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INDIA NON JUDICIAL

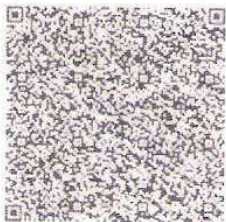
Government of National Capital Territory of Delhi

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hased by	: SANJEEV CHASWAL
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erty Description	: GANTING OF AWARD OF THE DOMAIN NAME STARBUCKS
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deration Price (Rs.)	: 0 (Zero)
arty	: SANJEEV CHASWAL
d Party	: NA
Duty Paid By	: SANJEEV CHASWAL
Duty Amount(Rs.)	: 100 (One Hundred only)



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**INDRP ARBITRATION**  
**UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**  
**ADMINISTRATIVE PANEL PROCEEDING**  
**SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name “starbucks.org.in”**

**AND IN THE MATTER OF INDRP CASE NO : 1454**

**STARBUCKS CORPORATION**  
**2401 Utah Avenue**  
**South, Seattle,**  
**Washington 98134,**  
**United States of America**

**Complainant**

**Vs.**

**Mr. Madhur Mujral**  
**QA 1901, South City**  
**New Delhi 122003, India**

**Respondent**

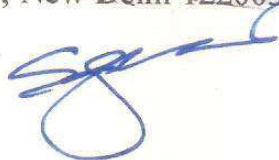
**ARBITRATION AWARD**

**Disputed Domain Name: *www.starbucks.org.in***

**1. The Parties:**

**1.1** The Complainant in this arbitration proceeding is The complainant in these proceedings is STARBUCKS CORPORATION, 2401, Utah Avenue, South, Seattle, Washington 98134 United States of America to the National Internet Exchange of India (NIXI) the Complainant; represented by the Complainant's authorized representative **Vikrant Rana of M /s. S.S. Rana & Co.**

**1.2** The Complainant has raised plea against the Respondent in this arbitration proceeding in respect of domain name “*starbucks.org.in*” who had registered by Mr. Madhur Mujral, of QA 1901, South City, New Delhi 122003, India who is registrant/ respondent herein, for





invoking arbitration proceedings against the Respondent herein.as per the details given by the WHOIS database maintained by the National Internet Exchange of India [NIXI].

## **2. The Domain Name and Registrar:**

2.1 The disputed domain name is [www.starbucks.org.in](http://www.starbucks.org.in) and the same is registered by registrant / respondent Mr. Madhur Mujral, of QA 1901, South City, New Delhi 122003, India. The disputed domain name is registered as [starbucks.org.in](http://starbucks.org.in) and is registered with the Registrar Hosting Concepts B.V. d/b/a Open provider Address: Willem Buytewechstraat 40, Rotterdam, ZIP "3024 BN, NL who had registered the this disputed domain name for the registrant/ respondent herein.

## **3. Arbitration Proceedings Procedural History:**

3.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. In accordance to the INDRP Rules of Procedure [the Rules] as approved by NIXI and the Indian Arbitration and Conciliation Act, 1996 has mandate to look in to disputes for registering the disputed domain name with the NIXI's accredited Registrar, the Complainant agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed and rules of .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder.

The Arbitrator has also submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI. As such NIXI on satisfaction of impartiality and independence of the arbitrator thus has allocated the matter as above to the arbitrator herein.

As per the information received from NIXI, the history of the proceedings is as follows:





3.3 Present Arbitral Proceedings have commenced on 16<sup>th</sup> November 2021 by issuing 1<sup>st</sup> notice under rule 5(c) of INDRP rules of procedure issuance by the undersigned Arbitrator through email directly to the Respondent as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully served on two dates Firstly on 16<sup>th</sup> of November and Secondly 2<sup>nd</sup> of December 2021 by the complainant to the respondent through email.

3.4 Through said notice, the registrant/ respondent Mr. Madhur Mujral, of QA 1901, South City, New Delhi 122003, was also directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice, failing which the Complaint shall be decided on the basis of the merits of the Complaint.

3.5 As per the record available before the office of the arbitrator as submitted by the complainant that the track report of the Airway Bill No. 40621545403 shows that the said courier has been returned undelivered. In view of the undelivered track report that the complainant papers have not been delivered to address mentioned in WHOIS record. In view of the report, The Arbitrator is of the view that pursuing of the arbitral reference cannot be carried out without proper service report of the delivery or refusal by the respondent herein, but the Respondent had failed to submit its reply or detailed statement to the sole arbitrator within 15 days of the first notice as delivered by an email.

