

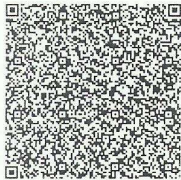
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi
- Page # 1 -

e-Stamp

Certificate No.	: IN-DL62197979129423T
Certificate Issued Date	: 19-Mar-2021 03:25 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1725912325163612T
Purchased by	: KAMAL DAVE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KAMAL DAVE
Second Party	: Not Applicable
Stamp Duty Paid By	: KAMAL DAVE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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In the matter of the Arbitration Act 1996 as Amended by
Arbitration & Conciliation (Amendment) Act, 2015;

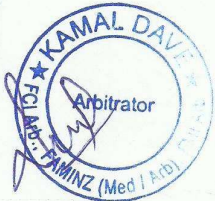
and

INDRP Rules of Procedure;

and

.IN Domain Name Dispute Resolution Policy (INDRP)

and



- Page # 1 -

Statutory Alerts

1. The authenticity of this Stamp certificate should be verified at 'www.shcllestamp.com' or using e-Stamp Mobile App of Stock Holding.
Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
The onus of checking the legitimacy is on the users of the certificate.
2. In case of any discrepancy please inform the Competent Authority.

- Page # 2 -

In the matter of an arbitration between

Godrej Consumer Products Limited
Pirojshanagar, Eastern Express Highway,
Vikhroli [East], Mumbai, 400079
Maharashtra, India ...Complainant

AND

Pest Service
Noida, Noida – 201301
Other
India ...Respondent

in respect of Disputed Domain Name(s):

[www.godrejpestcontrol.co.in]

INDRP Case No: 1403

FINAL AWARD

1. **THE PARTIES AND THEIR REPRESENTATIVES**

A. **Claimant :**

Godrej Consumer Products Limited
Pirojshanagar, Eastern Express Highway,
Vikhroli [East], Mumbai, 400079
Maharashtra, India



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Authorised Representative

Rodney D. Ryder / Ravi Goyal
Scriboard
Advocates & Legal Consultants
Level 2, Elegance,
Mathura Road, Jasola
New Delhi, 110025,
India

B. Respondent

Pest Service
Noida, Noida – 201301
India

2. THE DOMAIN NAMES AND REGISTRAR

- A. The accredited registrar of the disputed Impugned Domain [www.godrejpestcontrol.co.in] is Endurance Domains Technology LLP.

The details of the Registrar, are as follows:

Endurance Domains Technology LLP
Unit No. 501, 5th Floor, IT Building 3
Nesco IT Park, Nesco Complex
Western Express Highway
Goregaon [East]
Mumbai - 400 063

3. THE ARBITRAL TRIBUNAL – APPOINTMENT

- A. As per the records, on 02nd July 2021 NIXI sent intimation to the Arbitrator & the parties including the Respondent regarding the appointment of arbitrator to decide the dispute in respect of domain [www.godrejpestcontrol.co.in].



- B. As per the records, I, the undersigned (i.e. Kamal Dave) was appointed as arbitrator by NIXI, in accordance with INDRP Rules of Procedure and .IN domain name dispute resolution policy (INDRP), vide appointment order dated 02nd July 2021 after I submitted declaration of impartiality and independence at all times with NIXI.
- C. The .IN Domain Name Dispute Resolution Policy (INDRP) & Rules of Procedure of INDRP mandates appointment of arbitrator by NIXI, Accordingly clause 5 (b) of INDRP Rules of Procedure provides for it, which reads, *"The .IN Registry shall appoint, an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator"*.
- D. There is no document/ correspondence on record to show that the Respondent replied to the intimation of arbitration dispute regarding the domain [www.godrejpestcontrol.co.in].

