

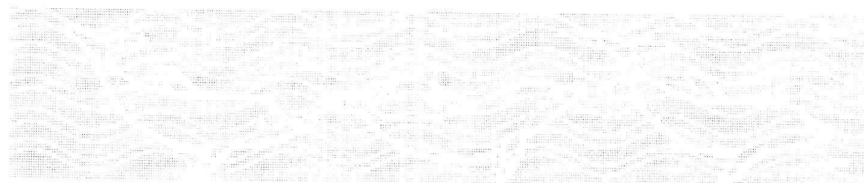
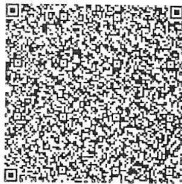
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INDIA NON JUDICIAL

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| Certificate No. | : IN-DL19966214144163T |
| Certificate Issued Date | : 06-Sep-2021 04:59 PM |
| Account Reference | : IMPACC (IV)/ dl925103/ DELHI/ DL-DLH |
| Unique Doc. Reference | : SUBIN-DL92510336420642544168T |
| Purchased by | : SRIDHARAN RAJAN RAMKUMAR |
| Description of Document | : Article 12 Award |
| Property Description | : Not Applicable |
| Consideration Price (Rs.) | : 0 (Zero) |
| First Party | : SRIDHARAN RAJAN RAMKUMAR |
| Second Party | : Not Applicable |
| Stamp Duty Paid By | : SRIDHARAN RAJAN RAMKUMAR |
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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY**

INDRP Case No: 1406

IN THE MATTER OF:

Peloton Interactive, Inc.
125 West 25th Street,
11th Floor, New York,
NY 10001

...Complainant

VERSUS

Ding RiGuo
8F, No.199 Shifu Road, Taizhou,
Zhejiang 318000,
China

...Respondent

AWARD

I. THE PARTIES:

A. Complainant

The Complainant is the State Farm Mutual Automobile Insurance Company is a company registered under the Companies Act, 1956, with its registered office at 125 West 25th Street, 11th Floor, New York, NY 10001, United States of America. Copy of the Vakalathanma in favor of the legal representative was attached as Annexure 1. The copy of the WHOIS extract of disputed domain name as on 23/06/2021 including that obtained from NIXI was attached as Annexure 2.

B. Respondent

The Respondent is one Ding RiGuo, having his address as 8F, No.199 Shifu Road, Taizhou, Zhejiang 318000, China

II. THE DOMAIN NAME AND REGISTRAR:

The disputed domain name : <PELOTON.IN >

III. PROCEDURAL HISTORY:



| | |
|----------------|---|
| June 29, 2021: | Date of Complaint |
| July 12, 2021: | The .IN REGISTRY appointed Sridharan Rajan Ramkumar 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. |
| July 12, 2020 | <p>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.</p> <p>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.</p> |

IV. FACTUAL AND LEGAL BACKGROUND:

1. It was submitted that the Complainant (which includes its predecessor(s)-in-interest Peloton Interactive, LLC and its licensees, franchisees, affiliates, associates and subsidiary companies) is a corporation existing under the laws of the State of Delaware. Copy of the certified extract of the Incorporation Certificate of the Complainant was annexed as **Annexure 3**
2. It was submitted that the Complainant was founded in 2012 (through its predecessor-in-interest) as an at-home gym equipment and media company with the vision to bring community and excitement of boutique fitness to people's homes in an accessible, affordable and efficient way and an aim to change the way people get fit. It is a pioneer in technology connected fitness and is today the largest interactive fitness platform in the world. It has also expanded to commercial environments such as hotels, resorts, country clubs and universities.



