

मध्य प्रदेश MADHYA PRADESH

BP 018825

**BEFORE THE ARBITRATOR RAJESH BISARIA  
UNDER THE  
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)  
[NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)]**

**ARBITRAL AWARD**

**Date-05.11.2021**

**Disputed Domain Name: www. bathsense.in**

**INDRP Case no -1435**

**THE PARTIES**

**(1)**

The **Complainant** is Asian Paints Limited, 6A Shanti Nagar, Santa Cruz (E),  
Mumbai – 400055, India

The **Respondent** is RAJENDRAN AP, Sri Srinivasa Illam, Thondikaradu ,  
Tiruchengodu ,Tamil Nadu – 637211, India



## **THE DOMAIN NAME AND REGISTRAR**

(2)

- (a) This dispute concerns the domain name bearing domain id no.  
D99A93B926D454C05B2D01744633E6C02-IN as identified below:

<bathsense.in>

- (b) The disputed domain name: www.bathsense.in and it is registered with Registrar GODADDY.COM, LLC. The Registrar's contact information is as under:

Address- 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260 USA

Telephone-+1 (480) 624-2505, Fax-+1 (480) 624-2546,

E mail- UDRPdisputes@godaddy.com, Web site-www.godaddy.com

## **PROCEDURAL HISTORY**

(3)

The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	23.09.2021
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and NIXI .	24.09.2021
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 24.09.2021)	05.10.2021
Complainant's response by submitting their Statement of Claim. Soft copy Hard copy	29.09.2021 04.10.2021
Due date of submission of Statement of Defense by Respondent	15.10.2021





(instructed by mail dated 24.09.2021) Extended due date of submission of Statement of Defense by Respondent (instructed by mail dated 17.10.2021)	22.10.2021
Respondent's response by submitting their Statement of Defense against the due date of submission as 15.10.2021 & 22.10.2021	Not submitted
Complainant's response by submitting their Rejoinder. (Statement of Defense not submitted by Respondent)	Not required
Complainant's response by submitting proof of delivery of complaint along with all annexures to Respondent Soft copy	29.09.2021
Intimation that the 'Respondent failed to submit the required/said documents within the time limit mentioned in mail ie 22.10.2021. Therefore the Respondent has lost their right to entertain it. The proceeding of this case is kept closed for award and the matter would be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy'.	25.10.2021
The language of the proceedings.	English

## **FACTUAL BACKGROUND**

### **(4) The Complainant :**

The **Complainant** is **Asian Paints Limited**, 6A Shanti Nagar, Santa Cruz (E), Mumbai – 400055 India, Telephone-+912224994200

### **(5) Authorized Representative of the Complainant:**

Name - Mr. Shantanu Sood

Address- Quest IP Attorneys, 47 Ashoka Crescent, DLF PH-1, Gurgaon – 122002, India

Telephone- +911244829587

E mail- email@questip.com



**(6) The Respondent**

The **Respondent** is RAJENDRAN AP, Sri Srinivasa Illam, Thondikaradu ,  
Tiruchengodu ,Tamil Nadu – 637211, India.

Telephone-+91.8610000128

E mail- watersensess@gmail.com

**(7) Complainant's Activities:**

(a) Asian Paints Limited (which term hereinafter shall include all of its predecessors in interest and title, subsidiaries, affiliates and group companies) is based in Mumbai, India. It was established as a company under the Indian Companies Act, 1913 as was then applicable. It was established in the year 1942 in Mumbai (then Bombay). From its humble beginnings and by virtue of the high quality and value of its products and services, Asian Paints rapidly climbed the ladder of success such that by the year 1967, within a short span of 25 years, it succeeded in becoming India's leading paints company. Driven by its strong consumer-focus and innovative spirit, the company has been the market leader in paints and related products since 1968. Today it is India's largest paint company and the third largest in Asia. It has paint manufacturing facilities in over 19 countries around the world, servicing customers in more than 65 countries around the world.

(b) Asian Paints has been continuously evolving and re-inventing itself over the years. It has evolved its field of business from just paints to other areas such as bath and sanitaryware, kitchens, home décor, home improvement solutions, etc. In a short span of time, Asian Paints Limited is a well-known presence in the paints, bath, kitchens, home décor and home improvements, building and constructions, interior styling and related businesses and is also a household name in India and countries around the world. Asian Paints' expansion into the bath, kitchens and consumer home improvements businesses has been bolstered through its acquisitions of





well-established existing companies to improve its product expertise. Some such businesses that have been acquired by Asian Paints include the well-known bath and sanitary ware specialist Ess Ess Bathroom Products Pvt. Limited, and Sleek International Pvt. Ltd. By virtue thereof, all goodwill, reputation and expertise associated with these existing businesses now vests with Asian Paints.

