

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)  
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**Dr. Vedula Gopinath, Sole Arbitrator**

**Arbitration Award No. INDRP/1385, Dated 8<sup>th</sup> July, 2021**

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Visakhapatnam

8<sup>th</sup> July 2021



**Dr. VEDULA GOPINATH  
SOLE ARBITRATOR**

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Dr. VEDULA GOPINATH  
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**Dr. Vedula Gopinath, Sole Arbitrator**

**Arbitration Award No. INDRP/1385, Dated 8th July , 2021**

**In the matter of Arbitration Between :**

M/s. Laltitude Limited Liability Company,  
7128 Colima Road #209,  
Hacienda Heights,  
California 91745,  
United States of America

AND

Mr. Rajesh Bansal,  
67, Paschim Viharf Extension,  
New Delhi - 110063, India.

... Complainant

... Respondent



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## I. THE PARTIES :

- (a) The Complainant M/s. Laltitude Limited Liability Company Authorised representative in this administrative proceedings is:

Mr. Dipak Rao,  
Singhania and Partners LLP,  
P-24, Green Park Extension,  
New Delhi - 110016, India  
Tel. Ph. No. 91-11-47471414, 91-11-47471430  
E-mail Id: [iptm@singhania.in](mailto:iptm@singhania.in)


- (b) The Respondent's Authorized representative in the administrative proceeds is:

Mr. Anshul Goel,  
Ashoka Law Associates,  
8 Central Lane, Bengali Market,  
New Delhi - 110001, India.  
Email Id: [anshulgoel@ashokalaw.com](mailto:anshulgoel@ashokalaw.com). [ip@ashokalaw.com](mailto:ip@ashokalaw.com)

## II. DISPUTED DOMAIN NAME & REGISTRY:

- a) The following Domain name is the subject of this Complaint is [www.soundbot.in](http://www.soundbot.in)
- b) The Registry is the National Internet Exchange of India (henceforth referred to as NIXI).
- c) The Sponsoring Registrar of the Impugned Domain name is **GoDaddy.com, LLC**. The details of the Registrar are given below :
- **Address :** 14455 North Hayden Road, Suite 219 Scottsdale, AZ 85260, United States.
  - **Email Id:** [abuse@godaddy.com](mailto:abuse@godaddy.com)
  - **Phone Number :** 1-480-505-8877



  
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### III. PROCEDURAL HISTORY / BACK GROUND :

24-05-2021	The .IN REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure.
25-05-2021	Consent of the Sole Arbitrator along with declaration of impartiality was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
27-05-2021	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to Respondent.
28.06.2021	Notice of Arbitration was sent to all concern by the Sole Arbitrator.
29.06.2021	Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
08.06.2021	Respondent requested for extension of time for submission of Defence Statement.
08.06.2021	Arbitral Tribunal gave extension of time for submission of defence statement upto 10.06.2021.
10.06.2021	Respondent submitted his Defence Statement.
11.06.2021	Complainants were advised to given reply to the Defence Statement within Ten (10) days.
16-06-2021	Rejoinder received from Complainant
18-06-2021	Two days' time given for any additional information by the parties.

Both parties given their pleadings through Electronic mail..



  
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#### IV. COMPLAINANT'S ACTIVITIES :

- a. The Complainant since 28-02-2013 is a registered Company in the jurisdiction of California, USA.
- b. The Complainant is the registered proprietor of the word and service marks "**SOUNDBOT**" under Class 9 across various jurisdictions including India, United States and Australia. The Complainant manufactures, sells and distributes goods such as Carrying cases, holders, protective cases, power supply connectors, adapters, speakers and battery charging devices among others.

#### V. COMPLAINANT'S TRADE MARKS & DOMAIN NAMES :


##### a. Trade Marks

Sl. No.	Application No.	Mark	Date of Application	Class	Status	Jurisdiction
1.	86507954	<b>S</b> SoundBot	20.01.2015	9	Registered	United States
2.	86500475	<b>S</b>	12.01.2015		Registered	United States
3.	2005926	<b>S</b> SoundBot	13.01.2020	9	Registered	Canada
4.	3962614	SOUNDBOT	03.10.2018	9	Registered	India
5.	3962612	SOUNDBOT	03.10.2018	9	T	India
6.	1633437	SOUNDBOT	17.04.2014	9	Registered	Australia
7.	1208260	SOUNDBOT	17.04.2014	9	Registered	WIPO
8.	85886962	SOUNDBOT	26.11.2013	9	Registered	United States
9.	3271249	SOUNDBOT	27.05.2016	9	Registered	India