3. It was submitted that the Complainant has used the name and mark PELOTON since inception in 2012, extensively and continuously, for and in relation to its business, products and services. PELOTON is also part of the corporate name of the Complainant and was that of its predecessor-in-interest, Peloton Interactive, LLC.
4. It was submitted that the Complainant flagship products are stationary exercise bicycles and treadmills – which it designed. It was submitted that the complainant also produces high value fitness and wellness classes/programs which its members can live-stream through its interactive platform and has an exercise app that allows users to access online fitness classes – all under the PELOTON name and mark. It was submitted that the complainant also offers a variety of other products, sports apparel and accessories designed to complement the use of its flagship products. It was submitted that further information about the Complainant, its products and services is available at www.onepeloton.com, which is accessible around the world including in India. Extracts from the said site was annexed as **Annexure 4**.
5. It was submitted that on purchase of a PELOTON exercise equipment (which features a large touchscreen, speaker sound system), a membership is created that allows access to the Complainant's especially designed live or on-demand classes. It was submitted that there are thousands of video sessions available, multiple fitness instructors to choose from and a robust music library. It was submitted that the complainant other social features are also available like the ability to virtually ride with friends, leader-boards with achievement badges and like. It was submitted that in addition, the PELOTON app allows users to work out on the go with access to a wide range of live exercise classes including running, cycling, yoga and meditation and coaching for strength and stretching and others on any equipment. It was submitted that The PELOTON app is also available for purchase as a monthly subscription. Just in the period October 1, 2020 - December 31, 2020 (Q3 2021 in USA) the Complainant provided over 149.5 million



workouts. An extract from the Complainant's website in this behalf was annexed as **Annexure 5**.

6. It was submitted that the Complainant and its products and services are well-known throughout the world and same is established from the fact that it has over 4.4 million members and subscribers including from India – all of whom bond connect through the world of fitness, empower and inspire each other and grow stronger together. For fiscal years 2020, 2019 and 2018, the Complainant's subscriptions were 1,091,100, 511,200 and 245,600 respectively. As on December 31, 2020, it had a 12-month retention rate of 92% as per Annexure 5.
7. It was submitted that the Complainant has its own customer education, purchase, delivery and service platform and sells its PELOTON products through its e-commerce site and its studios/showrooms. It was submitted that presently, there are over 117 showrooms in USA, Canada, UK, Germany and Australia which are located in upscale malls, lifestyle centres and premium street locations. The Complainant plans to launch in other countries soon. Extract listing some of the Complainant's showrooms was annexed as **Annexure 6**.
8. It was submitted that the Complainant has tied up with leading hotel brands where its PELOTON equipment is available to guests. These hotels are located in international cities like Boston, New York, London, Chicago, San Francisco, Los Angeles, Miami, Atlanta, Washington DC, New Orleans all of which are frequented by travelers from India. Extract in this behalf was annexed as **Annexure 7**. It was submitted that this ties up has helped increase the visibility of the Complainant's PELOTON products and services leading to a corresponding increase in consumer awareness.
9. It was submitted that driven by a members-first mindset, the key to the Complainant's success has been not just state of the art fitness equipment it provides but also immersive and motivating workouts that fit its members' schedule, goals and mood – at the tap of a button and from the



comfort of home. Revenue enjoyed by the Complainant under the PELOTON name and mark has been high and increasing year after year and now runs into billions of dollars. For fiscal years 2020, 2019, and 2018, the Complainant generated total revenue of \$1,825.9 million, \$915.0 million and \$435.0 million, respectively, representing 100% and 110% year-over-year growth. The Complainant's revenue in the period October 1, 2020 to December 31, 2020 was US\$ 1.26 billion. An extract from the 2020 Annual Report of the Complainant was annexed as **Annexure 8.**

10. It was submitted that Millions have come to know about the PELOTON name and mark through the Complainant's advertising, marketing and brand building measures through a variety of media. It was submitted that the complainant has undertaken multi-million- dollar TV campaigns on major cable and broadcast networks including CNN and NBC and was a sponsor for the 2018 Winter Olympics which included extensive TV advertising and live studio cycling classes broadcast from Pyeongchang, South Korea. Per the 2020 Annual Report, the Complainant's advertising expenses were \$302.8 million, \$218.8 million and \$101.4 million for the fiscal years ending June 30, 2020, 2019 and 2018 respectively. It was submitted that in addition, the Complainant has multi-faceted collaboration with the singer Beyoncé that involves class programming and a social giveback program. It was submitted that the complainant also has a robust Artist Series involving 50+ musicians who have licensed their name and musical works to the Complainant like Beyoncé, Madonna, Miley Cyrus, Justin Bieber, Queen (from 2018), Imagine Dragons (from 2018), Sir Paul McCartney and the Red Hot Chili Peppers.