(c) Asian Paints' exceptional success is testament to its commitment to provide products of the highest quality and value, which has earned it immense goodwill and reputation amongst consumers and members of the trade all around the world. Through the course of its history, it has received numerous honors and awards, which are testament to the high quality products/services and standards extolled by it. It is one of the world's top 25 most innovative companies and amongst the top 5 best Indian companies and brands. Asian Paints' products and services are so highly regarded that consumers recognize and immediately associate the its brands with its top class products and services. An example of some recent awards and honors received by Asian Paints are:

- Listed as one of the world's top 25 most innovative companies by Forbes Magazine (at No. 18 jointly with Tesla Motors).
- Declared India's 4<sup>th</sup> most valuable brand by Business Standard magazine and Brandz separately.
- Winner of the 2016 JDA Real Results Awards Winner – Best Results APAC
- Asian Paints felicitated as one of the Most Impactful Companies of the Decade by CNBC Awarded in Jan 2015.
- Asian Paints included in the list of India's Super 50 companies by Forbes India (July 2015 issue).
- Asian Paints was ranked 11th amongst the Top paint companies in the world by Coatings World - Top Companies Report 2015 (July 2015 Issue).
- Awarded the "Sword of Honour" by the British Safety Council for all the paint plants in India. This award is considered as the pinnacle of achievement in safety across the world.



- Ranked as India's fifth most valuable Indian brand by BrandZ™ in 2015.
- Included in the Forbes Asia's 'Fab 50' list of Companies in Asia Pacific in 2011, 2012 & 2013.
- In Feb 2012, Complainant won the Asian Centre for Corporate Governance & Sustainability awards for the BEST GOVERNED COMPANY in 2011.
- Ranked 13th amongst the top paint companies in the world by Coatings World - Top Companies Report 2012 (July 2012 Issue).
- Mr. P M Murty, MD & CEO, Asian Paints conferred upon the 'CEO of the Year' award by Business Standard, one of India's leading business daily (March 2011).
- Asian Paints receives the Best Audit Committee Award from the Asian Centre for Corporate Governance & Sustainability (Feb 2011).
- Awarded the "Sword of Honour" by the British Safety Council for all the paint plants in India. This award is considered as the pinnacle of achievement in safety across the world.
- Forbes Global magazine, USA ranked Asian Paints amongst the 200 'Best Small Companies of the world' in 2002 and 2003 and amongst the top 200 'Under a Billion Firms' of Asia in 2005, 2006 and 2007.
- The Asset - one of Asia's leading financial magazine ranked Asian Paints amongst the leading Indian companies in Corporate Governance in 2002 and 2005.
- Received the Ernst & Young "Entrepreneur of the Year - Manufacturing" award in 2003.
- Noted as amongst top 10 paint companies in the world in 2018 by Coating World.
- Noted as amongst top 10 paint companies in the world in 2019 by Coating World.
- Noted as amongst top 10 paint companies in the world in 2020 by Coating World.
- The trade mark ASIAN PAINTS has been declared a well-known trade mark in India





(d) Printout of some representative awards and accolades received by the Complainant as displayed on Complainant's website at [www.asianpaints.com](http://www.asianpaints.com), and otherwise were submitted as Annexure 3. It is pertinent to mention that the trade mark ASIAN PAINTS has been declared a well-known trade mark in India and has been notified as such by the Trade Marks Registry. Copy of the notification was submitted as Annexure 4.