4. PROCEDURAL HISTORY :

- A. After my appointment as arbitrator by NIXI & intimation to me on 02nd July 2021; On 02nd July 2021, the arbitral tribunal communicated the parties through email at their respective registered email addresses, whereby it was directed through Procedural Order No 1 that the mode of communication shall be electronic only except as otherwise specifically stated/ directed. Further the tribunal directed the parties (viz. complainant & respondent) through the procedural order no 1 to file their respective pleadings- viz. to file the scanned copy of complaint on oath through an affidavit 08th July 2021; And to file physical copy of complaint on oath through an affidavit along-with documents through courier on or before 12th July 2021; the tribunal directed the complainant to file the original & physical copy of delivery report of the email (electronic mail),



courier along-with the affidavit of service duly sworn-in before a NOTARY to this effect, within ten days i.e. on or before 12th July 2021; Further the tribunal directed respondent to file their reply on affidavit duly sworn-in before a NOTARY within ten days of receipt of complaint along-with aforementioned documents i.e. on or before 22nd July 2021 and serve the copy thereof to the complainant and the other respondent; And it was optional for the complainant to file any rejoinder within three days thereafter i.e. on or before 26th July 2021 and serve the copy thereof to the respondent; And it was optional for the respondent to file their reply in response to the rejoinder within three days thereafter i.e. on or before 30th July 2021 and serve the copy thereof to the complainant; And it was further optional for the parties to file their evidence by way of affidavit in support of their claim/ reply which shall be duly sworn-in before a NOTARY to that effect; and thereafter submit the electronic/ scan image and physical copy same before myself on or before 30th July 2021 and shall serve the copy thereof to the other party ; And the parties were at liberty to file their written arguments before myself along-with evidence by way of affidavit i.e. on or before 30th July 2021 and serve the copy thereof to the other party.

- B. The complainant through AR has sent scanned copy of documents with email dated 05th July 2021. All aforementioned documents have been taken on record.
- C. The AR of the complainant, pursuant to directions the Complainant submitted Affidavit in support of the complaint duly sworn-in and attested by Notary and sent compliance email dated 10th July 2021.
- D. The complainant through AR has filed documents regarding service of copy of complaint along-with documents/ annexures, affidavit, through



electronically as well as courier. The electronic delivery and copy of courier receipt and tracking report of courier service has been placed on record by the complainant through AR.

- E. The respondent has neither replied to the intimation by NIXI sent on 02nd July 2021; Nor to the notice sent on 02nd July 2021 by arbitrator and notice sent on 05th July 2021 along-with procedural order 1 by the complainant. The complainant through AR has taken steps to serve the respondent through email as well as courier but the respondent has not replied to notice nor even filed their reply. Therefore I am satisfied that the complainant the complainant has taken adequate steps for serving the respondent and thereby complied with the directions. The respondent has been duly served as mandated by clause 2 of INDRP Rules of Procedure and service on respondent is completed as per the clause.
- F. The complainant submitted its evidence by way of affidavit and written arguments through email dated 28th July 2021.
- G. The respondent has chosen to abstain and not participate in the arbitration proceedings. Hence as per clause 12 of INDRP Rules of Procedure, which mandates that where parties are in default i.e. who willfully abstains from the proceedings may be proceeded *ex-parte*. Accordingly, the tribunal concluded that proceedings against the respondent to continue *ex-parte*.
- H. The complainant cannot take benefit from the non-presence of the other party and his claim must stand on merits.

5. PLEADINGS :

- A. The complainant has filed its complaint on oath wherein he contended under the heading grounds of the case :



i. *The domain name is identical and/or confusingly similar to the Complainant's mark 'Godrej'*