3.6 But keeping in view of current pandemic scenario and in the interest of justice, the respondent Mr. Madhur Mujral, of QA 1901, South City, New Delhi 122003, India, was granted one more opportunity of 10 days' time, as being last opportunity to submit its reply or detailed statement to the sole arbitrator panel by 12<sup>th</sup> of December 2021. The complainant had delivered said notice through the email. In the second notice while granting one more opportunity of 10 days it was made clear that no further plea of extension for extending the time period for submitting reply or statement will be acceded in any manner and in the case of default in filing reply or statement by the Respondent the right for the same shall be foreclosed.





3.7 That on 17<sup>th</sup> December 2021 the undersigned being sole arbitrator directs for continuation of proceeding in the domain name dispute "*starbucks.org.in*" on merits. As such the undersigned directed for fixing of hearing in arbitral reference related to domain name dispute "*starbucks.org.in*" and the reference shall be taken up on merits on 24<sup>th</sup> of December 2021 at 11 am through virtual mode at specified time and date.

3.8 But on but due to sudden bereavement in the family of the undersigned arbitrator, the undersigned arbitrator proposed to hold arbitral reference through VC on 27<sup>th</sup> December 2021 at 11 am.

3.9 That the undersigned arbitrator holds this arbitral reference through VC on 27<sup>th</sup> December 2021 at 11 am in place earlier fixed date of 24<sup>th</sup> December 2021 at 11 am. The counsels representing the complainant counsels Pranit Biswas (Mr.) Ragini Ghosh (Ms.) | SSRANA & Co had appeared and argued before the undersigned arbitrator.

#### **4. Factual Background:**

4.1 The Complainant, STARBUCKS CORPORATION is a corporation organized and existing under the laws of the State of Washington and is a lifestyle brand company which has attracted a significant global following of customers under the name STARBUCKS and its variations. The Complainant herein includes its predecessors-in-interest, licensees, affiliates and associates.

4.2 The counsel for the complainant submitted that in 1971 the Complainant's predecessor-in interest opened its first retail store under the name STARBUCKS, offering a variety of coffee, tea and spices in Pike Place Market, Seattle, Washington. United States. The Complainant maintains the world's largest number of cafes, which serve a variety of food and beverages, and offer premium merchandise and other goods and services under the name and trademark STARBUCKS.

4.3 The mark STARBUCKS was incorporated in 1985 and STARBUCKS opened its first location in 1967 outside of Seattle in Vancouver, British Columbia, Canada, and a second location in Chicago, Illinois, United States. At present the Complainant has at least 32,943 retail store locations in 83 countries and territories around the world. Every week, more than



100 million customers visit the Complainant's stores around the world and are served by more than 400,000 individuals who proudly wear the green apron in STARBUCKS branded stores, or otherwise work for Starbucks Corporation and its affiliates.

4.4 STARBUCKS opened its first location in 1967 outside of Seattle in Vancouver, British Columbia, Canada, and a second location in Chicago, Illinois, United States.. At present the Complainant has at least 32,943 retail store locations in 83 countries and territories around the world. Every week, more than 100 million customers visit the Complainant's stores around the world and are served by more than 400,000 individuals who proudly wear the green apron in STARBUCKS branded stores, or otherwise work for Starbucks Corporation and its affiliates.

4.5 The STARBUCKS name and logo is widely regarded as one of the most popular and instantly recognizable names and logos in history, as it has worldwide recognition. The Complainant has used its trade marks **STARBUCKS, STARBUCKS COFFEE,**



and variations

thereof in various classes, (hereinafter, the "STARBUCKS LOGO MARKS ") in connection with its offerings of the world's finest fresh-roasted whole bean coffees, and other food and beverage products, among a wide range of goods and services.

4.6 The Complainant has used the STARBUCKS LOGO MARKS since 1971 for its goods, services and business. Because of the Complainant's sole and exclusive long-term use of the STARBUCKS LOGO MARKS , the STARBUCKS LOGO MARKS have become highly distinctive and world famous, and consumers associate them uniquely and exclusively with Starbucks Corporation.

4.7 The Complainant counsel submits that the mark STARBUCKS registered as top-level domain name STARBUCKS.COM was registered on October 25, 1993 and has a dedicated website on the Internet that is accessible to consumers throughout the world. It is pertinent to mention that the India-specific domain STARBUCKS.IN was registered on February 16,

A handwritten signature in blue ink, likely of the legal counsel mentioned in the text.