Copies of the Certificates / Status are attached as per **Annexure-4 of the Complaint.**

- a) The Complainant has a very strong internet presence with the website soundbot.com registered on 01-10-2013. Since its inception the website is extensively used by the Complainant to advertise its goods and services bearing its Registered Trade Mark "SOUNDBOT"



  
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## VI. THE CONTENTIONS OF THE COMPLAINANT :

- (i) The Complainant has honestly and bona-fidely adopted the trademark "**SOUNDBOT**" and has secured the registration of the same with the Indian Trademarks Registry on 04.01.2020 while claiming prior use in India since 01.10.2014. Registration Certificate is given as Anx4 of the complaint.
- (ii) The Complainant through its Registered Trademark has earned reputation in the global market for its speakers, headsets, earphones etc., has expanded its portfolio and created sub-brands for related goods under the names "POWERBOT" and "SPORTBOT".
- (iii) The Complainant's registered trade marks have been in extensive and continuous use throughout India. By virtue of the Complainant's sale and advertisements, the registered trademark have acquired enviable goodwill in the Financial Year Revenue as per 2016-17 343,039.75, 2017-18 ... 1,084,803.51, 2019-20 ... 13,796,024 and 2020-21 (Projected) ... 22,000,000. (figures in US\$)
- (iv) The Complainant has entered into an exclusive distribution agreement on 15-03-2021 with the respondent for a period of Three (03) years from the date of the said agreement i.e., 15.03.2017. (term 15-03-2017 to 15-03-2020). The Indian distribution arrangement has been advertised in the Press.
- (v) The Complainant per exclusive distribution agreement with the Respondent granted permission to register and use the Disputed Domain Name solely for the purpose of marketing, selling, distributing the goods on the disputed domain name. Also limited licence was grated for usage of the Trade mark. Accordingly, the respondent on 27.04.2017 registered the disputed Domain Name. (soundbot.in) (details given as per Anx2 of the complaint)
- (vi) As per the Clause 5.2 the Exclusive Distribution Agreement, the Respondent was granted with the exclusive rights to market, sell, distribute and promote the products of the Complainant's trademark i.e., "SOUNDBOT" in India.



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- (vii) The Clause 12.6 of the Exclusive Distribution Agreement further states that upon terminated by the Respondent is required to promptly return all intellectual property of the complainant.
- (viii) On 15.03.2020 the termination of the Exclusive Distribution Agreement, the respondent was required to transfer the disputed domain name. Even after termination of the agreement, the Respondent advertised its good with trade marks on popular websites like Amazon. The Respondent has advertisement of products on its website on 18.11.2020.
- ix) The Complainant gave a cease-and-desist notice to the Respondent on 27-11-2020 demanding desist from continuing the advertisement on the disputed website failing which they will initiate legal action against the Respondent within one week.
- X At the time of complaint there is no information of commercial activity of the Respondent leaving impression that the Respondent has no intention to carry on business and thus Website is dysfunctional and or vacant. (details given as per annexure 3 of the Complaint.
- Xi Respondent alleged to have contacted the Complainant to sell the disputed domain name for an amount of us\$9880 which is evident from the email correspondence.
- Xii As per Paragraph 4 of the INDRP Policy Respondent states that
- Complainant is the sole proprietor of trade mark SOUNDBOT and the same is appearing in the disputed domain name. Comparison of the disputed name with the Trade mark SOUNDBOT gives the identity or confusing similarity.
  - Since the trade mark is registered on 01-10-2013 much before the registration of the domain name, the claimant shall have prior user rights.
  - Since the complainant granted limited licence to use the trade SOUNDBOT and after expiry of the distribution agreement on 15-03-2020, the Respondent does not have legitimate rights in the disputed domain name or Trade mark.



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- d. Respondent holding the domain name in a passive manner not displaying any content or information which will lead to public believe that the complainant has stopped production of the goods has been suspended indefinitely which amounts to bad faith. Customers are misled by the disputed name and disrupt the business of Complainant.

**VII. RESPONDENT :**


- a. Respondent is a director of Interplay Solutions Private Limited
- b. Thus the respondent (individual named in the complainant) and the aforesaid company are deemed to be same.

**VIII. THE CONTENTIONS OF THE RESPONDENT :**

Respondent denies all the allegations made in the Complainant and gave the following averments.