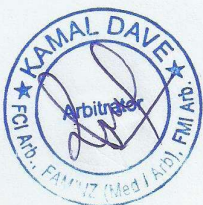
- *A mere glance at the disputed domain name gives rise to enormous confusion as to its origin, as the domain name used by the Respondent is identical to the well-known trademark/service mark of the Complainant. The utmost malafide intention of the Respondent is evident from the fact that the Respondent has copied the entirety of the Complainant's registered and well-known trademark followed by the descriptive terms 'Pest Control'.*
- *In fact, the WIPO Panels in cases such as Reuters Ltd. v. Global Net 2000 Inc., D2000-0441; Altavista Company v. Grandtotal Finances Ltd., D2000-0848; Playboy Enterprises v. Movie Name Company, D2001-1201 have held that the mere omission of one letter of a trademark has no effect on the determination of confusing similarity between a trademark and a domain name. The present case is on an even higher footing as the Respondent has picked up the registered trademark of the Complainant verbatim without even changing a single letter and has suffixed the term 'Pest Control' after it. This particular term is related to the insecticides and pesticides manufactured and sold by the Complainant under the 'Good Knight' and 'Hit' brands. Moreover, since the Complainant manufactures and sells a wide variety of household goods, any member of the general public would mistakenly assume that the Complainant also provides 'pest control' services. Thus, the use of the disputed domain name by the Respondent is a prima facie case of cybersquatting and trade/service mark/name infringement and passing-off.*
- *It is submitted that the domain name [www.godrejpestcontrol.co.in] is identical to the well-known and registered trademark 'Godrej'. Numerous UDRP panels have held [Farouk Systems, Inc. v. Yishi, D2010-0006; Havells India Limited, QRG Enterprises Limited v. Whois Foundation D2016-1775] that a domain name which wholly incorporates a Complainant's registered mark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks.*



- Moreover, in the past, several Panels have held that the addition of a generic term that is descriptive of the goods or services offered under the Complainant's mark increases the confusing similarity of the domain name with the Complainant's mark. [Godrej Consumer Products Limited v. Registration Private, Domains By Proxy, LLC / Vishal Jain, FMCG, D2020-1616; Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd., D2001-0110; Diageo Brands B.V., Diageo North America, Inc. and United Distillers Manufacturing, Inc. v. iVodka.com a.k.a. Alec Bargman, D2004-0627; BHP Billiton Innovation Pty Ltd, BMA Alliance Coal Operations Pty Ltd v. Cameron Jackson, D2008-1338; The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc., D2000-0113; Santa Fe Transport International Limited and Anr. v. Achyut Khare, INDRP/886; Dell Inc. v. Varun Kumar, INDRP/922; Lockheed Martin Corporation v. Aslam Nadia, INDRP/947; Indeed Inc. v. Deepak Singh, INDRP/987]
- The well-known mark 'Godrej' has been in extensive, continuous and uninterrupted use since the year 1897 in relation to the Complainant's [and its group companies] business. The mark 'Godrej' has also been used in relation to advertisements and related business/commercial information disseminated in several print media such as newspapers, magazines etc. both in India as well as abroad. Copies of a few such promotional information, brochures, articles, etc. are enclosed as Annexure H.
- The 'Godrej' mark is the corporate name as well as the primary brand name of the Complainant and its group companies. It has been used extensively over the years for its business as well as its corporate identity.
- It is to be noted that a mark is capable of being a trademark if it has acquired a secondary meaning in the market. In the present dispute the Complainant and its group companies have been using the trademark 'Godrej' in an extensive and continuous manner for more than a century and has thus acquired secondary meaning in the mark. [Realmark Cape Harbour L.L.C. v. Lawrence S. Lewis, D2000-1435].



- It is to be noted that, the trademark 'Godrej' has been declared a 'well-known' mark by the Trade Marks Registry, India under Section 11[6] of the Indian Trade Marks Act, 1999. A copy of the list as published by the Trade Marks Registry, India, duly indicating 'Godrej' as a well-known mark is enclosed as Annexure I. The said list clearly indicates that Godrej & Boyce Mfg. Co. Ltd., a group company of the Godrej Group has been successful in obtaining the well-known status for the 'Godrej' mark.
- At present, the Complainant's mark 'Godrej' is a name to reckon with and has acquired enormous goodwill not only in India but in several other countries across the globe due to its extensive use, advertisements, publicity and awareness throughout the world.
- It is well established that specific top level domain, such as ".com", ".in", ".co.in" ".net" or ".travel", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar [Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., D2000-1525; Rollerblade, Inc. v. Chris McCrady, D2000-0429; Wells Fargo and Company v. Jessica Frankfurter, INDRP/392].
- Moreover, in Living Media, Limited v. India Services, D2000-0973, it has been held that "trademark registration is itself prima facie evidence that the mark is distinctive". Similarly, in eAuto, LLC v. Triple S Auto Parts, D2000-0047, the Panel decided that when a domain name wholly incorporates a Complainant's registered mark, that is sufficient to establish identical or confusing similarity for purposes of the UDRP policy.
- Any person or entity using the well-known and famous mark/name 'Godrej' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant. Moreover, the use of the descriptive word 'Pest Control' in the disputed domain name increases the identicalness and/or confusing similarity of the disputed domain name with the Complainant's brand.
- In the present case, it is very natural for an user, who wishes to visit the website of the Complainant for pesticides or insecticides to type its brand