2005 and resolves to the website STARBUCKS.IN With the expansion of its international business, the Complainant registered top level country-specific domain names including in India in which STARBUCKS is the prominent part thereof. Some of the said domain names either have independent websites or are redirected to the Complainant's parent website [www.starbucks.in](http://www.starbucks.in)

A non-exhaustive list of such domain names is as below:

INDIA	starbucks.co.in	starbucks.in
	starbucks.net.in	starbucks.net (in Hindi)
	starbuckscoffee.co.in	starbuckscoffee.in
BANGLADESH	starbucksbangladesh.com.bd	starbuckscoffee.com.bd
EUROPEAN UNION	starbucks.en	starbuckscoffee.eu
SRI LANKA	starbucks.com.lk	starbuckscoffee.com.lk
UNITED KINGDOM	starbucks.co.uk	starbucks.uk
	starbuckscoffee.co.uk	starbuckscoffee.uk
UNITED STATES	starbucks.us	starbuckscoffee.us

**4.8** The Complainant's STARBUCKS with logo design are registered in over 185 countries around the world including Australia, Canada, the European Union, Hong Kong, Japan, Malaysia, New Zealand, Singapore, South Africa, the United Kingdom and the United States of America. It is pertinent to mention that the Complainant applied for and obtained registration for the trade mark STARBUCKS vide U.S. Registration No. **14445149** dating as far back as **June 3, 1985**, and claiming to be use since **March 29, 1971**.

#### **5. Parties Contentions:**

The complainant has raised three pertinent grounds as per INDRP Rules of Procedure for seeking relief is stated as under:

#### **A. Complainant Grounds for proceedings**

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.**
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.**



**III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.**

**I) Background of the Complainant and its statutory and common law rights related prior Adoption and use:**

The Complainant submits detailed contentions that are described in details as under:

**5.1** STARBUCKS was incorporated in 1985 and STARBUCKS opened its first location in 1967 outside of Seattle in Vancouver, British Columbia, Canada, and a second location in Chicago, Illinois, United States. At present the Complainant has at least 32,943 retail store locations in 83 countries and territories around the world. Every week, more than 100 million customers visit the Complainant's stores around the world and are served by more than 400,000 individuals who proudly wear the green apron in STARBUCKS branded stores,

**5.2** The Complainant's STARBUCKS LOGO MARKS are registered in over 185 countries around the world including Australia, Canada, the European Union, Hong Kong, Japan, Malaysia, New Zealand, Singapore, South Africa, the United Kingdom and the United States of America. It is pertinent to mention that the Complainant applied for and obtained registration for the trade mark STARBUCKS vide U.S. Registration No. 14445149 dating as far back as June 3, 1985, and claiming to be use since March 29, 1971.

**5.3** The Complainant Counsel further states that the trading name 'Star Bucks' originated in 1946, and since then it is Complainant's house mark, the Complainant's stores were changed to 'Star Bucks' and has been in use continuously ever since, with various Star Bucks-formative trademarks (hereinafter collectively 'Star Bucks Marks' / 'Complainant's Marks') having obtained registration in over 90 jurisdictions worldwide.

**II) Complainant's Claim of Statutory Rights:**

**5.4** The Complainant's STARBUCKS LOGO MARKS are registered in over 185 countries around the world including Australia, Canada, the European Union, Hong Kong, Japan, Malaysia, New Zealand, Singapore, South Africa, the United Kingdom and the United States





of America. It is pertinent to mention that the Complainant applied for and obtained registration for the trade mark STARHUC KS vide I.I.S. Registration No. 14445149 dating as far back as June 3, 1985, and claiming use since March 29, 1971.

5.5 The Complainant's products with the STARBUCKS trade name, the STARBUCKS LOGO MARKS, and/or STARBUCKS retail store locations have been featured in famous Hollywood and Bollywood motion pictures. Likewise, popular television shows feature STARBUCKS branded products and/or its retail stores quite often. It is pertinent to mention that many famous and well-known Indian as well as international celebrities have been photographed with STARBUCKS branded products or in the vicinity of STARBUCKS outlets where the Complainant's logos are prominently displayed. Such photographs regularly appear in the print and electronic media, including their websites. STARBUCKS and the STARBUCKS LOGO MARKS are well-known around the world, including within India.