**(8) Complainant's Trade Marks And Domain Names :**

- (a) While the well-known trade mark/trade name ASIAN PAINTS is the house mark and trade name of the Complainant, the Complainant has coined, invented and adopted several other trademarks to distinguish different types of products sold by it, each of which are represented by the Complainant in distinctive artistic lay-out, get up and colour scheme. More notable amongst them are the trademarks ROYALE, SMARTCARE, SENSE, SLEEK, ESS ESS, etc. to name a few. Each of these trademarks is inherently distinctive, which by virtue of continuous use and publicity have come to be exclusively identified with the Complainant and none else.
- (b) Some trademarks adopted and used by the Complainant to identify with its new home improvements categories of products including but not limited to sanitary ware fittings, bath and kitchen products and flooring, etc. are ROYALE, ESS ESS and its SENSE family of marks including but not limited to SENSE, BATHSENSE, KITCHENSENSE, LIVINGSENSE, etc. (hereinafter referred to as "Complainant's marks") that the Complainant uses in relation to goods and services falling in international classes 6, 7, 8, 11, 16, 19, 20, 21, 35 and 38. The Complainant uses these marks to distinguish product categories under its well-known house mark ASIAN PAINTS. The unique and inherently distinctive Complainant's marks are immediately identifiable with the Complainant and its products alone. Examples of the Complainant's marks are displayed below:



ap bathsense  
with asianpaints

ap royale  
BATHROOMS  
asianpaints

ap royale  
KITCHENS  
asianpaints

ESSESS  
FRESH TINTING  
asianpaints  
Smart Like You

(c) The Complainant's marks are to be marketed through its wide and extensive range of dealers, franchises and distributors across India inter alia covering its home décor, kitchens, bath and sanitaryware products and services. The Complainant has a highly motivated team of qualified professionals and managers, working with the sense and spirit of customer satisfaction. It has an extensive network of more than 1500 dealers in India, and branch offices across leading cities of India. A team of creative staff and designers have dedicated all their efforts and years of experience to develop original product lines aimed at satisfying the needs of the urban & demanding clientele. The Complainant's products are sold across the length and breadth of India. Accordingly, consumers identify the Complainant's marks exclusively with the Complainant, and use of any similar mark by a third party is bound to lead to confusion and deception. The Complainant's marks are earlier trademarks.

(d) The propensity of the Complainant's reach and depth of business is well established by the Complainant's immense sales revenues across India. The Complainant's sales revenues run into thousands of crores each year, and it spends hundreds of crores towards its advertising and promotional activities. Total year wise sales figures from 2007 and advertising figures from 2014 onwards are given below:

RAJESH BISARIA  
ARBITRATOR



Year	Gross sales (net of discount) (Rs in Lacs)	Advertisement expenses (Rs in Lacs)
07-08	405993	16484.78
08-09	500343	19705
09-10	575352	24425
10-11	720198	28235
11-12	906429	33859
12-13	1040502	42287
13-14	1204258	50403
14-15	1348382	59672
15-16	1475074	74005
16-17**	1435980	51650
17-18**	1600240	55824
18-19	1667659	69540
19-20	1755163	78253

\*Gross sale before returns.










\*\*Figures for these years are as per new accounting standards (Ind AS) and Schedule III of Companies Act, 2013

The foregoing information has been taken from the books of accounts as maintained by the Complainant in the regular course of the business. The Complainant's yearly sales with respect to its Bath and sanitary products under its marks are in tens of crores each year.


- (e) The Complainant's exclusive and extensive use of the marks, its advertising, marketing establish its Indian & worldwide reputation and goodwill under common law.



(f) Apart from the significant common law rights in the mark, the Complainant has also acquired statutory rights in the Mark, in part through registration of the trade marks BATHSENSE and other Complainant's marks in India. Examples of the Complainant's BATHSENSE trade mark registrations along with ROYALE and ESS ESS marks in relation to sanitaryware include:

S.No.	Mark	Reg. No.	Date of Registration
1.		3138568	23/12/2015
2.		3138569	23/12/2015
3.		3138570	23/12/2015
4.		3138571	23/12/2015
5.		3138572	23/12/2015
6.		3138573	23/12/2015
7.		3138574	23/12/2015
8.		3138591	23/12/2015
9.		3138592	23/12/2015