11. It was submitted that the Complainant has prominent presence on various social media and network sites under the PELOTON name and mark which has helped build a strong brand identity. It was submitted that the Complainant has 795000 likes and followers on Facebook, 152.2k followers on Twitter, 1.5 million followers on Instagram and 62.7k

YouTube subscribers. Extracts in this behalf was annexed as **Annexure-9.**

12. It was submitted that the complainant's YouTube channel <https://www.youtube.com/c/OnePeloton/featured> has numerous videos which have received 47456388 views by millions around the world. The number of views on these videos further go on to substantiate recognition enjoyed by the Complainant's PELOTON products and services. A few screenshots are below:



13. In order to protect its valuable intellectual property rights, the Complainant has obtained registrations for the PELOTON mark in various jurisdictions including Australia, Benelux, Cambodia, Canada, China, Egypt, EU, Hong Kong, Israel, Japan, Korea, Mexico, Morocco, New Zealand, Philippines, Russia, Singapore, Taiwan, Turkey, USA, Vietnam. A list of Complainant's registrations and applications worldwide (excluding India) was annexed as **Annexure 10.**

14. It was submitted that the Complainant has also obtained registrations for the PELOTON mark in India, details of which are as under:

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| Trade Mark | Registration No. | Registration Date | Class/es & Description of goods and services |
|------------|------------------|--------------------|---|
| PELOTON | 3208415 | September 01, 2015 | <p>28: Stationary exercise bicycles and component parts thereof, namely, bicycle seats and bicycle pedals; exercise weights; stationary bicycles equipped with interactive computer systems, video players, and body bars.</p> <p>38: Streaming of audio and video materials on the Internet featuring physical fitness classes, training, and instruction.</p> <p>41: Providing classes, workshops and seminars in the fields of fitness and exercise; providing fitness and exercise facilities; physical fitness instruction and consultation; physical fitness conditioning classes; physical fitness training services providing a website featuring information on exercise and physical fitness accessible through a global computer network and mobile devices.</p> |
| PELOTON | 3671676 | September 19, 2017 | 28: Exercise equipment |
| PELOTON | 4748255 | November 18, 2020 | <p>41: Educational services; entertainment services; Exercise classes offered by means of streaming feed on the Internet; Entertainment services, namely, providing podcasts via video and audio in the fields of exercise, weight loss, physical fitness, wellness, nutrition, mindfulness, meditation, and personal development; entertainment services, namely, production and distribution of radio programs, television</p> |



| | | | |
|--|--|--|---|
| | | | <p>programs and cable television programs in the fields of exercise, fitness, wellness, nutrition, mindfulness, meditation, and personal development for distribution via television, cable television, radio and a global computer network; entertainment services in the nature of the production and distribution of a television channel, cable television channel and radio channel in the fields of exercise, fitness, wellness, nutrition, mindfulness, meditation, and personal development; educational services, namely, the presentation of seminars, lectures, workshops, and panel discussions in the fields of exercise, fitness, wellness, nutrition, mindfulness, meditation, and personal development; providing classes, workshops and seminars in the fields of fitness, wellness, nutrition, mindfulness, meditation, and exercise; providing fitness and exercise facilities; physical fitness instruction and consultation; physical fitness conditioning, classes; physical fitness training services; physical fitness studio services, namely, providing exercise classes; yoga instruction; pilates instruction; online journals, namely, blogs featuring the topics regarding local community, exercise, fitness, wellness, nutrition, mindfulness, meditation, and personal development; providing a website featuring information on exercise, physical fitness, wellness, nutrition, mindfulness and meditation; providing non-downloadable live and recorded audiovisual content featuring</p> |
|--|--|--|---|



| | | | |
|---------|---------|-------------------|--|
| | | | wellness, nutrition, mindfulness, meditation, and physical fitness classes, training and instruction; providing online courses in the fields of exercise, fitness, wellness, nutrition, mindfulness, meditation, and personal development; information, advice and assistance relating to the aforesaid. |
| PELOTON | 4748253 | November 18, 2020 | 28: Stationary bicycles and component parts thereof; bicycle seats and bicycle pedals sold separately for stationary bicycles; exercise weights; stationary bicycles equipped with interactive computer systems, namely, computer console, microphone and camera; stationary bicycles |

It was submitted that the Complainant also has other registrations for PELOTON in India under nos. 4748257, 4748258, 4748259, 4748260 and 4748261 in classes 29, 30, 32, 3, 9, 10, 14, 16, 21, 26, 27, 38, 42, 45 and 43. Statement of Grant of Protection/copies of registration certificates for the above marks was annexed as **Annexure 11**.