- (i) The Respondent's company had acquired Exclusive Distribution Rights for 'Soundbot' in India via an agreement with the Complainant dated 15th March 2017.
- (ii) The Respondent registered the disputed domain name with full knowledge of the Complainant and the Complainant granted right in the Registered Trademark "**SOUNDBOT**".
- (iii) The Respondent registered the domain name in legitimate manner and exercised its rights over trademark SOUNDBOT as per the Exclusive Distributor Agreement.
- (iv) Respondent incurred sizeable expenses for registration and maintenance of website during the commercial relationship of the Respondent with the Complainant.



  
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- (v) The Complainant admittedly does not object to the registration of website and after termination the Complainant wanted the transfer of domain name without receiving the compensation and expenses incurred by the Respondent. Costs include design, development, renewal and development of the domain name which are justified.
- (vi) Certain amounts relating to services rendered by Respondent are payable and due to be payable to Respondent by Claimant.
- (vii) The disputed domain name soundbot.in is not accessible to the public since it has been taken down by the Respondent.
- (viii) Respondent reiterates that there are plethora of SOUND formative marks in India and a list of 149 trade marks with SOUND name has been given as per Annexure 4 of the Defense statement
- (ix) The Respondent is having legitimate rights on the disputed domain name on which heavy express have been incurred by the Respondent.
- (x) Respondent confirms that he is not even using the domain name commercially right now since the website has been taken down.
- (xi) Respondent is having right to receive compensation for its expenses incurred in procuring, developing and maintaining the website
- (xii) Since the domain name has been registered with the knowledge and consent of the Complainant and utilized for the purpose of business of Complainant and that the domain name was not registered for reselling.
- (xiii) Whether the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights? Since domain name was registered with the consent of the complainant, the respondent is having rights in the domain name.



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- xiv The Complainant admittedly does not object to the registration of this domain name by the Respondent or the use of the same by the Respondent during the term of the agreement.
- xv The termination of the agreement, the Complainant wants the Respondent to transfer this domain name to it without receiving any compensation for the various costs incurred by the Respondent in registration, designing and development and renewal and maintenance of this domain name and related website which is unjust.
- (xvi). The Respondent via its communication to the Complainant made it clear that the Respondent was not seeking to monetize this domain name or use it commercially but was looking for compensation for its expenses incurred in the registration of the domain, designing and development of the website as well as renewal and maintenance costs. The same have been documented as Annexure 2 of the Defence statement.
- (xviii). It is also pertinent to note that certain amounts payable to the Respondent by the Claimant in respect of services provided by the Respondent have not been paid till date and evidence related to the same is as Annexure 3.
- (xix). The Respondent had exclusive distributorship rights for the mark 'Soundbot' in India when it registered this domain name and it had been using the same legitimately under intimation to the Complainant during the period of the agreement.
- (xx). The domain [www.soundbot.in](http://www.soundbot.in) is currently not accessible to the public since it has been taken down by the Respondent presently.
- (xxi). There are also a plethora of 'Sound' formative marks in India, i.e. domains and brands starting with the word 'Sound' in Class 9. A List of 149 such registered trademarks in Class 9 in India and a list is given as Annexure 4. Of the defense statement.
- (xxii). The Respondent seeks from the Complainant now is compensation for these expenses in case the Complainant wants the Respondent to transfer the said domain to it.



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- (xxiii). The Respondent is clearly not using this domain in bad faith as the website for the said domain has not even been accessible by the public since some time.

**IX. REJOINDER BY THE COMPLAINANT ON THE DEFENCE STATEMENT :**

1. All the averments made by the Respondent are denied entirely except which are specifically mentioned in their complaint. Also complainant alleged certain inconsistent statements made in the defense statement.
2. The Respondent is not using the disputed domain name for any legitimate use and unable to demonstrate how the subject domain name is used in legitimate purpose.
3. The Respondent was required to return all the Intellectual Property Temporarily licensed during the tenure of Exclusive Distribution Agreement. 15-03-2020
4. The Respondent was required to return the disputed domain name to the Complainant and even after one year of termination of the aforesaid agreement on 15-03-2020 the domain name is not returned. Respondent use is illegitimate and that the contents of disputed down name was taken down and the same is parka.
5. The Complainant owes no dues or monies to the Respondent and the expenses claimed by the Respondent are false. The Complainant informs that the Respondent incurring expenses are for attaining profits from the sales and increasing its market presence.
6. Complainant confirms that they have not collected any profits generated by the Respondent in furtherance to the said agreement and promotion of disputed domain name temporarily licensed for use by the Respondent.
7. The Complainant denies that any expenses have been incurred and questions the veracity of the documents submitted by Respondent and Respondent is put to strict proof thereof.
8. The profits derived by the Respondent is a result from the disputed domain name lent to him for temporary use of the domain name bearing the registered Trade mark of the Complainant.