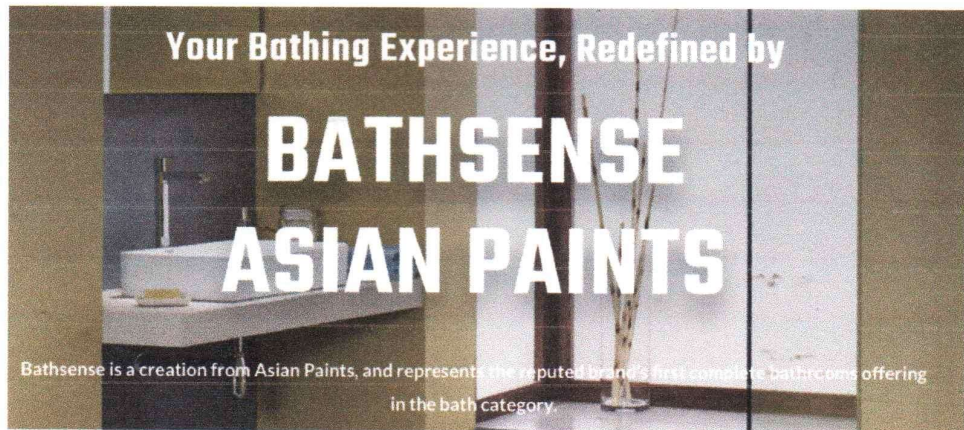


10.		3138593	23/12/2015
11.	ROYALE	2994638	25/06/2015
12.	ESS ESS	1192763	17/04/2003
13.	ASIAN PAINTS	1014682	06/06/2001

- (g) Copies of the registration certificates/extracts from the Indian IP Office website are annexed as Annex5. The registrations are owned by the Complainant and are currently valid.
- (h) The Complainant has a significant presence on the World Wide Web, and owns and operates its website located at [www.asianpaints.com](http://www.asianpaints.com). The Complainant uses a sub-domain <[www.bathsense.asianpaints.com](http://www.bathsense.asianpaints.com)> under this website to advertise and sell its BATHSENSE products. The domain name has been active for many years now.
- (i) The Complainant is also the owner of the domain and <[bathsense.com](http://bathsense.com)> that was registered on 18/04/2006. Printouts of some registration details for this domain from [www.WHOIS.com](http://www.WHOIS.com) ("WHOIS") was submitted as Annexure 6.
- (j) We submit that the foregoing information establishes that the Complainant and its group companies are exclusively associated with the name and Mark "BATHSENSE" and that they own prior rights in the marks ASIAN PAINTS, BATHSENSE, ROYALE and ESS ESS in India. Complainant's ownership and priority is well established.
- (k) With respect to the disputed domain, it is pertinent to point out that apart from the Respondent's lack of legitimate interests in the Mark as shown herein below, the timing and choice of domain name for registration also unequivocally confirm that it is nothing more than a case of domain

hijacking or cyber squatting or bait and switch. The registration of the disputed domain is in violation of the Respondent's undertakings under the .IN domain registration policy as the Respondent has blatantly registered the domain consisting of the Complainant's well-known mark in contravention of the express undertaking provided in the registration agreement that the domain does not infringe another's trade mark rights under Sections 3(b) and 3(c) of the INDRP policy.

- (1) The Respondent's bad faith is established by the fact that the entire content on the impugned domain name pertains to the Complainant and its marks. The Respondent has created a website that illegally reference the Complainant's ASIAN PAINTS, BATHSENSE, ROYALE and ESS marks and even features product images lifted directly from the Complainant's websites. The entire content on the impugned website is channeled from the Complainant's website and product brochures. The impugned website passes itself off as the official website of the Complainant and invites visitors to shop of the listed products by directing them to an online sales portal that is not controlled by the Complainant. The deceptive nature of the impugned domain is apparent from the fact that it masquerades as the Complainant's website. The main home page falsely states:



Screenshots of Respondent website were submitted as Annexure 7.



(m) It is very likely that Internet consumers, in particular consumers/visitors searching for the Complainant's banking services would believe that there is a real connection between the disputed domain and the Complainant. In fact, as disclosed below, it is apparent that the Respondent banked on the likelihood of such consumer confusion to profit from the disputed domain.

**(9) Respondent's Identity and activities :**

(a) According to WHOIS details supplied to the Complainant, the Respondent/ Registrant in this administrative proceeding is an individual named Rajendran AP whose address is listed as Sri Srinivasa Illam, Thondikaradu, Tiruchengodu, Tamil Nadu - 637211, India. A copy of the printout of the WHOIS search for the disputed domain was submitted as Annexure 1.

(b) The contact details of the Respondent as per WHOIS records are as follows:

Name: Rajendran AP

Address: Sri Srinivasa Illam, Thondikaradu, Tiruchengodu, Tamil Nadu - 637211, India

Telephone: +91.8610000128

Fax: NA

E-mail: watersensess@gmail.com

(c) The identity and other activities of the Respondent are not known as, they failed to submit Statement of Defense or any of the documents, within the given time schedule.