name 'Godrej' followed by the descriptive term 'Pest Control' [which is very closely associated with the Complainant's brand] and the country specific Top Level Domain [.co.in>. This will lead the user to believe that the Complainant is associated with or owns the website [www.godrejpestcontrol.co.in]. Moreover, it is very likely that an user, who would want to search for pest control solutions by 'Godrej' would search for the term 'Godrej Pest Control'. Such a search would inadvertently lead the user to the disputed domain name and the user would mistakenly assume that the disputed domain name and the services offered through it are being offered by the Complainant.

- In the past, administrative panels have also ruled in favour of brand owners even where the mark was not registered [Satyam Computer Service Limited v. Vasudeva Varma Gokharaju, D2000-0835; Express Publications [Madurai] Ltd. v. Murali Ramakrishnan, D2001-0208 and Hindustan Petroleum Corporation Limited v. Neel Punatar, D2004-0351].
 - It is thus submitted that the disputed domain name is identical and/or confusingly similar to the Complainant's well-known mark 'Godrej'.
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name
- The Respondent has no proprietary or contractual rights in any registered or common law trademark corresponding in whole or in part to the disputed domain name.
 - 'Godrej' is a registered and well-known trademark and the addition of the descriptive term 'Pest Control' clearly indicates that the Respondent knew of the Complainant's 'well-known' mark and its business activities due to the fact that the 'Godrej' mark has been in use by the Complainant in relation to various household products since the year 1897. It is thus highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. Moreover, the impugned domain name was registered by the Respondent on July 10, 2013 which is very recent compared to the inception and gradual popularity of the 'Godrej' brand. [Telstra Corporation Limited v.



Nuclear Marshmallows, D2000-0003; Kelemata S.p.A. v. Mr. Bassarab Dungaciu, D2003-0849]

- *It is to be noted that the Respondent has developed a website on the disputed domain name and claims to offer 'Godrej Pest Control' services. It is submitted that the Respondent has been trying to lure and defraud unassuming customers by misleading them into believing that the website and the services offered through the disputed domain name are being provided by the Complainant. A printout of the homepage of the impugned domain name is enclosed as Annexure J.*
- *The very fact that the Respondent has registered a domain name with the term 'Godrej Pest Control' indicates that the Respondent knew of the Complainant's brand and registered the domain name to cash-in on the brand's reputation. The Respondent, as of now, is passing-off by pretending to be offering a genuine service under the 'Godrej' brand. The term 'Pest Control' is closely related to insecticides and pesticides manufactured and sold by the Complainant. Moreover, since the Complainant manufactures and sells a wide variety of household goods, any member of the general public would mistakenly assume that the Complainant also provides 'pest control' services.*
- *Furthermore, the very fact that the Respondent has added a disclaimer at the footer of the website available on the disputed domain name stating that 'THIS IS NOT AN OFFICIAL WEBSITE OF GODREJ' further proves that the Respondent had actual knowledge of the Complainant's brand and yet it continued using the domain name. It is submitted that merely publishing such a disclaimer does not absolve the Respondent of its liability or responsibility in any manner whatsoever. The disclaimer is not prominent or conspicuous enough for innocent members of the public to view it properly. Moreover, this is a serious case of trademark infringement and passing-off on part of the Respondent.*
- *The Respondent has no active legitimate or bona fide business in the name of 'Godrej'. The Respondent is not a licensee of the Complainant, nor has*



the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent. [Charles Jourdan Holding AG v. AAIM, D2000-0403 ; ITC Limited vs. Mr. Mark Segal, INDRP/079; Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581; Aon PLC and Ors. v. Gangadhar Mahesh, INDRP/632; Aon PLC and Ors. v. Guanrui, INDRP/633]

