall be that the services available on the Respondent's website are provided, authorized, certified, or licensed by the Complainant. It has been held in the case of Lockheed Martin Corporation Vs. Aslam Nadia (INDRP Case No. which held that when the disputed name contains the entirety of the Complainant's trade mark followed by a generic

term, the addition of the top-level domain .in will not distinguish the Respondent's disputed domain name.

The Respondent has no rights or legitimate interests in respect of the domain name

The above-mentioned facts make it evident that the Respondent has no legitimate interest in the disputed domain name, rather the sole purpose of the registration is to misappropriate the reputation associated with the Complainant's registered trademark PUMA. The Complainant has not authorized the Respondent to use its trademark/ trade name/trading style. The Respondent has no rights or legitimate interests in the term PUMA. "PUMA" is the Complainant's registered trademark and has been adopted, registered and used by the Complainant in prior point of time. The trademark is exclusively identified with the Complainant and its goods. The Respondent is not a licensee or franchisee of the Complainant and has adopted identical term PUMA along with generic terms like "SALE" and "INDIA" with a view to ride upon the goodwill associated with the Complainant's trademark PUMA and pass off their goods/services as that of the Complainant.

That Paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in a disputed domain name. In the circumstances narrated above I hold that none of them are applicable to the Respondents in present case, as elaborated hereunder:

I find that the disputed domain name has not been used in connection with *bona fide* offering of goods or services by the Respondent. That the domain name has instead been registered with an intention to offer goods in violation of the trademark rights of the Complainant.

That the Complainant has acquired significant reputation and substantial goodwill in the its prior used and registered trademark PUMA. Hence, Respondent has no cause of adoption of an identical trademark or domain name, except in bad faith and with *malafide* intention. Moreover, the Disputed Domain Name was registered subsequently i.e. after date of use and date of registration of trademark and domain name by the Complainant. Hence, the Respondent, therefore, again cannot escape the liability of knowledge of the Complainant and its marks and domain. This also proves that the Respondent has registered and designed the website solely for misleading the consumers. The Respondent has only adopted the domain with the word *PUMA* with the aim to ride on the goodwill of the Complainant. Thus, the question of being known by the domain does not arise in the first place. The Respondent registered the disputed domain name for commercial gain. The Respondent has registered the disputed domain name for unfair use by way of attempting to capitalize on the goodwill and reputation of the Complainant. There is a clear intent for commercial gain to misleadingly divert consumers.

The disputed domain name has been registered in bad faith

Shreeta White

Under paragraph 6(iii) of the IN Domain Dispute Resolution Policy (INDRP), if 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, it shall be evidence that the Registrant's registration and use of the domain name is in bad faith.

I hold that the disputed domain name is deceptively similar to the Complainant's registered trademark PUMA, in which the Respondent cannot have any rights or legitimate interest.

It is clear from the fact that Respondent had registered the disputed domain name for sole purpose of designing the website to mislead consumers. By doing so the Respondent has intentionally attempted create a likelihood of confusion with the Complainant's registered trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. I hold that the trademark PUMA, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of Complainant's trademark. This view of mine is fortified by the fact that the parties are in same business.

That it has been consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can itself create a presumption of bad faith and so it opined about the Respondent's registration of the impugned domain name.

I hold that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the INDEED trademark or phonetic equivalent thereof. The Complainant has prior rights in the trademark INDEED which precedes the registration of the disputed domain name by the Respondent.

That the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.

For aforesaid reasons, I hold that the registration by the Respondent of the disputed domain name <www.pumasaleindia.in> is dishonest and misleading.

I further hold that, the Respondent's registration of the disputed domain name <www.pumasaleindia.in> is contrary to and is in violation of paragraph 4 of the INDRP Policy.

In view of all the above facts and well-known legal propositions and legal precedents, I find and hold as under:

- that that the Respondent's domain name is misleading to the acronym of the trademark in which the Complainant has rights.
- that the disputed domain name <www.pumasaleindia.in> is identical with the registered trademarks **PUMA**.
- that due to the fame of the distinctive and reputation of the trademarks/ domain name/ trading style **PUMA** of the Complainant, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- that Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name <www.pumasaleindia.in>
- that the Complainant has prior rights in the trademark / acronym which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- that the disputed domain name has been registered in bad faith
- that the disputed domain name is identical to the acronym of the Complainant's registered trademark in their entirety, in which the Respondent cannot have any rights or legitimate interest.

That I received no Response / Reply to the Complaint on behalf of the Respondent though proper service was effected to the Respondent's email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit his reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

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11. **DECISION**

- i. In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- ii. That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent **<www.pumasaleindia.in>** to the Complainant;
- iii. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 7th April 2021.

Place: Delhi

Date: 07.04.2021



**Dr. Sheetal Vohra
(PHD Law)**

Sole Arbitrator

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