## **SUBMISSIONS BY COMPLAINANT**

- (10) Complainant submitted Domain name complaint with pages 1 to 18 and annexure from pages from 19 to 227.

As per the INDRP Rules of Procedure, Clause 4(a) –

*The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted Pleadings of more or less 5000 words and annexure with 208 pages. The Complainant failed to follow the above clause by submitting about 208 pages of annexure and other documents, otherwise the application is submitted as per the INDRP Rules and Procedures. The extra documents submitted as mentioned has been allowed in the interest of justice at large, with a caution to Complainant for future.

- (11) Complainant was directed to submit proof of delivery of complaint along with all annexure (to Respondent) to the AT.

The soft copy of the said documents were sent to Respondent (mail ID watersensess@gmail.com) by Complainant's mail dated 29.09.2021. Apart from this the soft copy of Complaint was also sent to Respondent (at their registered mail ID- watersensess@gmail.com) by National Internet Exchange of India (NIXI), New Delhi, vide their mail dated 23.09.2021. Therefore on the basis of above submitted record, it is considered that soft copy of complaint documents were delivered to Respondent .

For the proof of delivery of their physical documents , Complainant submitted soft copy of tracking report of Courier service provider (Maruti, with document number – 21027200044487) , which indicate that "Delivery information is not available yet for this shipment!"



## **THE CONTENTIONS OF THE COMPLAINANT**

- (12) **The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:**
- (a) It is submitted that the disputed domain comprises the Complainant's prior and well-known Mark in its entirety. As disclosed above, the Complainant's adoption, use and registration of the Mark are well prior the registration of the disputed domain. Pertinently, the Complainant's marks- ASIAN PAINTS, BATHSENSE, ROYALE, ESS ESS had achieved immense reputation and goodwill well prior to the registration of the disputed domain and is readily and exclusively associated with the Complainant in India and around the world. The Respondent resides in India and has registered the domain on false undertaking/representation in contravention of Sections 3(b) and 3(c) of the INDRP.
  - (b) The disputed domain incorporates the Mark in its entirety and was registered as soon as news broke of the Complainant likely license to set up a payments bank under the payments bank scheme in India. Thus, the disputed domain <nsdlbank.in> clearly implies and will be expected by consumers to resolve to the Complainant's payments bank website.
  - (c) It is submitted that the prefix 'BATHSENSE' is the predominant part of the disputed domain. Consumers would associate the disputed domain with the Complainant. Under the circumstances, it is submitted that the disputed domain is confusingly similar to the Complainant's Mark.
  - (d) There is a high likelihood of confusion between disputed domain and the Complainant's Mark since the public would mistakenly assume that the is authorized or legitimately associated with the Complainant. Further, it is established that Respondent chose the disputed domain name precisely because of its commercial value in identifying



Complainant's sanitary ware goods and services, and such choice further accentuates the confusing similarity in the names.

- (e) Many INDRP and WIPO decisions have affirmatively held that incorporation of the trademark/trade name of the Complainant in its entirety is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark. The addition of merely generic, descriptive, or geographical wording to a trademark in a domain name would itself normally be insufficient in itself to avoid a finding of confusing similarity, and under the particular circumstances of this case, even less so. See, INDRP Case No. 726 November 7, 2015 <airtelbank.co.in> Bharti Airtel Limited v. Somasundaran submitted as Annexure 8.
- (f) Many decisions have affirmatively held that incorporation of the trademark/trade name of the Complainant in its entirety is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark. See, INDRP Case No. 148 Sept 27, 2010 <gingerhotels.co.in> Indian Hotels Company Limited vs Mr Sanjay Jha; WIPO Case No. D2010-1059, RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin, WIPO Case No. D2005-0288, Accor v. Everlasting Friendship Trust, and WIPO Case No. D2006-1307, eBay Inc. v. ebayMoving / Izik Apoannexed were submitted as Annexure 9.
- (g) Further, for purposes of comparison, the country code top-level suffix (ccTLD) in the disputed domain i.e. ".co.in" should be disregarded because the same is a necessary requirement to register and use the disputed domain and would not be considered the distinctive element of the disputed domain by Internet consumers. Previous Panels have ruled that the specific top level of a domain name such as ".in", ".co.in", ".com", etc. does not serve to distinguish the domain name from the trademark. See, for e.g., INDRP Case No. 156, October 27, 2010 Morgan Stanley. v. Bharat Jain; WIPO Case No. D2000-0834 CBS Broadcasting Inc. v. Worldwide Webs, Inc., were submitted as Annexure 10.