15. It was submitted that the Complainant has obtained domain registrations with the PELOTON designation such as <pelotonwork.com>, <pelotonteam.com>, <pelotonstudio.com>, <pelotonrun.com>. The domain <pelotoncycle.com> was registered in 2011 and <onepeloton.com> was registered in 2017. A list of the domain names owned by the Complainant for <peloton._> was annexed as **Annexure 12**.

16. It was submitted that the Complainant has been recognized as a leader in the world of fitness and has received many awards and accolades. For instance, it was recognized in Forbes Magazine and by Fast Company, among others, as among the most relevant brands in 2021 and was ranked at Number 2, up from its 33rd position the previous year. Relevant article was annexed as **Annexure 13**.

17. It was submitted that the Complainant has been the subject matter of unsolicited media comment. Feature stories in well-known publications like New York Times, Huffington Post, Financial Times, Forbes, The Wall Street Journal, CNBC have spoken of its success. Testimonials and press releases about the Complainant and the PELOTON name and mark are also available for review on www.onepeloton.com. A few representative articles and press releases was annexed as **Annexure 14**.
18. It was submitted that the Complainant has been actively enforcing its rights in the PELOTON name and mark through available means and has received favourable results. It successfully sought transfer of the domains <pelotonfund.org> and <pelotonscholarshipfund.org> by reaching out to the registrant/squatter. It has also succeeded in seeking domain transfer against adoption of PELOTON. The FORUM Administrative Panel in Peloton Interactive, Inc. v William Beckett, Claim No. FA1511001647927 transferred the domain names <peloton- cycle.com> to the Complainant. The Panel acknowledged the notoriety of Complainant's trademark and noted that the Respondent intentionally registered the disputed domain name to improperly exploit the trademark value of the PELOTON mark. Copy of correspondence and said decision was annexed as **Annexure 15**.
19. It was submitted that Due to its strong influence in the fitness industry, the Complainant is known in India and has following here. In addition, Indians traveling abroad would have seen the PELOTON name and mark and also experienced the PELOTON experience at the leading hotels where it is available.
20. It was submitted that from the above it is clear that the Complainant's proprietary rights in the trademark and trade name PELOTON to the exclusion of all others stand well established. The rights of the Complainant are matters of public knowledge known to the general public at large including in India.
21. The disputed domain name and corresponding website:



The disputed domain is registered to the Respondent. The website www.peloton.in resolves to a parking page which states that the domain is a premium one and is available for sale. A screenshot in this behalf is as under:



V. PARTIES CONTENTIONS:

1. Complainant

- (a) The Domain Name is identical or confusingly similar to a Trademark of the Complainant
- (b) Respondent has no legitimate interest in the domain name
- (c) Respondent has registered the domain name in bad faith

2. The Complainant asserts that each of the aforementioned factors are established, as substantiated as substantiated below:

- (i) The disputed domain name <peloton.in> is identical to the trademark and trade name PELOTON of the Complainant.
- (ii) From the foregoing paragraphs, it is abundantly self-evident that the Complainant has exclusive statutory and common law rights in the name and mark PELOTON including variants thereof. By virtue of prior adoption, registration, long and extensive use thereof as a trade name, trademark and domain name and the substantial expenditures incurred in its promotion and advertising worldwide, PELOTON is exclusively associated with the Complainant and is a 'well-known'

mark. Accordingly, PELOTON is entitled to be protected against any misuse whatsoever including that by the Respondent.

- (iii) The Complainant has been continuously and exclusively using the PELOTON name and mark in relation to its business since at least 2012 i.e. almost 2 years prior to the date on which the Respondent registered the disputed domain name i.e. June 25, 2014.
- (iv) It was submitted that the disputed domain name <peloton.in> is identical in entirety to the Complainant's name and mark PELOTON. It is a well-settled principle and has been held by various Panels deciding under the INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.
- (v) It was submitted that the disputed domain is nothing but the PELOTON name and mark; the addition of the ccTLD ".in" to the disputed domain name has no legal significance. It is well-settled that the ccTLD is not relevant in determining identity or deceptive similarity. Additionally, Paragraph 3 of the INDRP lists the representations and warranties by a Registrant at the time of registering a domain name. In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947), it was observed that "***it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights***" and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. In the present dispute as well, the Respondent, in registering the disputed domain has done so in clear violation of the exclusive rights of the Complainant in the PELOTON name and mark. Furthermore, the registration of a domain name that is identical to a trademark by an entity that has no relationship to that mark is sufficient in itself for a finding of bad faith.
- (vi) The Respondent has constructive notice of the name and mark PELOTON and was or should have been aware of the Complainant's



prior rights in the PELOTON name and mark at the time of registering the disputed domain name. The PELOTON name and mark has worldwide reputation and has substantial presence on the Internet. The bad faith of the Respondent in registering the disputed domain name is established from the fact he has registered the disputed domain name by adopting the well-known PELOTON name and mark. The WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163* has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

