

BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP Case No: 1436
ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW)
ADVOCATE, DELHI HIGH COURT
COMPLAINT UNDER
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER OF:

M and R Furnishing Private Limited

4634, Ajmeri Gate

Delhi- 110006 India

advocateronil@gmail.com

...Complainant

VERSUS

Shashank Patodia

15 Hazratganj, Lucknow

Uttar Pradesh- 0226001 India

Shashank.patodia@gmail.com

...Respondent

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

Sheetal Vohra

The complainant in these proceedings is M and R Furnishing Private Limited, having its address at 4634, Ajmeri Gate, Delhi-110006, India which has filed the present complaint under rules framed under INDRP. A copy of the .IN Domain Name Dispute Resolution Policy was annexed with the Complaint and marked as **Annexure 1**.

The Complainant's contact details are:-

M and R Furnishing Private Limited
4634, Ajmeri Gate, Delhi- 110006 India

The Complainant's counsel in this administrative proceeding is:

Mr. Ronil Goger
H-14, 2Nd Floor, Phase-1, Ashok Vihar,
Delhi-110052, India
E-mail: advocateronil@gmail.com
Tel: +91-8826918870

2. **RESPONDENT**

The Respondent/registrant of the Disputed Domain Name is an individual Mr. Shashank Patodia, located at 15 Hazratganj, Lucknow, U.P.- 0226001. A copy of the WHOIS record in respect of the domain name in question as received from NIXI was annexed and marked as **Annexure 2**.

The Respondent's contact details are:-

Shashank Patodia
15 Hazratganj, Lucknow
Uttar Pradesh- 0226001 India
Email: shashank.patodia@gmail.com

Tel: +91-9619798847

The Respondent's counsel in this administrative proceeding is:

Shashank Patodia

Siddhesh Kotwal

J1, 'Upasna' Building,

1, Hailey Road, New Delhi - 110001

Email: office@swarajandkotwal.com; manyahasija@swarajandkotwal.com;

siddheshkotwal@swarajandkotwal.com;

Tel: 011-41045066, Mob: 9871656128

II. THE DOMAIN NAME AND REGISTRAR:

The disputed domain name: www.apartments18.in

The domain name is registered with IN REGISTRY.

The Disputed Domain Name is registered with the domain registrar GoDaddy.com, LLC (hereinafter referred to as the 'Registrar').

The Registrar's contact information is as under:

Godaddy.com, LLC

14455 N Hayden Rd Ste 226.

Scottsdale, AZ 85260-6993.

Phone: (480) 505-8877

Fax Numbers (480) 624-2546

Email: udrpdiscutes@godaddy.com

III. PROCEDURAL HISTORY:

September 09, 2021	Date of Complaint
September 23, 2021	Sole Arbitrator was appointed to adjudicate the dispute
September 23, 2021	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.

Siddhesh Kotwal

October 07, 2021	Reply to the Complaint filed on behalf of the Respondent but without Power of Attorney
October 11, 2021	Reply filed by Respondent served on the Complainant
October 18, 2021	Rejoinder filed on behalf of the Complainant to the Reply filed by the Respondent
October 19, 2021	Completion of Pleadings notified to both parties by the Ld. Sole Arbitrator
October 20, 2021	Power of Attorney filed on behalf of Respondent after objections to that effect raised by the Complainant in its Rejoinder
October 20, 2021	Objections raised by the Complainant to Power of Attorney filed by Respondent

This award is proceeded with on basis of the available pleadings and documents filed by both the Complainant and the Respondent.

CASE OF THE COMPLAINANT

The Complainant has provided a table of the relevant trademarks of the Complainant as follows:

S. no.	Number	Mark	Date of Filing	Class	Status	Valid upto
1	1389315	APPARTMENT9	04.10.2005	22	Registered	04.10.2025
2	1389316	APPARTMENT 9 / appartment 9	04.10.2005	18	Registered	04.10.2025
3	1389317	APPARTMENT 9 / appartment 9	04.10.2005	27	Registered	04.10.2025
4	1600911	APARTMENT 9	12.09.2007	27	Registered	12.09.2027
5	1600912	APARTMENT 9	12.09.2007	25	Registered	12.09.2027
6	1600914	APARTMENT 9	12.09.2007	22	Registered	12.09.2027

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7	4883810	APARTMENT 9	27.02.2021	24	Registered	28.02.2031
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IV. FACTUAL AND LEGAL BACKGROUND:

The Complainant has based the complaint on the following grounds:

A. The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

About the Complainant

1. The Complainant submitted that it is a leading manufacturer and trader of goods pertaining to home furnishing, handicrafts, ceramics and furniture dealing under the bespoke brand/mark **apartment 9**. It was submitted that the Complainant is also engaged in providing services in the field of consultation, designing, installation, maintenance & repair of furniture and interiors. It was submitted that the Complainant was incorporated on July 22, 2005 under CIN No. U51909DL2005PTC138974, registered before the Registrar of Companies, India. An extract from the records of the Registrar of Companies, evidencing the above has been annexed as **Annexure 3**.
2. It was submitted that founded in 2005, by Ms. Anuja and Mr. Mayank Gupta, the Complainant's **apartment 9** brand/mark curates' spaces with a unique aesthetic, that seamlessly blends contemporary and traditional designs. The Complainant believes in the ideology that a touch of old-world charm combined in the right way with modern design sensibilities can bring magic to every home.
3. The Complainant submitted that it had started a passion project with an aim to make **apartment 9** a cult brand, with an essence/idea of creating an alternate reality and offering a unique retail experience, wherein the stores would look more like an "apartment rather than a retail store."

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4. It was submitted that with a vision that began 16 years ago, the Complainant today is a globally recognised name in comprehensive design solutions, offering perfect home decor, accessories, and accents. It was submitted that since its inception the Complainant has enlarged its range of products including but not limited to all types of furniture, tableware & bar ware, quilts, sham, bed linen, decorative accessories, curtains, cushions & throws, rugs, bags, table lamp, chandelier, buddha head, vases photo frame, jewellery box, carpet, mats, tile mats, cubes, candle holder, ceramics bowl, square tray, square dish, glasses, mirror, bath accessories, tea-light and various types of leather products and fabrics, under the **apartment 9** brand/mark.
5. Further, it was submitted that the Complainant has also expanded its services for furniture, house design services, interior and exterior design services, architectural design for interior decoration, consultation services relating to interior design, furniture installation, furniture renovation, textile laundering, furniture repair, furniture upholstery, maintenance and repair of furniture, cleaning and care of fabric, textile, leather, fur and goods made thereof and textile pressing and building consultancy.
6. The Complainant submitted that it owns and has used its corporate website <https://apartment9.in/> to promote its business activities under the **apartment 9** brand/mark, and continues to do so. Extracts of the webpages (over the course of the last few years) highlighting information about Complainant and its goods/services have been collectively enclosed with the Complaint as **Annexure 4 (Colly)**.

The Complainant's APARTMENT 9 Marks

7. The Complainant submitted that it owns and uses the brand and trademark 'APARTMENT 9' (word mark), **apartment 9** ®, and variations thereof (hereinafter collectively referred to as the "apartment 9 Brand/Marks") for more than 15 years in relation to its highly successful home furnishing, handicraft, ceramics and furniture business, as well as related goods and services. The

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Complainant also submitted that it owns trademark registrations for the apartment 9 marks for a wide variety of goods under Classes 18, 22, 25 and 27, with the earliest registration dating back to 2005. Copies of illustrative registration certificates issued by the Indian Trade Marks Offices have been collectively enclosed with the Complaint as **Annexure 5 (Colly)**.

The Complainant's Business Activities under the apartment 9 Brand/Marks

8. The Complainant further provided details of the its multi retail store(s), franchise store(s), factory unit(s) and office(s) in India currently operational under the brand/name of 'APARTMENT 9' as follows:

- a. Retail Store at N-(, N-block Market, Greater Kailash, Part-1, New Delhi-110048.
- b. Design Office and Corporate Office at 118, JP House, Near UCO Bank, Shahpur Jat, New Delhi-110049.
- c. Franchise Store at Hari Villa, Near Amaltas Bunglows, Vastarpur, Ahmedabad- 380054.
- d. Franchise Store at Hari Villa, Near Amaltas Bunglows, Vastarpur, Ahmedabad-380054.
- e. Franchise store at 6 Russell Street, Opposite Ruseel Dhaba, Kolkata- 700019.

Illustrative documents evidencing the use of the apartment 9 Brand/Marks at the physical stores on signage, posers, boards, etc. have been collectively enclosed as **Annexure-6**.

9. The Complainant submitted that over the past 16 years, it has also partnered internationally with Industry leaders such as Andrew Martin-UK, Liberty-UK and Lizzo-Sapain to pursue its expansion strategies and explore new markets. In addition to aforesaid, the Complainant also submitted that it has regularly participated in trade exhibitions at MAISON & OBJETPARIS, ACETECH-MUMBAI, EL DÉCOR-DELHI to explore indigenous and international market as well as to increase the brand recognition and publicity of their **apartment 9 Brand**

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Marks. It was also submitted that the Complainant's apartment 9 Brand/Marks have been recognized, awarded and provided extensive coverage in various leading design magazines such as Architectural Digest India, Hello, Elle Décor, etc. The documents in support of the promotion and advertising activities for the **apartment 9** Brand/Marks have been attached with the Complaint as **Annexure 7 (Colly)**.

10. The Complainant has further submitted that it has incurred a sum of over INR 4.78 Crores since its inception in 2005 for development of the **apartment 9** Brand/Marks, including payment of rentals for the retail showrooms and office spaces - to create brand image for the apartment 9 Marks in various metropolitan cities of India. Details of the expenses incurred was also provided as below:

Financial Particulars	Year: 2005-2020
Advertisement Expenses	1,44,59,713
Exhibition Expenses	95,75,617
Sales Promotion Expenses	32,22,191
Designing Expenses	64,88,064
Brand Development Exp.	88, 17, 293
Brand Packaging Expenses	52,82,964
Total Brand Expenses	4,78,45,842
Rent for Retail showroom of apartment 9 & Factory	30,62,07,335

It was also submitted that the Complainant has vast experience for execution of various orders for leading hotels and hospitality brand such as ITC Hotel, Eros Hotel, Raddison, Hans Hotel, Inter Continental, Holiday Inn, DLF etc. It was submitted that the vast sales/revenue generated by the Complainant clearly evidences the reputation and trust of customers in its **apartment 9** Brand/Marks and the products/services. That the Complainant's turnover in the last few years was INR 23.59 Crore in Financial Year: 2019-2020, INR 26.60 Crore in Financial Year: 2018-2019, INR 25.52 Crore in Financial Year: 2017-2018, INR 21.96 Crore in Financial Year: 2016-2017. Illustrative copies of the sales/expenditure invoices issued by the Complainant to evidence their extensive sales under the **apartment 9** Brand/Marks for their various products and services have been attached with the Complaint as **Annexure 8 (Colly)**.