- (h) Accordingly, the Complainant submits that the disputed domain should be considered identical/confusingly similar to the Complainants' Mark and name NSDL.

**(13) The Respondent has no rights or legitimate interests in respect of the domain name:**

- (a) It is submitted that the Respondent does not have any prior or legitimate right in the disputed domain. The primary portion of the disputed domain - BATHSENSE is the complainant's invented trade mark, which has no other reference than to identify the Complainant. The Respondent has no rights therein. The use of this Mark either by itself or with slight variations or in conjunction with any other word/extension does not serve any purpose for the Respondent, rather it causes confusion and deception.
- (b) In addition, because the Respondent's website prominently and solely features the Complainant's marks and products and is dressed up to resemble an authorised website of the Complainant, it is highly likely that Internet consumers would believe that there is an inevitable connection between the disputed domain and the Complainant. In fact, as disclosed below, it is apparent that the Respondent banked on the likelihood of such consumer confusion to profit from the disputed domain. There has been no legitimate attempt by the Respondent to use the disputed name for legitimate purposes. The domain contains the Complainant's registered trade mark in its entirety and illegally features the Complainant's well-known trademarks and products. The Respondent is easily able to represent himself as the Complainant and enter into fraudulent transactions or contracts with third parties under the veil of being associated with the Complainant resulting in inherent monetary loss and tarnishing of goodwill of the Complainant.
- (c) It is submitted that the disputed domain is illegitimate and directed to cyber squatting and trafficking. The entire content on the



impugned domain name pertains to the Complainant and its marks. The entire content on the impugned website is channeled from the Complainant's website and product brochures. The impugned website passes itself off as the official website of the Complainant and invites visitors to shop of the listed products by directing them to an online sales portal that is not controlled by the Complainant. The domain and website content constitute infringement under the Trade Marks Act, 1999 and passing off. The Respondent's conduct is contrary to Indian law and demonstrates the Respondent's lack of legitimate interest in the impugned domain. The Complainant has sent a cease and desist letter to the Respondent but there has been no response thereto. The Respondent has willfully ignored the Complainant's warning about his false, deceptive and infringing use of the Complainant's trademarks and personality. Copy of the letter was sent was submitted as Annexure 11.

- (d) It is submitted that the Respondent is neither affiliated with the Complainant nor has he obtained any authorization or license to register or use any domain name incorporating the Mark.
- (e) The above facts establish that the Respondent's registration is not inadvertent or innocent but instead intentional with a view to cyber squat, impersonate the Complainant and divert legitimate business away from the Complainant.
- (f) Many INDRP and WIPO decisions have affirmatively held that the existence of the foregoing elements is sufficient to conclude the lack of legitimate rights in a disputed domain. In previous decisions, such as WIPO Case No. D2003-0098 *Six Continents Hotels, Inc. v. Patrick Ory*, the Panel concluded that in the absence of any commercial relationship between the parties entitling the Respondent to use the Complainant's mark, the Respondent could not be thought to have any legitimate right or interest in the disputed domain comprising the Complainant's mark. A copy of the decision was submitted as Annexure 12. A similar conclusion should be reached in the instant case as the Respondent's sole



motive to register the domain appears to be to trade off the immense recognition of the Mark.

- (g) In view of the facts stated above, it is submitted that the Complainants have established the Respondent has no rights or legitimate interest in the disputed domain name.

**(14) The domain name was registered and is being used in bad faith:**

- (a) The facts support the conclusion that the domain registration is illegitimate.
- (b) The facts support the conclusion that the Respondent has registered the domain with predatory intent. The Respondent's intent is clearly designed to impersonate the Complainant and intentionally mislead Internet users for commercial gain. The fact that the Respondent uses the impugned domain to impersonate, refer to and feature the Complainant's products and services establish that he was not only aware of the Complainant's marks and products but that the domain was registered solely to confuse and deceive consumers for his own illegitimate profit.
- (c) In sum, the facts demonstrate that the Respondent's actions are nothing more than an attempt to inter alia profiteer from domain grabbing, fraudulent conduct, illegal predation, and amounts to bad faith registration and use under the INDRP and UDRP.
- (d) In view of the foregoing, the Complainant submits that the Respondent's bad faith registration and use is established. Accordingly, the Complainant submits that it has established a strong case for a favorable decision.