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9. If the Respondent claims promotional expenses, Complainant shall have a share in the profits generated as a result of the disputed domain name.

**X. DISCUSSIONS FINDING / REASONING :**

1. The Arbitral Tribunal has examined the correspondence, notices and agreement exchanged between the complainant and respondent and conclude the following :
  - a) There is a mutually beneficial business relationship between the complainant and respondent.
  - b) The respondent has been appointed as exclusive distributor of complainant and executed an Exclusive Distribution Agreement on 15.03.2020 and as per Annexure-VII of the complainant the said agreement and newspaper reports were given.
  - c) In the aforesaid agreement, the respondent has been given right and license to utilise the trade mark of the complainant.
  - d) In exercise of the aforesaid right the respondent (exclusive distributor of complainant) has exercise his right of registering the alleged disputed domain name i.e. **soundbot.in**. With a sizeable cost the Respondent continuously maintain the web site.
  - e) The respondent through their attorneys has served a cease and desist notice on the respondent duly directing the respondent not to use the trademark of complainant and transfer disputed domain name to the complainant.
  - f) From the email communications it is ascertained that the respondent had offered for the tdransfer of disputed name to the complainant subjective payment of consideration for disputed name and the outstanding arising out of the business transactions between the parties amounting to 16900 USD Dollars (Pending Repair Maintenance Allowance (RMA) allowance of 7026 USD and 9880 USD for domain name). The Complainant admitted of having paid similar charges in 2018 as per the email correspondence exchanged between the parties.



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2. Admittedly the complainant is having business relationship with the respondent and that the subject domain name has been registered with the acceptance and consent of the complainant. Further, the respondent has been using the disputed domain name and trademark of complainant with consent only. Thus there is no truth in inflicting illegitimacy or bad faith on the part of the Respondent.
3. From the aforesaid exclusive distribution agreement, it is observed that in case of dispute both the parties intend to settle the matter by way of mediation, mediator to be appointed by Indian Disputed Centre. The Arbitral tribunal believes that the present dispute falls under the clear provision of dispute resolution under the agreement. For the reasons best known to both the parties, they have not opted for raising the dispute under mediation of Indian Disputed Centre. Thus, both the parties should have got the settlement under Section 30 of the Indian Arbitration and Conciliation Act 1996 as per the clear intention expressed by the parties in the aforesaid exclusive distributed agreement. It is known fact that, all though the agreement has been terminated the Arbitration (Mediation) Clause still subsists and remaining in force till the dispute is settled by way of mediation.

There is yet another provision of Honourable Delhi High Court being the legal jurisdiction.

4. From the email correspondence, it is further observed that the complainant initially intended to file a lost suite. However, at the advice of their attorneys, laws suit was not initiated and opted for filing the complaint before National Internet Exchange of India (NIXI) under .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP).
5. According to the .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP), Paragraph 4 of INDRP policy the complainant must prove that :
  - (i) The disputed domain name is identical or confusingly similar to a trademark has rights.
  - (ii) The respondent has no rights or legitimate interest in the disputed domain name



  
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- (iii) The disputed domain name has been registered or is being used in bad faith.

The Complainant is unable to establish the three elements against the Respondent.

6. A complainant must show a prima facie case that a respondent lacks rights or legitimate interest the complainant has made a prima facie showing the burden to come forward with evidence establishing rights or legitimate interest shifts to the respondent.

#### **XI. Leagal Precedents**

- a. Uniform Disputed Resolution Policy (UDRP) Panels have recognized that resellers, distributors or service providers using a domain containing the complainant's trademark to undertake sales or repairs related to the complainant's or services may be marking a bona fide offering of goods and services and thus have a legitimate interest in such domain name.

- b. The Word SOUND which is the trade mark of the Complainant appears to be a generic word and similar cases have been dealt by the Indian Judiciary.

The Arbitral Tribunal relying on the decision of the Hon'ble Supreme Court in the case of Reliance Industries Ltd., Vs Reliance Polycrete Ltd., 1997 (17) 581,

Excerpts from the Hon. Supreme Court Judgement

**Quote :** we are inclined to hold it in the negative. In the prima-facie view it does appear to be a case of too much self-importance given to themselves by the Appellants. Fact that so many Joint Stock Companies and firms having word 'Reliance' as their Corporate Firm name exists belies case that public / common man associates the word only with the Appellants or their group Companies no matter what the field of activity". Unquote.

Thus the word SOUND is a generic word and the same was registered by many business concerns.