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The Complainant's Domain Name, Website and Social Media Presence

11. The Complainant further submitted that it owns the domain name <apartment9.in> and operates its corresponding primary website at <https://apartment9.in/> through which it conducts a significant portion of its business and where information about the Complainant and its business under the **apartment 9** Brand/Marks which is easily accessible and available to millions of internet users, who may be current or potential consumers. It was submitted that the Complainant's domain name in its entirety incorporates its registered trademark **APARTMENT 9**, thus further augmenting its proprietary rights in the said brand/marks.
12. It was submitted that the aforementioned domain name <apartment9.in>, forms an integral part of the brand identity of the Complainant's company, and was created /registered on and has been regularly renewed since October 16, 2007. An extract from the WHOIS database supporting the aforementioned date has been enclosed with the Complaint as **Annexure 9**. It was submitted that by virtue of the said domain's association with the Complainant for more than a decade now, the domain name has become synonymous with the Complainant and its business.
13. It was submitted that the Complainant's **apartment 9** Brand/Marks and services and goods thereunder are prominently advertised on major social networking sites such as Facebook, Instagram, LinkedIn and YouTube - which collectively have thousands of followers / views who may arguably be considered as potential, if not existing customers. It was submitted that these websites attract masses from every social, geographical, economic and age demographic worldwide, the apartment 9 Brand/Marks have consequently been exposed to an exponentially large section of both Indian and international public. Extracts of relevant webpages, in support of the above submissions, have been collectively enclosed with the Complaint as **Annexure 10 (Colly)**.

Onset of the Present Dispute

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14. It was submitted that the Complainant recently learnt of the Respondent's registration of the Disputed Domain Name and use of its corresponding fraudulent website at <https://apartment18.in/> for offering inter alia home décor products, tableware and bar ware, decorative accessories, cushions, table lamp, candle products, bath accessories, etc., **directly identical** to those of the Complainant. Extracts from the website <https://apartment18.in/> have been enclosed with the Complaint as **Annexure 11 (Colly)**.

The Disputed Domain Name's Similarity to the Complainant's Rights

15. The Complainant submitted that the disputed domain name is identical with and/or confusingly similar to the Complainant's **apartment 9** brand/marks. It was submitted that the Disputed Domain Name is confusingly similar to the Complainant's registered trademark APARTMENT 9/ **apartment 9** with a mere replacement of the numeral '9' with '18' (*which is another multiple of '9'*) and insufficient for differentiation.
16. It was submitted that the Complainant has well-established rights in respect of the **apartment 9** brand/marks which have been recognized and granted statutory rights by the Indian Trademarks Registry under Registration Nos. 1389315, 1389316, 1389317, 1600911, 1600912 and 1600914, earliest dating back to 2005.
17. It was submitted that it is indisputable that the Disputed Domain Name is confusingly similar to the Complainant's registered trademark **APARTMENT 9**. The Complainant placed reliance on **Philip Morris USA Inc. v. Domain Administrator, Case No. D2016-2078** wherein it was held that *"The Panel finds that the disputed domain name <marlbos.com> is confusingly similar to Complainant's MARLBORO mark. The names look and sound similar."* Also, the Complainant placed reliance on the case of **ONEY BANK, v. Xiao Long Lin, A La Si Jia, Case No. D2020-2968** wherein it was held that *"The placement of the numeral '1' in the disputed domain names does not avoid a finding of confusing similarity. For example, the mere addition of a dictionary word to a complainant's*

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registered mark does not avoid confusing similarity." Further, the Complainant placed reliance on **Osram GmbH v. Guo Liang Jie, Case No. DCN2020-0028** wherein it was held that *"the distinctive feature of the disputed domain name is effectively the misspelt of the word "osram" (by replacing the vowel "o" with the numeral "0"), being the distinctive feature of the Complainant's trademark. It is a form of typosquatting. After removing the ccTLD ".cn", effectively the word "osram" is seen entirety. The Complainant's trademark is clearly recognizable in the disputed domain name."*

18. The Complainant further submitted that mere replacement of the numeral '18' (which is another multiple of '9') as a suffix to the Complainant's registered trademark **APARTMENT 9** / **appartement 9** is incapable of lending the Disputed Domain Name any distinctiveness or reduce its similarity with the Complainant's **appartement 9** Brand/Marks and on the contrary, enhances the degree of similarity between the rival brands. It was submitted that the word **APARTMENT** with the numeral '18' (which is another multiple of '9') in the Disputed Domain Name appartement18.in, in the present context, is confusingly similar on visual, structural and phonetic parameters, when compared with the Complainant's **appartement 9** Brand/Marks. It was also submitted that the Complainant is known globally (including India) for their business of home furnishing, handicraft, ceramics and furniture since 2005 and hence use of the Disputed Domain Name will, in all likelihood, make internet users believe that it originates from the Complainant, when that is not the case. Therefore, the Complainant submitted that the numeral '18' (which is another multiple of '9') as a suffix is not sufficient to avoid confusion between the Disputed Domain Name and the **appartement 9** Brand/Marks of the Complainant, which is exclusively associated with the Complainant alone and none else.

19. The Complainant further submitted that it has been continuously and extensively using the registered **APARTMENT 9** Marks in commerce since its adoption in 2005 - both internationally as well as in India - and thus its rights in the **appartement 9** Brand/Marks are beyond reproach. Moreover, since the Disputed Domain Name

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has only been registered since September, 2018, it is vastly subsequent (more than a decade) to the Complaint's adoption, usage and statutory rights in the **apartment 9** brand/marks globally and in India.

20. The Complainant submitted that on account of its submissions the disputed domain name in the Complaint, it had met the requisite conditions under Paragraph 4 of the INDRP.

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

21. It was submitted that as per Paragraph 6 of the INDRP, the following conditions which must be met for the Registrant of the disputed domain name to have any rights or interests therein:

- a. before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bonafide* offering of goods or services;
- b. the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- c. the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In this regard, it was submitted that the Respondent, in the present case has not fulfilled any of the aforementioned conditions for it to have demonstrable rights or legitimate interests in the Disputed Domain Name.

22. It was submitted that the mere fact of an existing domain name does not imply that the Respondent has any rights or legitimate interests in it.

23. The Complainant submitted that mere fact that the Disputed Domain Name is

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registered does not imply that the Respondent has any rights or legitimate interests in them. The Complainant placed reliance **Deutsche Telekom AG v. Phonotic Ltd. (WIPO Case No. D2005-1000)**, wherein it has been held that *"Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy"*.

24. The Complainant submitted that the Respondent has not used nor made any demonstrable preparations to use the Disputed Domain Name in connection with a "bonafide offering of services or goods". It was submitted that the Respondent's use of the Disputed Domain Name is for fraudulent purposes, namely, to imitate a legitimate, well-reputed and trustworthy entity, i.e. the Complainant, so as to deceive customers into purchasing goods and availing services that may be false / inaccurate or never provided. It was submitted that to its Complainant knowledge, the Respondent has never been commonly known by the Disputed Domain Name. knowledge, the Respondent has never been commonly known by the Disputed Domain Name. The Complainant placed reliance on **Alpha One Foundation, Inc. v. Alexander Morozov, NAF Case No. 766380**, wherein it has been held that *"This fact, combined with the lack of evidence in the record to suggest otherwise, allows the Panel to rule that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy 4(c)(ii)"*.

25. The was submitted that the Respondent neither has rights or legitimate interests in the Disputed Domain Name nor has the Complainant assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its registered APARTMENT 9/ **appartement 9** . The Complainant placed reliance r on the case of **Six Continents Hotels, Inc. v. Patrick Ory, WIPO Case No. D2003-0098** wherein it was held *"There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use*

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the Domain Name”.

26. It was submitted that the inclusion of the word ‘APARTMENT’ –which was uniquely adopted by the Complainant for their home furnishing, handicraft, ceramics and furniture products/services, based on a fanciful idea/concept - with the numeral ‘18’ (which is another multiple of ‘9’) in the Disputed Domain Name amply reflects that the intention of the Respondent was to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent and cash-in on such deception. The Complainant placed reliance on **The Dow Chemical Company v. Hwang Yiyi, WIPO Case No. D2008-1276**, wherein it was held that use of a disputed domain name in connection with a website that is *“very similar to the Complainant... intends to mislead the consumers into thinking that the Respondent has some kind of business relationship with the Complainant or it is the Complainant”* and, therefore, is not legitimate.
27. It was submitted that the Respondent was not making a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant submitted that it was clear that the Disputed Domain Name had been registered for commercial gain by misleading and diverting consumers and/or tarnishing the Complainant’s apartment 9 Brand/Marks, and therefore also the Respondent had no rights or legitimate interests in the Disputed Domain Name. The Complainant placed reliance on **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516** wherein it was held *“It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark”*. The Complainant also placed reliance on **Orange Brand Services v. Fayaz/ Exuberant Services and Solution Pvt. Ltd. <orangeinfosolutions.in> INDRP/522**, wherein the Learned Panel held that *“Complainant is well-known with its trademark. Due to the strong reputation of the trademarks ORANGE, Internet users will apparently and reasonably expect it an offer of the Complainant or authorized or affiliated enterprises under ‘orangeinfosolutions.in.’”*.

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28. Further, it was submitted that the Complainant enjoys exclusive rights over the apartment 9 Brand/Marks qua its specific products/goods/services dealing in home furnishing, handicraft, ceramics. It was submitted that Tte registered trademark APARTMENT 9 / **apartment** © when considered as a whole does not indicate in any manner services or goods relating to the home decor industry and accordingly is an inherently distinctive trademark. Therefore, it was submitted that the Complainant is protected against all use of its apartment 9 Brand/Marks and confusingly similar marks (including by the Respondent herein) that dilutes and tarnishes its rights therein.

29. It was submitted that there was no justification for the Respondent's registration and / or use of the Disputed Domain Name. It was submitted that by virtue of a dishonest adoption and *malafide* intent of the Respondent, together with its brazen usage of the Complainant's apartment 9 Brand/Marks, there is no scenario wherein the Respondent can claim to make legitimate non-commercial or fair use of the Disputed Domain Name.