- Furthermore, the Respondent whose name is 'Pest Service', does not engage in any legitimate or bonafide business or commerce under the name 'Godrej'. [Etro S.p.A v. M/S Keep Guessing, INDRP/024; Tata Sons Limited v. Jacob W., D2016-1264].
- In light of the uniqueness of the domain name [www.godrejpestcontrol.co.in], which is completely identical to the Complainant's well-known trademark followed by a term indicative of the Complainant's business, it is extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant. [Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003; Daniel C. Marino, Jr. v. Video Images Productions, et al., D2000-0598]
- The Respondent has not provided his complete address in the WHOIS contact information. This clearly indicates the mala fide of the Respondent leading to the conclusion that the Respondent does not have any legitimate rights in the disputed domain name. Moreover, by providing inaccurate and unreliable information, the Respondent has violated Section 2 of the 'Terms and Conditions for Registrants' issued by the .IN Registry. A copy of the said Terms & Conditions as available on [www.registry.in] is annexed as Annexure K. A similar provision in Paragraph 3[a] of the Policy states that the credentials furnished by the domain name registrant should be complete and accurate. The Respondent has not adhered to this as well.



- *The Respondent cannot have any rights or legitimate interests in the disputed domain name because the disputed domain name incorporates the Complainant's well-known mark 'Godrej' in its entirety.*
 - *The Complainant contends that the Respondent has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name.*
 - *Furthermore, the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed domain name.*
- iii. *The Respondent registered and/or is using the disputed domain name in bad faith*
- *The Complainant asserts that it is inconceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainant and its 'well-known' trademark. The Complainant's 'Godrej' trademark is globally 'well-known' as it has been continuously used since 1897. In fact, the disclaimer at the footer of the homepage of the impugned domain name conclusively proves that the Respondent is aware about the Complainant's brand 'Godrej'. Furthermore, the addition of the term 'Pest Control' after the Complainant's trademark 'Godrej' in the disputed domain name makes it apparent that the Respondent is deliberately passing-off its services under the 'Godrej' brand. It is apparent that the Respondent registered the disputed domain name to mislead consumers into believing that the impugned domain name is associated with the Complainant. [Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH, D2001-0026; Lockheed Martin Corporation v. Aslam Nadia, INDRP/947]*
 - *Moreover, a basic internet search of the term 'Godrej' would have alerted the Respondent of the Complainant's extensive ownership and rights over the 'Godrej' mark as well as its business activities under the said mark.*
 - *Both the Complainant and the Respondent are primarily based in India, and it is thus inconceivable that the Respondent while registering the disputed domain in the year 2013 was unaware of the well-known mark 'Godrej' which has been actively and continuously used in India since 1897. Moreover, as*



mentioned above, the Respondent itself has published a disclaimer on the website available on the impugned domain name which clearly establishes that the Respondent knew of the Complainant's brand while registering the impugned domain name. As submitted above, merely publishing such a disclaimer does not absolve the Respondent of its liability or responsibility in any manner whatsoever. Moreover, this a serious case of trademark infringement and passing-off on part of the Respondent. The Respondent cannot infringe on the Complainant's rights by merely publishing such a flimsy disclaimer.