- (vii) In addition to constructive notice, the Respondent had actual notice of Complainant's rights in the well-known trademark and trade name PELOTON name and mark. On April 27, 2021, a notice was sent to the Respondent by e-mail and a copy of the same is attached as **Annexure 17**. In the said notice, the Respondent was informed of the Complainant's rights in the PELOTON name and mark and also cautioned that unauthorized use of the disputed domain name violated the rights of the Complainant. Transfer of the disputed domain name was also requested. No response to the said notice has been received till date.
- (viii) It was submitted that the Respondent has offered the domain name for sale with an aim to sell the same to the Complainant i.e., to force the Complainant to pay for its own intellectual property or to third parties, thereby preventing the Complainant from owning the disputed domain name. It was submitted that that offering to sell a domain name to the Complainant or by advertising to the public at large that the domain name is for sale is evidence of bad faith and is properly regarded as an offer to sell the domain name to the Complainant or a competitor. This qualifies as bad faith under Paragraph 6(i) of the INDRP. This is a settled position of law and has been held so by prior Panels of this Forum including in FDC



Limited v. Terra Preta GmbH, INDRP/913 where it was observed that as the Respondent had registered or acquired the domain name for the purpose of selling or renting the domain name, the same qualifies as bad faith.

- (ix) It was submitted that the Registration of the disputed domain name by the Respondent disrupts the Indian business of the Complainant as any person looking for information on PELOTON in India would necessarily look for the website corresponding to the domain name <peloton.in>. Further, the disputed domain name causes a false association with the Complainant's PELOTON name and mark and will lead the average Internet user to believe that the disputed domain name is owned by the Complainant and could relate to genuine PELOTON goods and services. As such, when consumers see the disputed domain name, they will believe that the Complainant owns the disputed domain name. Any realistic use of the disputed domain name will automatically misrepresent an association between the Respondent and the Complainant leading the members of the public to believe that the Complainant has licensed the use of the domain name to the Respondent or has authorized the Respondent to register the same, resulting in unfair trade competition/passing off and trademark infringement, at a minimum, under Indian law.
- (x) It was submitted that the Respondent appears to be a domain squatter and has a history of registering domain names similar to or comprising of various notable trademarks. These have been the subject matter of domain dispute cases under the INDRP and have been decided by prior Panels in favour of the respective Complainants. Examples include American Airlines, Inc. v. Ding Ri Guo (INDRP 967/2018) for <americanairlines.co.in>, A reverse WHOIS search for the Respondent (<https://viewdns.info/reversewhois/?q=Ding+Riguo>) reveals that there are 1129 domain names registered to him. This conduct of the Respondent plainly demonstrates bad faith. An extract (page 1 and 2 only) in this behalf was annexed as **Annexure 18**.



- (xi) It was submitted that in view of the aforesaid, the registration of the domain name <peloaan.in> in the name of the Respondent is contrary to and in violation of paragraph 4 of the INDRP.

VI. DISCUSSION AND FINDINGS:

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

- i. that that the Respondent's domain name is deceptively similar/identical to the trademark/ trade name in which the Complainant has rights.
- ii. that the disputed domain name PELOTON.IN registered by the Respondent incorporates the Complainant's well-known PELOTON trademarks in their entirety.
- iii. that due to the fame of the distinctive and reputation of the trade mark PELOTON, 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.
- iv. that the Respondent has no rights or legitimate interests in respect of the domain name.
- v. that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- vi. that Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the PELOTON trademark.
- vii. that the Complainant has prior rights in the trademark PELOTON which precedes the registration of the disputed domain name by the Respondent.
- viii. 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.
- ix. that the disputed domain name has been registered in bad faith
- x. that the disputed domain name is deceptively similar to the Complainant's registered trademark PELOTON, 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 affected to her 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 its 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.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent “PELOTON.IN” to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 6th Day of September, 2021.



Sridharan Rajan Ramkumar
Sole Arbitrator

Date: 06/09/2021

Place: New Delhi