30. It was submitted that the Complainant has established a prima-facie case for absence of rights or legitimate interests in the Disputed Domain Name in favour of the Respondent. It was submitted that as per the WIPO Overview of WIPO Panel Views on Selected UDRP Questions (2nd Edition) wherein the consensus view adopted was that "*... a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name.*"

C. The Registrant's domain name has been registered or is being used in bad faith

31. It was submitted that as per para 7 of INDRP states that the registration and use of

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a domain name is in bad faith when *inter alia*:

(c)

by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

It was submitted that the Respondent in the present case has clearly adopted the Disputed Domain Name with the intention to create confusion with the apartment 9 Brand/Marks and show false nexus between itself and the Complainant - as elaborated in the paragraphs below.

32. It was submitted that the Complainant is vested with worldwide statutory and common law rights in its apartment 9 Brand/Marks since the year 2005. It was submitted that in such circumstances, the Respondent's usage of a confusingly similar mark to the Complainant's apartment 9 Brand/Marks for identical goods/business, is of concern as it was fraught with the likelihood of creating confusion in the minds of public at large. It was submitted that the consumers looking for the Complainant's apartment 9 goods/services may perceive the Disputed Domain Name to be another domain name of the Complainant offering *inter alia* home décor products, tableware & bar ware, decorative accessories, cushions table lamp, candle products, bath accessories, etc., directly identical to those of the Complainant. That this misconception was very likely to be amplified when such unwary consumers would receive fraudulent communications from the Respondent, which would lull such consumers into a false sense of security, leading to the incorrect assumption that the Respondent's communication and business activities are genuine and originating from the Complainant itself. The Complainant submitted that it was exactly this sort of scenario that the Respondent was seeking to create and that this was in itself evidence of its bad faith and *malafide* intentions.

33. It was further submitted that the Respondent, being in an identical industry and

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dealing with same or similar goods/services, was bound to have knowledge of the world-renowned repute of the Complainant herein. It was submitted that the respondent had no cause for adoption of a confusingly similar trademark or domain name, except in bad faith and with *malafide* intention. It was submitted that the Disputed Domain Name was registered subsequently in September 2018, i.e. post nearly 13 years of filing of the trademark applications by the Complainant in India

for registration of its APARTMENT 9 / **apartment 9** marks and 11 years of the Complainant registering their domain name apartment9.in. It was submitted that the Respondent, therefore, again cannot escape the liability of knowledge of the Complainant and its business under the apartment 9 Brand/Marks - since no level of coincidence can lead to the Respondent adopting a name / trademark confusingly similar to the Complainant's much prior adopted, used and registered

APARTMENT 9 / **apartment 9** marks. The Complainant placed reliance on **Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager (WIPO Case No. D2011-1951)**, it was held that "*it is clear in this Panel's view that, at the time the disputed domain name (<mchelin.com>) was registered, Respondent had actual knowledge of Complainant's preexisting rights in the MICHELIN trademark. The Panel, therefore, concludes that Complainant has established that Respondent registered the disputed domain name in bad faith*". It was submitted by the Complainant that in the present case, at the time of registration of the Disputed Domain Name, the Complainant had been known by the **apartment 9** Brand/Marks for their business activities for much over 15 years and had already enforced its rights against several infringers. Even so, the Respondent chose to register the Disputed Domain Name so as to misappropriate the Complainant's **apartment 9** Brand/Marks in an unabashed and unauthorized manner. Thus, a finding of bad faith registration of the Disputed Domain Name is irrefutable and must follow.

34. The Complainant submitted that there can be no doubt that the Respondent was aware of the Complainant's **apartment 9** Brand/Marks when it registered the Disputed Domain Name, which clearly suggests "*opportunistic bad faith*" in violation of the Policy. The Complainant placed reliance on **Orange Brand**

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Services Limited v. Anshul Agarwal / Orange Electronics Pvt. Ltd.
<orangeindia.in> INDRP/579 (*"Given the fame of the Complainant's trademark and domain name, it is not possible to conceive a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark"*). The Complainant further submitted that **APARTMENT 9** Brand/Marks is a well-known, internationally recognized and renowned mark, registered across several classes in India. This suggests that the Respondent must have not only been aware of the Complainant's **apartment 9** Brand/Marks but should also have known of the Complainant's related domain name apartment9.in and reach of its goods/services worldwide, which constitutes strong evidence of bad faith. In this regard, the Complainant placed reliance on **Marriott International, Inc. v. Momm Amed IA, NAF Case No. FA95573.**

35. The Complainant placed reliance on the case of Amazon.com Inc., Amazon Technologies, Inc. v. Giovanni Laporta / **Yoyo.Email (WIPO Case No. D2015-0009)**, wherein while directing the transfer of the domain name **<amazonsupport.email>** to the Complainant, the Administrative Panel held that: *"A further indication of Respondent's bad faith under the Policy is the fact that the AMAZON Mark predates Respondent's registration of the Disputed Domain Name by twenty (20) years."* It was submitted that in the present case, adoption of the **apartment 9** Brand/Marks by the Complainant precedes registration of the Disputed Domain Name by much over a decade. Therefore, it is clear that the Respondent intended to trade on the reputation of the Complainant and its rights in the **apartment 9** Brand/Marks.

36. It was submitted that the Respondent appears to be using the Disputed Domain Name for the purpose of misleading and extracting illegal benefits from innocent customers, who will be led to believe the Respondent to be the Complainant or at least affiliated with it. It was further submitted that the Respondent's bad faith intentions due to use of the Disputed Domain Name are thus lent further credence. The Complainant placed reliance on **Skype Limited v. Sadecehosting.com Internet Hizmetleri San Tic Ltd Sti (WIPO Case No. 1059477)** it was observed that *"Respondent is using the ... domain name in order to gain access to personal*

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and financial information of Internet users. Such use of the disputed domain name in connection with a phishing scheme qualifies as bad faith registration and use under Policy ¶ 4(a)(iii)".

37. It was further submitted that even if the Respondents were offering inter alia home décor products. Tableware & bar ware, decorative accessories, cushions table lamp, candle products, bath accessories, etc., through the Disputed Domain Name, such use would still support a finding of bad faith use and registration, as these are directly identical goods/services offered by the Complainant under its famous and registered APARTMENT 9/**appartement 9** marks. The Complainant placed reliance on **Kingston Technology Corp. v. c/o Asiakingston.com (WIPO Case No. FA1464515)** wherein the Panel observed that "*finding use of domain name incorporating Complainant's trademark in connection with the sale of competing products to constitute bad faith*".
38. It was finally submitted that the Disputed Domain Name was registered and is being used in bad faith. It was submitted that if the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant, loss and hardship will be caused to the Complainant.
39. For forgoing reasons, the Complainant submitted that it has adequately satisfied the three conditions provided in Paragraph 4 of the INDRP and therefore, requested an arbitrator / panel be appointed in these proceedings to issue the necessary directive for the Disputed Domain Name to be transferred to the Complainant.
40. The Complainant submitted that there are no other legal proceedings that have been commenced, are continuing or have been terminated by the Complainant in connection with or relating to the Disputed Domain Name.
41. The Complainant lastly gave certifications and undertaking to the effect that the Complainant, by submitting the Complaint agrees to the settlement of the dispute, regarding the domain name which is the object of the Complaint by final and

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binding arbitration in India conducted in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any by-laws, rules or guidelines framed there under, as amended from time to time. The Complainant agreed that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waived all such claims and remedies against the .IN REGISTRY, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute. The Complainant by submitting this Complaint agreed that the decision of the Arbitrator to be appointed in this matter may be made public and may be published on the website including without limitation other forms of publication of the .IN REGISTRY. The Complainant certified that the information contained in this Complaint is to the best of Complainant's knowledge and is complete and accurate, also that this Complaint is not being presented for any improper purpose, such as to harass the Respondent etc.

CASE OF THE RESPONDENT

1. The Respondent denied all the averments of the Complainant in. It was submitted by the Respondent that the allegations made by the Complainant are utterly frivolous and suffer from gross infirmities. It was submitted that the Respondent has the registered trademark over the mark Apartment 18 granting him exclusive rights for its use in all connected good and services as per the Trade Marks Act, 1999 (hereinafter referred to as the "Act").
2. It was submitted that the disputed domain name was registered with a bona fide intent to give rise to a new online platform in compliance and adherence of the requisite formalities and verifications as laid down by the .IN REGISTRY vide the Policy Framework & Implementation dated 28.10.2004. Thus, it was submitted that the registration of the Disputed Domain Name cannot in any manner be said to be in conflict with the legitimate rights or interests of the Complainant.

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3. The Respondent submitted that the present Complaint is utterly frivolous and is a glaring example of the mala fide of the Complainant with the ulterior motive to take over the well-established online platform of the Respondent which is amply clear from the relief sought by the Complainant i.e. transfer of the Disputed Domain Name. It was further submitted by the Respondent that the Complainant being exclusively a retail store wants to expand its horizon in the e-commerce industry and has approached the Hon'ble Registry only with the intent to steal on the goodwill built by the Respondent in the online domain.

The Respondent has relied on the following grounds:

A. That "Apartment 18" is a registered trademark in the name of the Respondent and the Respondent exercises exclusive rights over it

4. The Respondent submitted that the Complainant has deliberately withheld the information that the Respondent in the year 2019 obtained trademark registration on the device mark "Apartment 18" under his name with the TM No. 4151275. The Certification of the said registration of the trademark was granted to the Respondent on 18.04.2019. It was submitted that the said trademark registration of the mark "Apartment 18" grants exclusive rights to the Respondent for its use in all relation to all goods and services connected to it as per the provisions of the Act. A copy of the Certificate of the trademark registration dated 18.04.2019 was attached with the reply and marked as ANNEXURE – 1.
5. It was submitted that as per the provisions of the Section 28 of the Act, the registration of a trade mark gives the registered proprietor of the said trademark exclusive rights to the trademark.
6. It was submitted by Respondent that as per the provisions of the Trade Marks Act, 1999, it was established that the proprietor of a registered trade mark enjoys exclusive rights over the said mark, in this case- Apartment 18. It was submitted by Respondent that this registered trademark allows the Respondent to exclusively use the mark Apartment 18 with respect to all the goods and services in relation of the trade mark. It was submitted

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by Respondent that the online platform of the Respondent with the Disputed Domain Name evidently comes under the purview of the services in relation to the trademark as per the provisions of the Act. Thus, the act of registering the disputed domain name was merely an exercise of the exclusive rights that the Respondent owns over the trade mark Apartment 18.