- c. The Arbitral Tribunal concurs with the reasoning of other UNDRP Panels that have closely examined the conjunctive requirement in the context of terminated distributors and



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have concluded that a complainant must establish bad faith at the time of registration as well in the later use of the domain name. Post-termination conduct may in some instances reflect on the respondent's original intent, as in other contexts, but the complaint cannot succeed simply because a previously circumspect distributor behaved badly after termination. The logic is expressed well in *Danshar (1963) Ltd., Vs. Joey Gilbert Daisy Li*, **WIPO Case No. D2011-2304** :

- d. "What must be tested, however is the Respondent's motivations of the time of registration. It must also be borne in mind that the dual requirement of both registration and use in bad faith was very sharply debated in the lead up to the adoption of the Policy and an alternative proposal that only registration or use in bad faith would suffice was rejected. Accordingly, the preponderant and preferable view is that it is impermissible and preferable view is that it is impermissible to use subsequent conduct to override actual intentions at the relevant time rather than providing an inference for what those intentions were. See e.g. *The Proprietors of Strala Plan No. 36, A Truks and Caicos Corporation Vs. Gift2Gift Privacy Protect.org*. **WIPO Case No. D2010-1173**".
- e. Here, the Complainant does not dispute that the Respondent registered the Domain Name in contemplation of a distributorship that was formally executed two weeks later and then used the Domain Name appropriately and with permission during the term of the distributorship agreement. The Respondent acted as a distributor for years, built two local companies around the Complainant's three products, and expressed surprise and distress at being terminated as a distributor.
- f. The Complainant quoted few WIPO precedents which appears to be inapplicable to the facts of circumstances of the present dispute.



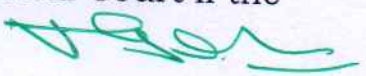
  
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## XII. ...Commercial Transitions between the Parties

- a. The arbitral Tribunal believes that the case is a commercial dispute between the parties inclusive of transfer of Disputed Domain Name from the Respondent to Claimant.
- b. The Arbitral Tribunal examined the exclusive distributor agreement, email correspondence exchanged between the parties and cease and desist notice served by the Complainant on the Respondent and arrive at the following opinion and conclusions.
  - 1, The subject domain name has been acquired and utilized by the Respondent with full consent and concurrence of the Claimant.
  2. There has been three year exclusive distribution contract between the parties and the Respondent was given license to utilize the Trade Mark of Complainant.
  3. After termination of the said exclusive distribution agreement, there have been certain deliverables between the parties such as
    - a. Disposal of inventory (unsold stocks) of us\$40000 held by Respondent for which Complainant was requested to give the required help as per the provisions of the said Exclusive Distribution Agreement.
    - b. Reimbursement of expenses for the repairs of the stocks
    - c. Reimbursement of acquisition and maintenance charges for the disputed domain name,
  - 4, It is noted that the Respondent is not utilizing the disputed domain name and it is taken down as mentioned by the Complainant.
  5. Obviously the Respondent is exercising LIEN on the disputed domain name for the realization of his claim for expenses, and other outstanding due to Respondent.
  6. Inconclusive negotiations taken place and Complainant shown interest in finalizing the deal and get the domain name transferred.
  7. The legal action threatened by the Complainant vide Cease and Desist Notice was not initiated and by efflux of time, the legal action appears to have been waived.
  - 8, The parties should have gone for mediation as per the arbitration clause in the distribution agreement which was not initiated by the parties.
  9. The Arbitral Tribunal believes that there is no illegitimacy or bad faith on the part of the Respondent as alleged by the Complainant.
  10. To resolve the issues the parties are advised to go in for a negotiated settlement, mediation or approach Commercial Court if the situation so warranted.



  
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## **XII. CONCLUSIONS :**


- (i) The Complainant's failed to satisfy the requirements of Paragraph 4 of the .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP). Further the Arbitral Tribunal believes that there is no "**bad faith**" on the part of the Respondent. Respondent confirms that the impugned domain name is not used commercially by the respondent and respondent is not acting against the interests of complainant. The disputed domain name is taken down.
- (ii) The present dispute forms part and parcel of claims / outstanding's claimed and payable to respondent by complainant. The Arbitral Tribunal is of the considered opinion that the dispute between the parties may better be settled by way of mediation as per the relevant provisions available in the aforesaid exclusive distributor agreement or to approach a Commercial Court for adjudication.

## **XIII. DECISION:**

For all the foregoing reasons, the complainant is denied. Both the parties bear their own costs.

Visakhapatnam  
Dated 8<sup>th</sup> July 2021



  
Dr. Vedula Gopinath  
Sole Arbitrator