(15) **Remedy Sought:**

In accordance with Clause 10 of the Policy, for the reasons described above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the disputed domain <www.bathsense.in> be transferred to the Complainant.

The Complainant also seeks the award of compensatory and exemplary damages along with award of costs of these proceedings.

(16) **Other Legal Proceedings:**

No other legal proceedings have been commenced or terminated in connection with or relating to the domain name that is the subject of the Complaint.

**RESPONSE BY THE RESPONDENT**

(17) As per AT mail dated 24.09.2021 and 17.10.2021, Respondent was directed to submit their Reply of Complaint (Statement of Defense) by 15.10.2021 & 22.10.2021 respectively. It was intimated to all concerning by AT mail dated 25.10.2021 that 'Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) from 24.09.2021 to 22.10.2021, but Respondent failed to submit the same within said time limit, therefore the Respondent had lost their right to entertain it. The proceeding of this case was kept closed for award on 25.10.2021 and now the matter is to be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.'

(18) Received mail from Respondent from their registered mail ID - watersensess@gmail.com), wherein it was mentioned that-



*Dear Sir,*

*Apologies. I came to know about this issue only yesterday as I have opened the email only after the package that we received from you through post.*

*Can you please advise how to resolve this issue?*

- (19) The mail of Respondent as per above para (18), does not stand as Respondent had lost their right to entertain it, as per AT's mail dated 25.10.2021

### **REJOINDER BY THE COMPLAINANT**

- (20) Since Respondent failed to file the Statement of Defense , so there is no question of submitting the Rejoinder by the Complainant.

### **DISCUSSION AND FINDINGS**

- (21) After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure by NIXI and Respondent has been notified of the complaint of the Complainant.
- (22) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) from 24.09.2021 to 22.10.2021. But Respondent failed to submit the same within said time limit, therefore the Respondent had lost their right to entertain it. The proceeding of this case was kept closed for award on 25.10.2021 and now the matter is be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.



- (23) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant must prove each of the following three elements of its case:
- (a) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
  - (b) The Respondent has no rights or legitimate interest in respect of the domain name; and
  - (c) The Respondent's domain name has been registered or is being used in bad faith.
- (24) **The Respondent's domain name is identical or confusingly Similar to a trademark or service mark in which the Complainant has rights:**

**Facts & Findings**

- (i) On the basis of the submitted facts and referred Awards of various INDRP and WIPO cases by Complainant and due to non submission of Statement of Defense , the Arbitral Tribunal concludes that the Complainant has established 4(a) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.
- (25) **The Respondent has no rights or legitimate interest in respect of the domain name:**

**Facts & Findings**

- (i) On the basis of submitted facts and referred Awards of INDRP and WIPO cases by Complainant and due to non submission of Statement of Defense , the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.





- (26) The Respondent's domain name has been registered or is being used in bad faith:

**Facts & Findings**

- (i) On the basis of submitted facts and referred Awards of INDRP and WIPO cases by Complainant and due to non submission of Statement of Defense, the Arbitral Tribunal concludes that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**ARBITRAL AWARD**

Now I, Rajesh Bisaria, Arbitrator, after examining and considering the pleadings and documentary evidence produced before and having applied mind and considering the facts, documents and other evidence with care, do hereby publish award in accordance with Clause 12 & 13 of the INDRP Rules of Procedure and Clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP), as follows:

*Arbitral Tribunal orders that the disputed domain name www.bathsense.in be forthwith TRANSFERRED from Respondent to Complainant.*

*Further AT takes an adverse view on the bad faith registration of impugned domain by the Respondent and to restrict the act for future misuse, fine of Rs 10000/- (Rs Ten thousand only) is being imposed on the Respondent, as per the provision in clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP) to be paid to .IN Registry for putting the administration unnecessary work.*

AT has made and signed this Award at Bhopal (India) on 05.11.2021 (Fifth Day of November, Two Thousand Twenty One).

Place: Bhopal (India)

Date: 05.11.2021

  
05/11/2021  
(RAJESH BISARIA)

Arbitrator