- In light of the Respondent's knowledge of the Complainant's rights and the availability of the website on the domain name, it is reasonable to infer that the Respondent registered the disputed domain name in bad faith with the intention to target these rights. [Cellular One Group v. Paul Brien, D2000-0028; Façonnable SAS v. Names4Sale, D2001-1365; Vakko Holding Anonim Sti. v. Esat Ist, D2001-1173; Maori Television Service v. Damien Sampat, D2005-0524; Kelemata S.p.A. v. Mr. Bassarab Dungaciu, D2003-0849]
- The Complainant's mark is a name to reckon with and has acquired enormous goodwill not only in India but in several other countries. Moreover, the mark 'Godrej' has been declared 'well-known' in India. Please refer to Annexure I. Registration of a domain name identical or confusingly similar to a 'well-known' trademark is a clear indicator of bad faith. [Yahoo! Inc. v. Jorge O. Kirovsky, D2000-0428; Kabushiki Kaisha Toshiba v Shan Computers, D2000-0325; Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, D2000-0226; Nike, Inc. v. B. B. de Boer, D2000-1397; Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581; QRG Enterprises Limited & Anr. v. Zhang Mi, INDRP/852]
- At present, the domain name [www.godrejpestcontrol.co.in] is being held by the Respondent in bad faith. Since the Complainant manufactures and sells a wide variety of household goods including insecticides and pesticides, any member of the general public would mistakenly assume that the Complainant also provides 'pest control' services.



- Moreover, it is very likely that an internet user, who would want to search for pest control solutions by Godrej would search for the term 'Godrej Pest Control'. Such a search would inadvertently lead the user to the disputed domain name and the user would mistakenly assume that the disputed domain name and the services offered through it are being offered by the Complainant.
- Additionally, the blatant disregard and violation of the Terms & Conditions as well as of the Policy by the Respondent constitutes strong evidence of bad faith. As per Section 2 of the 'Terms & Conditions for Registrants', registrants are mandated to provide complete and accurate contact details. A similar provision in Paragraph 3[a] of the Policy states that the credentials furnished by the registrant should be complete and accurate.
- The Respondent is solely using the domain name for wrongful financial gain. Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service without violating the Complainant's rights. Thus, the disputed domain name was registered in bad faith. [The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250]
- The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. The Complainant has a long and well-established reputation in the 'Godrej' mark through its exclusive use in India and abroad. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity - that is, the Complainant. [Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215; Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93]
- On account of the high degree of inherent and acquired distinctiveness which the well-known mark 'Godrej' is possessed of, the use of this mark or



any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade.

- That any use of the impugned domain name by the Respondent would necessarily be in bad faith. [Xpedia Travel.com, D2000-0137 and Goodfoodguide.net, D2000-0019 wherein it was held that owing to a wide public knowledge of the Complainant's mark, the Respondent cannot be said to have a legitimate interest in the concerned mark since he ought to have known of the Complainant's mark.]
- In cases such as Guerlain S.A. v. Peikang, D2000-0055 and Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., D2000-0163 it has been held that bad faith is found where a domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith".
- With regard to famous and well-known brands, successive UDRP panels have found bad faith registration in similar circumstances. [Cho Yong Pil v. Sinwoo Yoon, D2000-0310; America Online Inc. v. Chinese ICQ Network, D2000-0808; thecaravanclub.com, NAF/FA95314]
- The Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives:
 1. The domain name could be used by the Respondent to extract huge sums of money from the Complainant who have legitimate interest in the said domain name.
 2. The Respondent is cashing-in on the reputation of the Complainant's mark by using the domain name for offering services similar to the Complainant.
 3. The Respondent can transfer or sell the domain name to some competing interest of the Complainant.



iv. The complainant sought remedies under the head - "*VII. REMEDIES SOUGHT BY THE COMPLAINANT: The Complainant most humbly prays that:*

(a) In accordance with Paragraph 10 of the Policy, for the reasons described in Section V above, the Complainant requests the Arbitrator Panel to issue a decision that the contested domain name [www.godrejpestcontrol.co.in] be transferred to the Complainant.

B. The respondent has abstained from the arbitration proceedings and has been proceeded ex-parte as per clause 12 of INDRP Rules of Procedure.

6. The Issues : From the complaint following issues have been framed :

A. Whether the Registrant's domain name [www.godrejpestcontrol.co.in] is identical to the trade mark in which the Complainant has rights?

B. Whether the Respondent has no rights or legitimate interests in respect of the domain name [www.godrejpestcontrol.co.in] ?