B. That the Disputed Domain Name is a unique combination of words and numbers created with the bona fide intent by the respondent to build a brand in the e-commerce industry:

7. The Respondent submitted that in the year 2018, keeping in mind the rapidly growing popularity of home décor and furnishing in e-commerce, the Respondent curated a platform with the objective of targeting the prospective customers who live in Multi-story Apartments in cities. The Respondent submitted that its vision for the brand at its core was driven by the paradigm shift in the buying behaviour of the consumers towards online buying, more so in the home décor and furnishing industry. Moreover, in the past years the number of online retailers in home décor and furnishing has witnessed a steep surge on account of the profitability of the industry. Hence, owing to the aforementioned considerations, the Respondent embarked on the journey of starting off the online platform Apartment 18.
8. It was submitted that the term "Apartment 18" was first coined by the Respondent in the month of the September 2018. The idea behind the term Apartment 18 stemmed from the unilateral vision of the Respondent to target the consumers who are residents of Multi-story Apartments in cities. Further, the suffix, number 18, was included as a representation of the year of establishment of the brand. Therefore, the Respondent based on the above stated deduction, coined the term "Apartment 18".
9. The Respondent further submitted that the Respondent, owing to the suitability of the term 'Apartment 18' to the brand and its services, immediately opted for the registration of the domain name with the Registry. It was further submitted that the Respondent thereupon, on 08.09.2018, through the .IN Registry Accredited Registrar - GoDaddy registered the domain name <APARTMENT 18.IN>. It was submitted that the Disputed

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Domain Name was readily available to the Respondent which reflected that there was no other party claims over the Disputed Domain Name. A copy of the receipt of payment for the Disputed Domain Name issued by GoDaddy in favour of the Respondent was attached and marked as ANNEXURE-2.

10. It was submitted that the Respondent through its online platform Apartment 18 is the seller of premium and unique home décor products specializing in hand crafted products made by Indian artisans. It was submitted by Respondent that in its first year i.e. 2018-2019, the gross sale of the products offered by the Respondent under the brand name Apartment 18 touched Rs 13.3 Lakh. It was submitted by Respondent that owing to the stellar services and the quality of the products offered by the Respondent, the sales rocketed to Rs. 2.6 crores in the subsequent year. It was submitted by Respondent that even during the pandemic, the business generated by the Respondent touched Rs. 4.97 crores. It was further submitted by Respondent that so far, the Respondent through his online platform has successfully delivered over 31,000 orders across various cities in India and internationally. A copy of the Sales Overtime Report of Apartment 18 along with the User Sessions Report and User Sessions Report based on Countries was attached to the Reply and marked as ANNEXURE- 3(Colly).

C. That the Disputed Domain Name enjoys a far wider popularity and outreach in the online domain and in no way creates confusion with the domain name of the Complainant

11. It was submitted by the Respondent that the online platform of the Respondent in just a few years since its inception boasts of a loyal customer base across all major 485+ cities of India & several other countries. It was submitted that the Respondent's online platform has witnessed 2.2 million unique visitors between 2018-2021 from users in India, and over 1 million unique visitors from over 171 countries. It was submitted by Respondent that the brand Apartment 18 has a solid customer base in countries like the United States, Singapore, Australia, and the United Kingdom. The Respondent annexed a copy of the User Sessions Report and User Sessions Report based on countries.
12. It was submitted that the website of the Respondent <https://apartment18.in/> is an e-

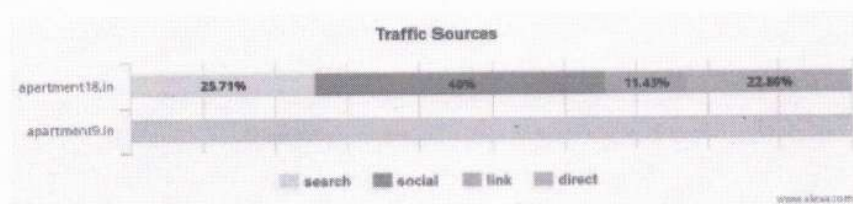
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commerce platform selling its products online and enjoys a thriving online customer base. It was submitted that the business activities of the Complainant are primarily as a retail store and the website <https://apartment9.in/> is majorly a promotional tool for the business activities of Apartment 9 only highlighting the retail services provided. The Respondent also provided the comparative metrics of the website of the Respondent and the Complainant to demonstrate that the website of the Respondent witnesses a much higher traffic, reach and ranking than that of the Complainant which is reproduced herein below:

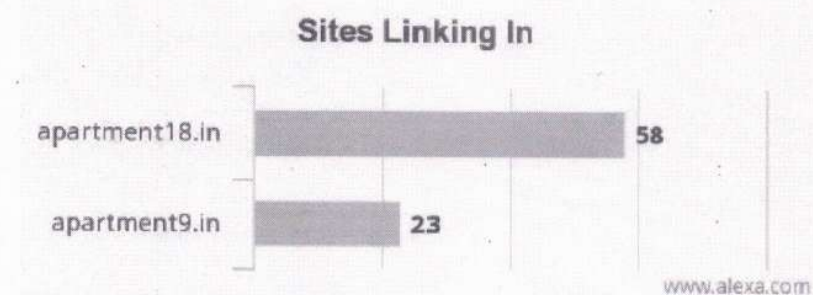
Traffic Metrics					Rank in Country: India		Export CSV	1
Site	Global Rank		Rank in Country (IN)	Global Reach %		Global Pagesviews %		
apartment18.in	371,887	* 137,364	44,855	0.00010%	* 40.00%	0.00003%	* 64.00%	
apartment9.in	2,194,899			0.00021%		0.000214%		

Historical data not available for sites ranked >=100,000

Site	Pagesview/User		Source Rate		Time on Site (minutes)	
apartment18.in	4.58	* 23.0%	36.00%	* 32.8%	4.8	* 28.0%
apartment9.in	5.81				3.6	



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It was hence submitted by the Respondent that from the above metrics as far as the position of the brands of the Respondent and the Complainant in the online domain is concerned, the platform of the Respondent has a far wider national and global reach. The Respondent submitted that the website of Apartment 18 has witnessed 0.00013% global reach being in the business since only 2018, whereas the website of the Complainant has seen a global reach of merely 0.0001% making the popularity and reach of the website of the Respondent far ahead in the online domain.

13. It was submitted by the Respondent that in just a short span of time, Apartment 18 has been successful in establishing a robust following on social media pages and that the brand Apartment 18 has a sweeping following on the leading social media platforms globally with 16,239 followers and 9,268 likes on Facebook alone. Further, the Respondent submitted that its Facebook page witnesses monthly page post reach of approximately 1.25 million users and monthly video views of 100,000 users. A copy of the Facebook Reach and Views metrics Respondent's Facebook page were attached with the reply and marked as **ANNEXURE – 4**.

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14. It was further submitted by the Respondent that on another leading social media platform Instagram with nearly 1 billion users per month, the brand of the Respondent enjoys a wide following of 73,000 users. Further the Instagram Page of the brand witnesses a monthly account reach of approximately 1.1 million users and monthly content interactions of approximately 21,000 users. A copy of the Instagram statistics of the Instagram page of the Respondent's brand was attached and marked as **ANNEXURE – 5**.
15. It was submitted that the Respondent is a well-established and trusted name in the e-commerce industry and that the brand of the Respondent has a very high recall and traction in the customer base as around 28,800 Google searches have been done using the keyword: "apartment 18" in the last 2.5 years alone. Therefore, there is no ambiguity between brand names and the customers have a very high recall and loyalty towards the brand name Apartment 18. A copy of the Google account which reflects the number of times people searched for exact brand name "Apartment 18" was attached with the Reply to the Complaint and marked as **ANNEXURE -6**.
16. It was further submitted that as a reflection upon the brand popularity and legitimate e-commerce activities across various online domains of the Respondent, the brand of the Respondent Apartment 18 has partnered with one of the trusted credit card bill payment platform CRED to build its reach and credibility. It was further submitted by the Respondent that the brand Apartment 18 has its own brand store Apartment 18 in one of the leading online shopping platforms in the world - AMAZON. A copy of the brand partnership of Apartment 18 with CRED along with the brand store of the Apartment 18 on Amazon was attached and marked as **ANNEXURE – 7 (Colly)**.
17. It was submitted that the brand Apartment 9, although in the business of home décor and furnishing for across 15 years, is at its core a retail service. It was submitted that the brand has been driven by the objective "apartment rather than a retail store" since its inception. It was further submitted that the brand primarily focuses on offering a unique retail experience to its customers, and that since the nature of the services of the brand Apartment 9 at its roots is retail, the brand does not enjoy a significant popularity

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and user base in the e-commerce industry.

18. The Respondent further submitted that the website of the brand Apartment 9 is a means of promotion and customer engagement for its retail services and that the website does not reflect any significant traffic or reach whatsoever as shown in the preceding paragraphs. The website at its best is the account of all relevant information relating to the services provided by the retail store Apartment 9.
19. It was submitted by the Respondent that brand Apartment 9 has an inconsequential presence even on some of the leading social media platforms. It was submitted that the brand has only witnessed a following of 9,162 users on the leading platform Facebook and a following of 11,600 users on Instagram and that when these figures are compared to the brand of the Respondent it was evident that the Respondent has a far better reach, popularity and credibility in the online domain. Comparative metrics of the brands of the Respondent and the Complainant were reproduced as below:

ONLINE DOMAIN	APARTMENT 18	APARTMENT 9
Website Global Reach	0.00013%	0.00001%
Website Global Rank	3,73,897	21,38,939
Sites Linking In	58	23
Facebook	16,239 following	9,162 following
Instagram	73,000 following	11,600 following

A copy of the Facebook statistics of the brand of the Complainant along with the Instagram statistic of the brand were attached herewith and marked as **ANNEXURE – 8 (Colly)**.

20. It was submitted that the Respondent commenced the online platform Apartment 18 with a bona fide intent to build a brand that provides excellent e-commerce services in the home décor and furnishing industry. It was submitted that as opposed to the wide range of retail services provided by the Complainant ranging from selling furnished and

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decorative goods to its styling and repair, thereof, the Respondent started the platform Apartment 18 with a clear vision of selling unique and handcrafted home décor products in the online domain.