C. Whether the domain name [www.godrejpestcontrol.co.in] is registered and being used in bad faith?

D. Relief – *VII. REMEDIES SOUGHT BY THE COMPLAINANT: The Complainant most humbly prays that:*

(a) *In accordance with Paragraph 10 of the Policy, for the reasons described in Section V above, the Complainant requests the Arbitrator Panel to issue a decision that the contested domain name [www.godrejpestcontrol.co.in] be transferred to the Complainant.*

7. Analysis of the issues on Merit

A. Whether the Registrant's domain name [www.godrejpestcontrol.co.in] is identical to the trade mark in which the Complainant has rights?

i. I have perused the complaint, affidavit & documents/ Annexures placed on record. From the submissions on oath and perusal of



Annexures, and after perusing them I found that the complainant has obtained Trademark certificates from Intellectual Property Office in India & other countries worldwide. From the pleadings it is apparent that complainant company is offering their various household products under the trademark "Godrej" since the year 1897.

ii. The complainant has submitted in their pleadings that

- "...Over the years, the Complainant has introduced several different products under the 'Good Knight' brand. Brief details [and the timeline] of the different products introduced by the Complainant under the brand since its launch in 1984 can be viewed at the following URL: <http://www.goodknight.in/innovation-timeline/>.
- Similarly, the brand 'Hit' was first introduced by the Complainant in 1991. Since then, several products have been launched under the 'Hit' brand. For instance, 'Kala Hit', 'Lal Hit', 'Hit Anti Roach Gel', 'Hit Anti Mosquito Racquet', 'Hit Gel Stick', 'Hit Chalk', 'Hit Rat Glue Pad', 'Hit Rat', etc. The brand has a dedicated website at www.godrejhit.com. The products under the 'Hit' brand are aimed at killing mosquitoes, rats, cockroaches, etc.
- Godrej has also been actively involved in the 'pest control' business under the brand 'HiCare'. In 2004, Godrej became one of the first brands to provide odourless, safe and high-tech pest control in India under the 'HiCare' brand. Under the 'HiCare' brand, Godrej would offer its customers home visits to get rid of pest infestation. Godrej sold eighty percent of its stake in the 'HiCare' business to a Danish services conglomerate called ISS in 2009, and thereafter the 'HiCare' business was completely sold off to ISS in 2013. A news article about this transaction is enclosed as Annexure C. Additional details about 'HiCare' are available at www.hicare.in. ..."; and also submitted
- "...The Complainant has several trademark registrations for the mark 'Godrej' and other related marks in India as well as in other jurisdictions. A tabular list of a few trademark registrations/applications obtained/filed by the



Complainant in India along with supporting documents as well as details of trademark applications/registrations filed/obtained in other jurisdictions is annexed as Annexure D. It is to be noted that the 'Godrej' mark and related variations are also registered under Class 5 [relevant for insecticides, pesticides, etc.] in India...."

- iii. In their arguments, the complainant has further argued that,
- *"...It is humbly submitted that the trademark 'Godrej' has been declared a 'well-known' mark by the Trade Marks Registry, India under Section 11[6] of the Indian Trade Marks Act, 1999. A copy of the list as published by the Trade Marks Registry, India. Please refer to Annexure I of the Complaint"*
- iv. I have perused "Annexure I" and I found that the complainant owns registered trademark "Godrej" am thus satisfied that the complainant is the lawful owner of the trademark and is carrying out business activities under the trademark "Godrej".
- v. I have perused the submission on oath by the complainant I am satisfied respondent have adapted the trademark "Godrej" in violation of complainant's exclusive right to use the trademark "Godrej".
- vi. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
- vii. I conclude that the domain name [www.godrejpestcontrol.co.in] is identical and confusingly similar to the trademark "Godrej" over which the Complainant has rights and thus has contravened the Paragraph 4(a) of INDRP Policy.

B. Whether the Respondent has no rights or legitimate interests in respect of the domain name [www.godrejpestcontrol.co.in] ?

- i. I have perused the complaint, affidavit & documents/ Annexures placed on record and their submissions on oath.



ii. I have gone through the submissions of the complainant in their pleadings and evidence and specifically,

- *"...Furthermore, the very fact that the Respondent has added a disclaimer at the footer of the website available on the disputed domain name stating that 'THIS IS NOT AN OFFICIAL WEBSITE OF GODREJ' further proves that the Respondent had actual knowledge of the Complainant's brand and yet it continued using the domain name. It is submitted that merely publishing such a disclaimer does not absolve the Respondent of its liability or responsibility in any manner whatsoever. The disclaimer is not prominent or conspicuous enough for innocent members of the public to view it properly. Moreover, this a serious case of trademark infringement and passing-off on part of the Respondent...."*

iii. I am satisfied that respondent, by using the trademark "Godrej", are violating rights or legitimate interests of the complainant who have exclusive right to use the trademark "Godrej".

iv. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.

v. After analyzing the submissions & details made herein-before and the documents placed on record, I conclude that the respondent has no claims, rights or legitimate interests to use the trademark "Godrej" in respect of carrying out business from the disputed domain name [www.godrejpestcontrol.co.in]. I am satisfied and conclude that the respondent has acted in contravention of paragraph 4(b) of INDRP Policy.

C. Whether the domain name [www.godrejpestcontrol.co.in] is registered and being used in bad faith?



- i. I have perused the complaint, affidavit & documents/ Annexures placed on record. I have also perused the submissions and particularly ,
 - *"...Additionally, the blatant disregard and violation of the Terms & Conditions as well as of the Policy by the Respondent constitutes strong evidence of bad faith. As per Section 2 of the 'Terms & Conditions for Registrants', registrants are mandated to provide complete and accurate contact details. A similar provision in Paragraph 3[a] of the Policy states that the credentials furnished by the registrant should be complete and accurate. ..."*
- ii. And after perusing Annexures on placed record, it is apparent that the complainant company is bonafide owner of trademark "Godrej" and is carrying out business activities, however, the respondent is trying to mislead the innocent persons by use of confusing domain name, where the respondent has himself added a disclaimer at the footer of the website available on the disputed domain name stating that 'THIS IS NOT AN OFFICIAL WEBSITE OF GODREJ and is thus taking illegal benefit from the goodwill of the complainant company. I am satisfied that respondent have registered domain name using the trademark "Godrej" contravening the exclusive rights of the complainant over the trademark "Godrej" and the registration of the Impugned Domain [www.godrejpestcontrol.co.in] has been done in bad faith and with dishonest intention to mislead the innocent public.
- iii. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
- iv. After analyzing the submissions & details made herein-before and the documents placed on record, I conclude that the the domain name [www.godrejpestcontrol.co.in] is registered and being used in



bad faith by the respondent. I further conclude that the respondent has acted in contravention of paragraph 4(c) of INDRP Policy.

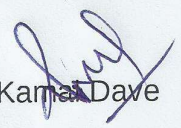
D. Remedies Requested – *The Complainant most humbly prays that:*

- i. Analysis of the issue (D) Relief – In accordance with Paragraph 10 of the Policy, for the reasons described in Section V above, the Complainant requests the Arbitrator Panel to issue a decision that the contested domain name [www.godrejpestcontrol.co.in] be transferred to the Complainant.
- ii. I have perused the complaint, affidavit & documents/ Annexures placed on record and after analyzing & discussing them in details herein-before I have concluded that the respondent has acted in contravention of paragraph 4 of INDRP Policy in entirety.
- iii. I thus conclude the final issue i.e. Relief to be settled in favour of the complainant and accordingly I allow the prayer of the complainant to rightfully transfer the ownership of domain name [www.godrejpestcontrol.co.in] in favour of the complainant.

8. AWARD

- A. I AWARD AND DIRECT, that the ownership of domain name [www.godrejpestcontrol.co.in] be transferred in the name of the complainant.

This is my final award made and published by me on this 22nd day of August 2021, at New Delhi, the seat of arbitration.


Kamal Dave
Sole Arbitrator



KAMAL DAVE
Arbitrator
FCI Arb., FAMINZ (Med / Arb), FMI Arb., BA
LLB., PGD EDI/e-commerce, PGD IR & PM, DLL
RZF-222/54, Street No. 31, Sadh Nagar-II,
Palam Colony, New Delhi-110045