21. It was submitted that the Respondent's brand is a far more popular and trusted brand when drawn a comparison with the brand of the Complainant. It was submitted that the Respondent has wider reach and user engagement in all aspects of the online domain and that the statistics of the Google search of the term "Apartment 18" make it evident that the brand Apartment 18 has its own value and that in no way does it create a confusion in the minds of the user of it being a subsidiary of the brand of the Complainant.
22. The Respondent submitted that due to the reasons mentioned above, it is evident that in the online domain the Disputed Domain Name is, without a shadow of doubt, more popular and well established. It was submitted that therefore, as far as the online domain is considered, the users will associate the word "Apartment" with the brand of the Respondent i.e., Apartment 18 as the outreach of the Disputed Domain Name is invariably more widespread when compared to the domain name of the Complainant.

D. That the Complainant preferred the present Complaint with the *malafide* intent to steal the goodwill of the Disputed Domain Name that the Respondent has built in the online domain

23. It was submitted by the Respondent that the Complainant, having no legitimate claim over the Disputed Domain Name, filed the present Complaint seeking the transfer of the Disputed Domain Name with the mala fide intent to take over the flourishing business of the Respondent. It was submitted by the Respondent that the brand of the Complainant, as stated by the Complainant, is focused on creating a unique retail experience. In 2005, when the Complainant established his retail brand, the concept of e-commerce was in the offing and the consumers relied upon retail stores for their needs. However, in the past few years, with the advent of e-commerce, there has been a shift in buyer behaviour towards online shopping and as a result online domain has become a major source of profitability and revenue making.

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24. It was submitted by the Respondent that the Complainant, drawn by the rampant growth in the e-commerce, wanted to widen the reach of his brand in the online domain. It was submitted that the Complainant found the perfect opportunity to enter the e-commerce industry, as the brand of the Respondent is well-established in the online domain and is seeing a steep growth in its business and popularity and the same has been duly established with the comparative metrics discussed in detail with supporting graphical charts in the preceding paragraphs. It was submitted that the Complainant has filed the present complaint with the sole intent of taking over the business of the Respondent and to steal the goodwill that the Respondent has built over the online domain. It was submitted that the complaint is nothing but a frivolous attempt by the Complainant to widen its horizon in online domain by capturing the thriving brand of the Respondent.
25. In para-wise reply on merit, the Respondent has denied all contentions and averments of the Complainant. It was reiterated that as far as the online domain is concerned, the brand of the Respondent Apartment 18, has a well-established standing with higher website traffic, global ranking, user recall and presence on leading social media platforms. It was further submitted by the Respondent that the website of the brand of the Complainant is merely a promotional tool and at best, a collection of information of the operations of the retail store of the Complainant. The website and other social media pages of the Complainant have negligible user engagement. The brand of the Complainant has built a concrete reputation as a retail store and owing to the same, the brand has no standing and significance in the online domain, more specifically in the e-commerce industry which is the exclusive mode of operation of the brand of the Respondent. It was reiterated by the Respondent that the website of the Respondent since its inception was created with the bonafide intent to create an e-commerce platform to sell premium and unique home décor products specializing in hand crafted products made by Indian artisans. It was reiterated by the Respondent that the online platform was built with the sole vision to target the consumers who are residents of Multi-story Apartments in cities. In pursuance of the said objective, the Respondent with the bona fide intent, keeping in view the profitability and rising growth in the e-commerce industry, built the online platform with the Apartment 18. With respect to the averment of the Complainant that the Disputed domain Name is directly identical to the Domain Name of the Respondent, it was submitted by the Respondent that the nature

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of the operation of the business is clearly distinguishable. Moreover, the trademark Apartment 9 and Apartment 18 are registered under different class. The Respondent has trademark registration under Class 20 specifically Apartment 18 as opposed to the Trademark Apartment 18, which makes the differentiation in the nature of services amply evident. It was further submitted by the Respondent that the Disputed Domain Name Apartment 18 is a fanciful combination of the word 'Apartment' and the number '18'. 'Apartment' being a generic word was combined with '18' to commemorate the year in which the Seller launched its brand i.e. 2018. When read together, Apartment 18, is an arbitrary mark with a unique combination of a word and a number. It was reiterated that the Disputed Domain Name is well-established in the online domain when compared to the Domain Name of the Complainant. The Respondent reiterated that, the trademark Apartment 9 and Apartment 18 are registered under different class. The trademark has its registration under Class 20 specifically Apartment 18 as opposed to the Trademark Apartment 18, which makes the differentiation in the nature of services amply evident. The Respondent reiterated that in its first year i.e. 2018-2019, the gross sale of the products offered by the Respondent under the brand name Apartment 18 touched Rs 13.3 Lakh. Owing to the stellar services and the quality of the products offered by the Respondent, the sales rocketed to Rs. 2.6 crores in the subsequent year. Even during the pandemic, the business generated by the Respondent touched Rs. 4.97 crores. So far, the Respondent through his online platform has successfully delivered over 31,000 orders across various cities in India and internationally. It was submitted that the Complainant being exclusively a retail store is looking to expand its services in the e-commerce industry as the e-commerce industry is becoming widely popular among the present-day consumers. With the brand of the Respondent, the Complainant found an opportunity to enter the e-commerce industry by taking over an already popular and widespread brand among the consumers. The Respondent since the inception of the online platform has operated with the bona fide intent to build the brand and make profits. For the said purpose the Respondent coined a unique combination of words and numbers to give the consumers an insight in the nature of the brand's services. The wide popularity of the brand of the Respondent is evident of the bona fide offering and unique nature of the services provided by the Respondent.

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26. The Respondent therefore submitted that the present complaint be dismissed.

CONTENTIONS AND SUBMISSIONS OF COMPLAINANT IN THE REJOINDER

1. The Respondent raised five preliminary objections in its Rejoinder viz. 1) that the Reply filed by the Respondent is without proper authorization. It was submitted that as per Paragraph 3(b) of the INDRP Rules of Procedure '*either party or its authorized representative shall submit a power of attorney while filing a complaint or response.*' The Complainant sought the rejection of the reply on this ground instantaneously. A copy of the INDRP Rules of Procedure with the relevant provision was enclosed as **Annexure R1**, 2) the Respondent has submitted no relevant arguments in the Reply to address the blatant similarities between the Disputed Domain Name and the Complainant's registered

trademark **APARTMENT 9/ appartement ⑨**, 3) the Respondent has failed to submit any contentions in the Reply to address the bad faith adoption/use of the Disputed Domain Name, 4) the Reply is based on untenable averments and misleading information, with no reliance on the proper legal provisions/rules or precedents and 5) no due regard has been given by Respondent to the Complainant's prior and extensive global usage (particularly in India) and substantial **senior** statutory rights in the **appartement ⑨** /**APARTMENT 9** Marks since 2005/2007 – as elaborated in the Complaint, along with the extensive promotions and advertisements (both physically & online) of **appartement 9** Brand/Marks in worldwide markets (including India), which have generated immense goodwill and reputation for them and thus, making the **appartement 9** Brand/Marks 'renowned' and radically distinctive for their products / services.

2. In para-wise reply on merit, the Complainant has denied all contentions and averments of the Respondent. It was reiterated that the Respondent has clandestinely refrained from providing the complete information. It was submitted by the Complainant that the alleged claim of Respondent having rights on the 'Apartment 18' mark is patently denied, since the concerning mark is facing a Rectification/Cancellation Action before the Indian Trademarks Registry - which has been duly filed by the Complainant to

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enforce their rights in the **apartment 9** Brand/Marks on February 28, 2021 under Rectification No. 270459. A copy of the latest extracts from the electronic records of the Indian Trademarks Registry, evidencing the rectification/cancellation action filed against the 'Apartment 18' mark by the Complainant was filed as **Annexure R2**. It was submitted that the Respondent submitted completely irrelevant arguments in its Reply.

3. It was reiterated by the Complainant that the Disputed Domain Name is identical with and/or confusingly similar to the Complainant's **apartment 9** Brand/Marks with a mere replacement of the numeral '9' with '18' (*which is another multiple of '9'*) and insufficient for differentiation. It was submitted by the Complainant that the inclusion of the word 'APARTMENT' - *which was uniquely adopted by the Complainant for their home furnishing, handicraft, ceramics and furniture products/services, based on a fanciful idea/concept*, as elaborated in the Complaint - with the numeral '18' (*which is another multiple of '9'*) in the Disputed Domain Name amply reflects that the intention of the Respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent and cash-in on such deception. The Complainant placed reliance on **The Dow Chemical Company v. Hwang Yiyi, WIPO Case No. D2008-1276**, use of a disputed domain name in connection with a website that is "*very similar to the Complainant... intends to mislead the consumers into thinking that the Respondent has some kind of business relationship with the Complainant or it is the Complainant*" and, therefore, is not legitimate. The Complainant also relied on the case of **ONEY BANK, v. Xiao Long Lin, A La Si Jia, Case No. D2020-2968** wherein it was held that "*The placement of the numeral '1' in the disputed domain names does not avoid a finding of confusing similarity. For example, the mere addition of a dictionary word to a complainant's registered mark does not avoid confusing similarity.*" Further, in **Osram GmbH v. Guo Liang Jie, Case No. DCN2020-0028** it was held that "*the distinctive feature of the disputed domain name is effectively the misspelt of the word 'osram' (by replacing the vowel 'o' with the numeral '0'), being the distinctive feature of the Complainant's trademark. It is a form of typosquatting. After removing the ccTLD '.cn', effectively the word 'osram' is seen entirety. The Complainant's trademark is clearly recognizable in the disputed domain name.*"

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4. In the Rejoinder, the Complainant submitted that the present INDRP proceeding was initiated to restrain the illegitimate and bad faith adoption/use of the Disputed Domain Name, which if not transferred to the Complainant, would lead to considerable loss and hardship. In addition to the above, Respondent reiterated that the Complainant is vested with prior statutory and common law rights in its **apartment 9** Brand/Marks since the year 2005. In such circumstances, the Respondent's usage of a confusingly similar mark to the Complainant's **apartment 9** Brand/Marks for identical goods/business, is of concern as it is fraught with the likelihood of creating confusion in the minds of public at large. It is highly probable that consumers looking for the Complainant's **apartment 9** goods/services may perceive the Disputed Domain Name to be another domain name of the Complainant offering *inter alia* home décor products, tableware & bar ware, decorative accessories, cushions table lamp, candle products, bath accessories, etc., directly identical to those of the Complainant. It was further submitted by the Complainant that this misconception is highly likely to be amplified when such unwary consumers would receive fraudulent communications from the Respondent, which would lull such consumers into a false sense of security, leading to the incorrect assumption that the Respondent's communication and business activities are genuine and originating from the Complainant itself. The Complainant further submitted that it is exactly this sort of scenario that the Respondent is seeking to create and is in itself of its bad faith and *malafide* intentions. Also, the averments of Respondent claiming the Complainant being '*exclusively a retail store*' is an attempt to misguide this Tribunal. It was submitted by the Complainant that while it is correct that the Complainant is currently running several multi retail store(s), franchise store(s), factory unit(s) and office(s) in India under the brand/name of 'APARTMENT 9' in New Delhi, Noida, Ahmedabad, Kolkata, etc., and over the last 16 years, has also partnered internationally with Industry leaders such as Andrew Martin-UK, Libery-UK and Lizzo-Spain to pursue its expansion strategies and explore new markets. However, in addition to the above physical usage, Complainant has focused and invested on their Online & Social Media Presence and thus, the Complainant has averred the following in the Compliant with cogent documentary evidence i.e. a) Complainant owns the domain name <apartment9.in> and operates its corresponding primary website at <https://apartment9.in/> through which it conducts a significant portion of its business and where information about the Complainant and its business under the **apartment 9**

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Brand/Marks which is easily accessible and available to millions of internet users, who may be current or potential consumers. As is evident, the Complainant's domain name in its entirety incorporates its registered trademark **APARTMENT 9**, thus further augmenting its proprietary rights in the said brand/marks b) the aforementioned domain name <apartment9.in>, as evident, forms an integral part of the brand identity of the Complainant's company, and was created / registered on and has been regularly renewed since **October 16, 2007**. An extract from the WHOIS database supporting the aforementioned date has already been enclosed as Annexure 9 in the Complaint c) besides its own website, the Complainant's **apartment 9** Brand/Marks and services and goods thereunder are prominently advertised on major social networking sites such as **Facebook, Instagram, LinkedIn and YouTube** - which collectively have thousands of followers / views. It was submitted by the Complainant that given the fact that these websites attract masses from every social, geographical, economic and age demographic worldwide, the **apartment 9** Brand/Marks have consequently been exposed to an exponentially large section of both Indian and international public. It was submitted that extracts of relevant webpages, in support of the above submissions, have been collectively enclosed as Annexure 10 in the Complaint. It was reiterated that the Complainant enjoys exclusive and extensive rights over the **apartment 9** Brand/Marks *qua* its specific products/goods/services dealing in home furnishing, handicraft, ceramics and furniture - both online and offline.

5. It is reiterated by the Complainant that Respondent has clandestinely refrained from providing the complete information to this Tribunal. The Complainant denied that the Respondent is having rights on the 'Apartment 18' mark, since the concerning mark is facing a Rectification/Cancellation Action before the Indian Trademarks Registry - which has been duly filed by the Complainant on February 28, 2021 under Opposition No. 270459. Further, the Complainant submitted that a search for the word element 'APARTMENT' in Classes 18, 22 and 25 - relevant to the Complainant's business - on the Indian Trademarks Registry's database reveals that besides the Complainant's **APARTMENT 9** Marks there are no other 'APARTMENT or formative marks' existing on the trademark records - on date. The Complainant submitted that this clearly indicates the exclusivity held by the Complainant on the word element 'Apartment and any other variations. The search reports from the public database of the Indian Registry

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for Classes 18, 22 and 25 was annexed as **Annexure R3**. It was submitted by the Complainant that in reference to the present INDRP proceeding, there is no doubt that the Respondent was aware of the Complainant's **apartment 9** Brand/Marks when it registered the Disputed Domain Name, which clearly suggests "*opportunistic bad faith*" in violation of the Policy. The Complainant relied on **Orange Brand Services Limited v. Anshul Agarwal / Orange Electronics Pvt. Ltd. <orangeindia.in> INDRP/579** ("*Given the fame of the Complainant's trademark and domain name, it is not possible to conceive a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark*"). It was submitted by the Complainant that as set forth above, **APARTMENT 9** Brand/Marks is a prior, internationally recognized and renowned mark, registered across several classes in India. This suggests that the Respondent must have not only been aware of the Complainant's **apartment 9** Brand/Marks but should also have known of the Complainant's related domain name apartment9.in and reach of its goods/services worldwide, which constitutes strong evidence of bad faith - **Marriott International, Inc. v. Momm Amed IA, NAF Case No. FA95573**. Also, the Complainant has well-established rights in respect of the **apartment 9** Brand/Marks which have been recognized and granted statutory rights by the Indian Trademarks Registry under Registration Nos. 1389315, 1389316, 1389317, 1600911, 1600912 and 1600914 for various goods/services relevant to their business activities, with earliest dating back to 2005 - which is much prior (nearly 13 years) to the 'Apartment 18' application.

6. It was submitted that the subsequent business activities of the Respondent from 2018 are in direct violation of the intellectual property rights of the Complainant - wherein there is a mere replacement of the numeral '18' (*which is another multiple of '9'*) as a suffix to the Complainant's registered trademark **APARTMENT 9/ apartment 9** . It was further submitted by the Complainant that the Complainant is known globally (including India) for their business of home furnishing, handicraft, ceramics and furniture since 2005 and hence use of the Disputed Domain Name will, in all likelihood, make internet users believe that it originates from the Complainant, when that is not the case. It was submitted by the Complainant that therefore, the numeral '18' (*which is another multiple of '9'*) as a suffix is not sufficient

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to avoid confusion between the Disputed Domain Name and the **apartment 9** Brand/Marks of the Complainant, which is exclusively associated with the Complainant alone and none else. It was further submitted by the Complainant that the mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In this regard, the Complainant placed reliance on **Deutsche Telekom AG v. Phonotix Ltd. (WIPO Case No. D2005-1000)**, it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Also, it was submitted by the Complainant that the Respondent's use of the Disputed Domain Name is for fraudulent purposes, namely, to imitate a legitimate, well-reputed and trustworthy entity, i.e. the Complainant, so as to deceive customers into purchasing goods and availing services that may be false / inaccurate or never provided. Additionally, the reason provided for the adoption of the term/mark "Apartment 18" is vague and without any merit. It is further submitted that the Respondent, being in an identical industry and dealing with same or similar goods/services, is bound to have knowledge of the world-renowned reputation of the Complainant herein. It was submitted by the Complainant that hence, it has no cause for adoption of a confusingly similar trademark or domain name, except in bad faith and with *malafide* intention. Moreover, the Disputed Domain Name was registered subsequently in September 2018, i.e. post nearly 13 years of filing of the trademark applications by the Complainant in India for registration of its

APARTMENT 9/ apartment 9

Marks and 11 years of the Complainant registering their domain name apartment9.in. It was submitted by the Complainant that the Respondent, therefore, again cannot escape the liability of knowledge of the Complainant and its business under the **apartment 9** Brand/Marks - since no level of coincidence can lead to the Respondent adopting a name / trademark confusingly similar to the Complainant's much prior adopted, used and registered **APARTMENT 9 /**

apartment 9

Marks. The Complainant placed reliance on **Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager (WIPO Case No. D2011-1951)**, wherein it was held that "*it is clear in this Panel's view that, at the time the disputed domain name (<mchelin.com>) was registered, Respondent had actual knowledge of Complainant's preexisting rights in the MICHELIN trademark. The Panel, therefore, concludes that Complainant has*

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*established that Respondent registered the disputed domain name in bad faith". In the present case, at the time of registration of the Disputed Domain Name, the Complainant had been known by the **apartment 9** Brand/Marks for their business activities for much over 15 years and had already enforced its rights against several infringers. Even so, the Respondent chose to register the Disputed Domain Name so as to misappropriate the Complainant's **apartment 9** Brand/Marks in an unabashed and unauthorised manner. It was submitted by the Complainant that with regards to the alleged sales of the Respondent, they appear to be using the Disputed Domain Name for the purpose of misleading and extracting illegal benefits from innocent customers, who have been led to believe the Respondent to be the Complainant or at least affiliated with it. It was submitted by the Complainant that the Respondent's bad faith intentions due to use of the Disputed Domain Name are thus lent further credence. The Complainant placed reliance on **Skype Limited v. Sadecehosting.com Internet Hizmetleri San Tic Ltd Sti (WIPO Case No. 1059477)** wherein it was observed that "*Respondent is using the ... domain name in order to gain access to personal and financial information of Internet users. Such use of the disputed domain name in connection with a phishing scheme qualifies as bad faith registration and use under Policy ¶ 4(a)(iii)*".*

7. Regarding the documents adduced by the Respondent on page nos. 23-27 under **Annexure 3** of the Reply, the Complainant submitted that they have no reference or relation with the Disputed Domain Name and are merely uncorroborated figures/numbers. It was submitted by the Complainant that the documents do not support/justify the baseless contentions by the Respondent. It was further submitted by the Complainant that nevertheless, the same would be insignificant as it would in violation of the intellectual property rights of the Complainant as well as much subsequent to the adoption and use of the **apartment 9** Marks/Brand by the Complainant dating back to the year 2005. It was further submitted by the Complainant that the unfounded allegation of the Respondent that the website '*https://apartment9.in/ is majorly a promotional tool*' is vehemently denied. It was submitted by the Complainant that the Complainant has already submitted cogent evidence to support the extensive sales conducted and expenditures incurred of the **apartment 9** Marks/Brand and it is pertinent to note that their website [www.apartment9.in](https://apartment9.in) has played a major role as a '*Sales/Marketing Tool*' and contributed

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in the significant financial standing of over 230 crores in sales between the years 2005-2021. The Complainant provided the following sales figures under the **apartment 9 Marks/Brands**:

S. No.	Financial Year	Sales Figures (INR)	No. of Invoices Issued
1	2005-2006	43,36,305	995
2	2006-2007	2,00,63,131	3,433
3	2007-2008	3,42,46,898	6,539
4	2008-2009	5,72,47,545	7,940
5	2009-2010	10,90,49,438	7,955
6	2010-2011	16,24,27,870	9,553
7	2011-2012	14,45,17,709	9,673
8	2012-2013	13,66,33,769	8,618
9	2013-2014	17,97,92,135	6,060
10	2014-2015	25,04,29,961	5,713
11	2015-2016	23,87,06,266	6,214
12	2016-2017	21,95,70,346	3,591
13	2017-2018	25,51,78,153	3,266
14	2018-2019	26,60,44,684	3,208
15	2019-2020	23,59,45,938	2,775
16	2020-2021	22,36,63,443	2,754
Total Sales under the apartment 9 Brand		232,78,53,591	88,287

It was further submitted by the Complainant that in addition to the above, the Complainant receives regular online feed backs and inquires on the **apartment 9 Marks/Brand**, through potential customers and numerous job aspirants. A redacted copy of the excel sheet evidencing illustrative inquiries made about the products under the Complainant's **apartment 9 Marks/Brand** was attached as **Annexure R4**. It was further submitted by the Complainant that the Complainant has vast experience for execution of various orders for leading hotels and hospitality brand such as ITC Hotel, Eros Hotel,

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Raddison, Hans Hotel, Inter Continental, Holiday Inn, DLF etc. It was further submitted by the Complainant that the vast sales/revenue generated by the Complainant (*through online and offline modes*) clearly evidences the reputation and trust of customers in their **apartment 9** Brand/Marks and the products/services. It was further submitted by the Complainant that the comparative metrics and other unreliable data provided by the Respondent does not support their case in any manner, since there is no cause for adoption of a confusingly similar trademark or domain name, except in bad faith and with *malafide* intention. Moreover, the Disputed Domain Name was registered subsequently in September 2018, *i.e.* post nearly 13 years of filing of the trademark applications by the Complainant in India for registration of its **APARTMENT 9/**

apartment 9

Marks and 11 years of the Complainant registering their domain name apartment9.in. It was submitted by the Complainant that the Respondent, therefore, again cannot escape the liability of knowledge of the Complainant and its business under the **apartment 9** Brand/Marks - since no level of coincidence can lead to the Respondent adopting a name / trademark confusingly similar to the Complainant's much prior adopted, used and registered **APARTMENT 9/**

apartment 9

Marks. The Complainant highlighted that the Respondent has selectively provided the Comparative Metrics for the years 2018-2021. However, the Complainant's website has been operating since **October 16, 2007**, *i.e.* for more than a decade prior to the Respondent and has attracted masses from every social, geographical, economic and age demographic worldwide, which has been exposed to the **apartment 9** Brand/Marks. It was submitted by the Complainant that thus; the Respondent is clearly trying to mislead the Ld. Registrar and make tainted submissions. It was submitted by the Complainant that the reliance placed on the Respondent's social media accounts, claimed partnerships and other activities are clear elements of '*opportunistic bad faith*' by use of the Disputed Domain Name for fraudulent purposes, namely, to imitate a legitimate, well-reputed and trustworthy entity, *i.e.* the Complainant, so as to deceive customers into purchasing goods and availing services that may be false / inaccurate or never provided, along with entering into fictitious business relations. The Complainant further highlighted that the Respondent has submitted that they wish to operate in the '*home décor and furnishing industry*' and willingly admit that the Complainant offers a '*wide range of retail services... ..ranging*

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*from selling furnished and decorative goods to its styling and repair, thereof... ..the Respondent started the platform Apartment 18 with a clear vision of selling unique and handcrafted home décor products in the online domain'. It was submitted by the Complainant that based on the above admission of the Respondent it is evident beyond any reasonable doubt that the Respondent has blatantly adopted a confusingly similar mark to the Complainant's **apartment 9** Brand/Marks for identical goods/business, which is of prime concern as it is fraught with a high likelihood of creating confusion in the minds of public at large. It was submitted by the Complainant that it is highly probable that consumers looking for the Complainant's **apartment 9** goods/services may perceive the Disputed Domain Name to be another domain name of the Complainant offering *inter alia* home décor products, tableware & bar ware, decorative accessories, cushions table lamp, candle products, bath accessories, etc., directly identical to those of the Complainant. This misconception is highly likely to be amplified when such unwary consumers would receive fraudulent communications from the Respondent, which would lull such consumers into a false sense of security, leading to the incorrect assumption that the Respondent's communication and business activities are genuine and originating from the Complainant itself. The Complainant specifically submitted that it is exactly this sort of scenario that the Respondent wishes to create and is in itself evidence of its bad faith and *malafide* intentions.*

8. With regard to the Respondent's claims and submissions that in 2005 the '*concept of e-commerce was in the offing*', the Complainant submitted that the 'e-commerce' business has been prominently operating since the early 1990's, details of which were given by the Complainant herein below:

- 1992: Book Stacks Unlimited in Cleveland opens a commercial sales website (www.books.com) selling books online with credit card processing.
- 1995: Amazon.com is launched by Jeff Bezos.
- 1995: eBay is founded by computer programmer Pierre Omidyar as AuctionWeb. It is the first online auction site supporting person-to-person transactions.

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- 1999: Alibaba Group is established in China.
- 1999: Global e-commerce business reaches \$150 billion

Thus, it was submitted by the Complainant that accordingly, the averments of the Respondent are without any merit and ought to be out rightly rejected. An illustrative online Article in support of the above contentions on the operations of the e-commerce business since 1990's was annexed as **Annexure R5**. The Complainant further submitted that it is submitted that the allegation against the Complainant of 'stealing the goodwill' of the Respondent – is false, inappropriate and should have no place in the present proceeding. With regard to the financial figures submitted by Respondent, it was submitted by the Complainant that the same have been generated maliciously by fraudulent tactics and imitating a legitimate, well-reputed and trustworthy entity, i.e. the Complainant, so as to deceive customers into purchasing goods and availing services that may be false / inaccurate or never provided. Finally, it was submitted by the Complainant that the Respondent has failed to make out any case that would justify dismissal of the present proceedings or support the registration/use of the Disputed Domain Name. It was submitted that therefore, the Complainant requests this Tribunal issue the necessary directive for the Disputed Domain Name to be transferred to the Complainant.

In a nutshell, I give herein below contentions of the Complainant and the Respondent:

V. PARTIES CONTENTIONS:

A. COMPLAINANT'S CONTENTIONS

- (a) The disputed Domain Name is identical with or confusingly similar to the Complainant's registered trademarks "APARTMENT 9 / **apartment 9** ®" and the corresponding domain name <<https://apartment 9.in/>> of the Complainant.

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- (b) The Complainant has acquired extensive goodwill and immense reputation in its aforementioned trademarks and domain name being prior adopter, prior user and prior registrant.
- (c) Disputed Domain Name <https://apartment18.in> of the Respondent is identical and confusingly similar to Complainant's **apartment 9** brand/marks as well as identical and confusingly similar to Complainant's domain name [<https://apartment 9.in/>](https://apartment 9.in/).
- (d) Respondent is attempting to free ride and trade off over the goodwill of the Complainant's domain name and trademarks as both the Complainant and the Respondent provide identical goods / services / business.
- (e) Respondent had no legitimate interest in the domain name.
- (f) Respondent's use of Disputed Domain Name is only so as to imitate the Complainant and to deceive customers into purchasing false and inaccurate goods and availing unreliable services of the Respondent.
- (g) Usage of the word "APARTMENT" with the numeral '18' (which is a multiple of 9) in the Disputed Domain Name reflects that Respondent only intends to mislead and deceive the general public into believing that some nexus exists between the Complainant and Respondent.
- (h) Respondent has got the disputed domain name registered in bad faith
- (i) The Respondent has filed cancellation against registered trademark 4151275 **apartment 18** on 28/02/2021.
APARTMENT18 (device mark) /
- (j) The Respondent has admitted that he is in identical business. The Respondent has blatantly adopted a confusingly similar mark to the Complainant's **apartment 9**

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Brand/Marks for identical goods/business, which is of prime concern as it is fraught with a high likelihood of creating confusion in the minds of public at large.

B. RESPONDENT'S CONTENTIONS

- (a) That the Respondent holds a registered trademark under number 4151275 **apartment 18** APARTMENT18 (device mark) / **18** and as per section 28 of Trade Marks Act, 1999 has exclusive right to use his trademark.
- (b) The registration over "Apartment 18" grants exclusive rights to the Respondent for its use in relation to all goods and services connected to it.
- (c) The term "Apartment 18" is coined by the Respondent in the year 2018 and on 08.09.2018, through the .IN Registry Accredited Registrar – GoDaddy, the Respondent registered the domain name <APARTMENT 18.IN>.
- (d) The disputed domain name is used in respect of an online e-commerce platform for selling premium and unique home décor products which also boasts substantial sales while the domain of the Complainant is more related to retail sales in furniture and other home décor products.
- (e) That the Complainant's allegedly similar website is only a means of promotion and customer engagement for the Complainant's business.
- (f) The trademark Apartment 9 of Complainant and Apartment 18 of Respondent are registered under different classes. The Respondent has trademark registration under Class 20 specifically as opposed to the Trademark Registrations of the Complainant, which makes the differentiation in the nature of services amply evident.
- (g) The disputed domain name enjoys a far wider popularity and outreach in the online domain and that the Complainant's website has only an inconsequential presence over social media.
- (h) The Complainant wants to take over the flourishing business of the Respondent by transferring it to its name.

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VI. DISCUSSION AND FINDINGS:

1. The INDRP, which is the substantive law governing this proceeding, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:
 - i. The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant have rights;
 - ii. The Registrant has no rights or legitimate interests in respect of the domain name; and
 - iii. The Registrant's domain name has been registered or is being used in bad faith.

I have gone through the pleadings i.e., the Complaint filed by Complainant, Reply filed by Respondent and Rejoinder filed by Complainant. I have also gone through documents filed by both sides with their Complaint, Reply and Rejoinder. Further, I have also gone through case laws cited by the Complainant with the Complaint and Rejoinder. After giving due consideration to pleadings, documents, fact and legally settled principles, I hold that in the present case all three requirements for transfer have been met. I further hold that the Respondent's domain name is visually, phonetically, structurally and conceptually deceptively similar to the trademark and domain name of the Complainant which the Complainant who is prior adopter, prior user and prior registered proprietor of trademark and domain name APARTMENT9 and over which Complainant has absolute and sole rights. Not only is the Complainant prior adopter, prior user and prior registrant but has greater sales turnover viz. the Complainant has sales turnover of 230 crores between financial years 2005-2021. Per contra, it is Respondent's own case that he has generated business of Rs. 4.97 crores during pandemic. It is pertinent to mention that the Respondent has not filed a single document in the form of invoice to substantiate use since the year 2018.

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

2. I find that the Respondent's domain name < www.apartment18.in > is confusingly similar to the prior adopted, prior used and prior registered trademarks and domain name

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of the Complainant viz. APARTMENT 9, **apartment 9** marks and its corresponding domain name <www.apartment9.in>. I hold that the Complainant also has both common law as well as statutory rights in its trademark APARTMENT 9, **apartment 9**. Therefore, the Complainant is the sole legitimate owner of the trademarks APARTMENT 9, **apartment 9** and holds exclusive rights over its domain name <www.apartment9.in>. The Complainant is prior registered proprietor of Registration Nos. 1389315, 1389316, 1389317, 1600911, 1600912 and 1600914 for various goods/services relevant to their business activities, with earliest dating back to 2005 - which is much prior (nearly 13 years) to the 'Apartment 18' application. I note that the Complainant's earliest trademark applications were filed on 04/10/2005 with user claim since 22/7/2005. I am of the view mere replacement of numeral '18' with numeral '9' is not enough to differentiate the marks especially when APARTMENT is dominant and prominent part of trademark of both Complainant and Respondent and due to long use identified with the Complainant.

3. I hold that the Respondent's registration of domain *apartment18.in* will induce members of the public and trade to believe that the website of Respondent belongs to the Complainant or that the Respondent has a trade connection, association, relationship or approval with/of the Complainant, when it is not so. The chances of confusion and deception are aggravated as both parties are in similar business. I find that the a person with average intelligence and imperfect recollection would obviously not realize the minor replacement of numeral 18 with numeral 9 and will be misled into thinking that the said domain belongs to the Complainant only.
4. I hold that the Complainant is the prior user of APARTMENT 9/ **apartment 9** marks since 2005 and that the same is sufficient to make the Complainant a senior user in respect of the same.
5. I therefore hold that the disputed domain name is confusingly similar to the much prior domain of the Complainant <www.apartment9.in> as per INDRP, para 4 (i); Rules 4 (b)(vi)(1).

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B. The Respondent had no rights or legitimate interests in respect of the disputed domain name:

6. I find that the Respondent had no rights/ legitimate interest in the domain name <apartment18.in> for the following reasons:

- a. I find that the Respondent admittedly and evidently has no connection whatsoever with the Complainant and the Complainant has not licensed or otherwise permitted the Respondent to register the disputed domain name.
- b. I hold that before adopting / registering / using APARTMENT 18, the Respondent ought to have conducted search in records of Trade Marks Registry. Even otherwise, since the Complainant and the Respondent are in similar business, the Respondent who is junior user / junior registrant is deemed to have knowledge of business, trademark and domain name of the Complainant. I note that the registered trademark of the Respondent under number 4151275 APARTMENT18 (device mark) / **apartment 18** has been filed on 18/04/2019 on proposed to be used basis. The Complainant has taken steps to file for rectification / cancellation of this mark and the proceedings have been numbered as 270459. It is a legally settled principle that passing off action is maintainable even against registered proprietor by prior user as held by Hon'ble Supreme Court in the case of *S. Syed Mohideen vs. P Sulchana Bai 2016* (66) PTC 1 (SC). of trademark.
- c. I find that the Complainant has registered its APARTMENT 9/ **apartment 9** marks since 2005 and using them since the year 2005. The Complainant has given sales figures with Rejoinder and substantiated use with invoices. The earliest invoices are of the year 2009 which is prior to use and adoption by the Respondent. Similarly, the Complainant's domain name <apartment9.in> was created / registered on 16/10/2007. The APARTMENT 9/ **apartment 9** marks have been considered distinctive to the Complainant and its products and services. I find that as already established herein, the Complainant is the sole proprietor of the

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APARTMENT 9/**apartment 9** marks and has garnered immense goodwill and reputation under the APARTMENT 9/**apartment 9** marks. I find that the disputed domain name is deceptively similar to the APARTMENT 9/**apartment 9** marks in which the Complainant enjoys substantial reputation and goodwill. Thus, the Respondent can have no legitimate interest in the impugned domain name <https://apartment18.in/> other than with malafide intentions to ride on goodwill and reputation attached to Complainant's APARTMENT 9/**apartment 9** marks and domain name apartment9.in

- d. Therefore, I hold that the sole purpose of the Respondent's registration of the disputed domain name is to defraud general public in making them believe that it is a website hosted by the Complainant and to divert traffic from the Complainant's websites and that proves the fact that the Respondent had no rights or legitimate interest in the disputed domain name.
- e. I find that this illegal registration, in fact brings to light, the lack of interest of the Respondent to honestly use the domain name. Thus, it is but apparent that the Respondent has registered the domain name only to take unfair advantage of the Complainant's reputation and goodwill. Such use does not constitute a bonafide offering of goods or services under ICANN Policy 4(c) (i) or a legitimate non-commercial fair use under ICANN Policy 4(c) (iii).
- f. I find that it is well established that criminal fraud clearly demonstrates that Respondent has no legitimate interests in the disputed domain name.
- g. I find that as the Complainant has registered the domain name apartment9.in much prior to the Respondent. Hence, it is evident that the Respondent was interested in obtaining the disputed domain name only because it is deceptively similar to the mark in which the Complainant has rights and interest. Such use of a domain name does not provide a legitimate interest under the Policy. The Respondent thus, holds no legitimate rights or interest in the disputed domain name pursuant to ICANN

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Policy ¶ 4(c).

- h. Accordingly, and for all the reasons above, I hold that the Respondent has no rights or legitimate interest in the disputed domain name

C. The domain name was registered in bad faith:

7. I hold that the Respondent had registered the impugned domain name in bad faith for the following reasons:
- a. I hold that the Respondent has registered and used <apartment18.in> in bad faith in violation of Paragraph 4(b)(vi) of the Rules, and Paragraph 4(c) of the Policy.
 - b. I hold that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed Domain Name. The Complainant has prior rights in the Complainant's APARTMENT 9/**apartment 9** marks and domain name <apartment9.in> which precedes the registration of the disputed domain name by the Respondent.
 - c. The bad faith registration can be seen from the fact that in paragraph 20 of the Reply, the Respondent admitted that the Complainant offers a 'wide range of retail services... ..ranging from selling furnished and decorative goods to its styling and repair, thereof... ..the Respondent started the platform Apartment 18 with a clear vision of selling unique and handcrafted home décor products in the online domain'. Hence, it is evident beyond any reasonable doubt that the Respondent has blatantly adopted a confusingly similar mark to the Complainant's **apartment 9** Brand/Marks for identical goods/business, which is of prime concern as it is fraught with a high likelihood of creating confusion in the minds of public at large. It is highly probable that consumers looking for the Complainant's **apartment 9** goods/services may perceive the Disputed Domain Name to be another domain name of the Complainant offering *inter alia* home décor products, tableware & bar ware, decorative

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accessories, cushions table lamp, candle products, bath accessories, etc., directly identical to those of the Complainant. This misconception is highly likely to be amplified when such unwary consumers would receive fraudulent communications from the Respondent, which would lull such consumers into a false sense of security, leading to the incorrect assumption that the Respondent's communication and business activities are genuine and originating from the Complainant itself.

- d. I find that the fact that the Complainant's APARTMENT 9/ **apartment 9** marks and domain name www.apartment9.in were adopted, applied and used much prior to the registration of the disputed domain name makes it extremely unlikely that the Respondent created the said domain independently without any knowledge of the Complainant's popular APARTMENT 9/ **apartment 9** marks and domain name www.apartment9.in or website.
- e. In the case of *Google Inc. Sunil K. Support Solution Aditi Sawant, Support Solution Rohit Sharma/ Vineet Sharma Deep Sunil K*, FA1501001599162 (National Arbitration Forum, February 19, 2015) the Panel held that, "Respondent's use of the contested domain name is an attempt to capitalize on the likelihood that Internet users will be confused as to the possibility of Complainant's association with the contested domain name and its website. Under Policy 4 (b) (iv), this stands as evidence of Respondent's bad faith in the registration and use of the domain name." In the case of *Google Inc. vs. Chen Zhaoyang*, INDRP/23 (2007) the Panel held that, "The Respondent has taken deliberate steps to ensure to take benefit of identity and reputation of the Complainant. The Respondent also provided web services which were similar to those of the Complainant. All these factors indicated that the disputed domain name was registered and used by the Respondent in bad faith in respect of the general commercial activities."
- f. I find that the Respondent is attempting to use the disputed domain name in such a manner so as to lure unwary consumers. I find that when the fact that the disputed domain name is deceptively similar to the Complainant's domain and prior

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APARTMENT 9/ **apartment 9** marks and domain name www.apartment9.in or website, it is conclusively proved that the said domain has been registered only to misrepresent and mislead consumers under the guise of the Complainant. This irrefutably establishes that the said domain has been registered in bad faith by the Respondent. In the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd* [AIR 2004 SC 3540], it has held that the Respondent had registered domain names www.siffynet.com and www.siffynet.net which were similar to the Plaintiff's domain name www.sifynet.com. The Plaintiff was reputed and Sify was a coined mark comprising of Satyam and Infoway. The Hon'ble Supreme Court of India held that "domain names are business identifiers, serving to identify and distinguish the business itself or its goods and services and to specify its corresponding online location." The decision was in favour of the Plaintiff.

- g. I find that the Respondent has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name registration does not infringe or violate someone else's rights. (*AB Electrolux vs. Liheng* INDRP/700) (August 03, 2015). I do not agree with the Respondent that the nature of the operation of the business of Respondent and Complainant is clearly distinguishable. In this regard the Respondent has tried to portray that the disputed domain name is registered for exclusive online operation whereas the Complainant is, at its root, a retail store in home décor and furnishing. Firstly, this is not entirely true and the Complainant has online presence and secondly, if the Respondent was only in online business, he would not have filed trademark application in class 20 but in class 35 which he has not done.
- h. For aforesaid reasons, I hold that the facts and evidence overwhelmingly support the conclusion that the Respondent has registered the disputed domain name in bad faith.
- i. For the foregoing reasons, I hold that the registration of the disputed domain name <APARTMENT18.IN> is deceptively similar to the earlier / prior APARTMENT 9/ **apartment 9** marks and domain name www.apartment9.in or website of the

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Complainant, and that the Respondent has no rights or legitimate interest in and to the disputed domain name, and that the Respondent has registered and used the disputed domain name in bad faith.

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


- that that the Respondent's domain name is misleading and deceptively similar to the trademark in which the Complainant has rights.
- that the disputed domain name <APARTMENT18.IN> is deceptively similar to the earlier / prior APARTMENT 9/ **apartment 9** [®] marks and domain name www.apartment9.in or website of the Complainant
- that due to the reputation of the APARTMENT 9/ **apartment 9** [®] marks and domain name www.apartment9.in or website of the Complainant, the first impression in the minds of the users shall be that the Respondent's website / domain name originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- that Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name <APARTMENT18.IN>
- that the Complainant has prior rights in the trademark / domain name which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name which has not been able to produce.
- that the disputed domain name has been registered in bad faith

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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 <APARTMENT18.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 16th Day of November, 2021.

Date: 16/11/2021



Dr. Sheetal Vohra

Sole Arbitrator