				CER NOI. 'NtJ.	REG. DATE.
1.	India	S'I'ARBUCKS	16	2002419	20 10-06-02
2.	India	STARBUCKS	35	2172620	2011-07-08
3.	India	STARBUCKS	42	2172621	2011-07-08
4.	India	STARBUCKS	3	2380291	2012-08-16
5.	India	STARBUCKS	9	2786829	2014-08-01
6.	India	STARBUCKS	35	2786831	2014-08-01
7.	India	STARBUCKS	42	2786836	2014-08-01
8.	India	STARBUCKS	44	2063607	2010-12-06
9.	India	STARBUCKS COFFEE	35	2231527	2011-11-09
10.	India	STARBUCKS (in Assameesse)	29	3018571	2015-07-27
11.	India	STARBUCKS (in Bengali)	29	3025207	2015-08-05
12.	India	STARBUCKS (in Devanagari- Hindi)	29	3009673	2015-07-14



13.	India	STARBUCKS (in Gujarati) -fit EU Sft	29	3009674	2015-07-14
14.	India	STARBUCKS (in Kannada)			2015-07-14
15.	India	STARBUCKS (in Kashmiri)	29	3018582	2015-07-27
16.	India	STARBUCKS (in Malayalam)	29	3009682	2015-07-14
17.	India	STARBUCKS (in Manipuri)	29	3009677	2015-07-14
18.	India	STARBUCKS (in Manipuri)	30	2349342	2012-06-16
19.	India	STARBUCKS (in Manipuri)	32	2349343	2012-06-16
20.	India	STARBUCKS (in Manipuri)	35	2349344	2012-06-16

5.6 Much reputation and valuable goodwill have accrued to the Complainant and the STARBUCKS LOGO MARKS due to use, sales and marketing and because of the premium quality of the goods sold thereunder. The Complainant's prominence in the global marketplace, including the Indian market, as well as its reputation for quality, has grown through the years.

5.7 STARBUCKS has consistently received top-level brand rankings from various brand-evaluation agencies over the past 20 years. Some of these agencies include: (a) Interbrand, a leading international branding consultancy company that has ranked STARBUCKS among the "Top 100 Brands" in the world (2000-2020); (b) Millward Brown Optimor, now known as Kantar Millward Brown ("KMB"), a leading market research and brand evaluation and management company that publishes an annual assessment of the 100 most valuable and powerful brands in the world entitled BrandZ - Top 100 Brand Rankings that consistently ranks STARBUCKS among the "100 Most Valuable Brands" (2006-2021); (c) Campaign



Asia-Pacific, a leading media company that has ranked STARBUCKS as having an extraordinarily high brand perception among Asian consumers (2004-2020); and (d) Forbes brand rankings of the World's Most Valuable Brands (MVB\*). Forbes measures the World's Most Valuable Brands by looking at the financial numbers. The most valuable brands are the ones that generate massive earnings in industries »here branding plays a major role. Forbes consistently ranks STARBUCKS among the 100 most valuable brands (2013-2020).

### III) The Respondent had sent a Communication of NON-USE to Abuse Domain NIXI :

5.8 The complainant Counsel has further submitted copy of the email of the respondent from his email account [syndic8web@gmail.com](mailto:syndic8web@gmail.com) to [abuse@openprovider.zenndesk.com](mailto:abuse@openprovider.zenndesk.com), wherein the respondent has communicated and admitted in his email dated 15th November 2021 *that the domain "Starbucks" is being used as keyword for testing coffee mug business and not being used as domain name, let me know if you have any question to delete the domain name.*”.

5.9 As such after seeing the copy of email, it clearly shows that the respondent that the respondent is very much well aware of reputation attached to the domain name “starbucks.org.in” and further made an statement that the respondent is not using the domain name “starbucks.org.in” for his business Further the Complainant counsel submitted that the Respondent though knowing of reputation attached to it and is ready for its deletion but did not comply with surrendering of domain name to the complainant. But had made statement that the respondent is not using the domain name “*starbucks.org.in*” for his business

5.10 In view of the categorical statement made by the respondent herein in his email dated 15th November 2021 through his email account [syndic8web@gmail.com](mailto:syndic8web@gmail.com) addressed to [abuse@openprovider.zenndesk.com](mailto:abuse@openprovider.zenndesk.com) despite of the statement made through an email acknowledging right of the complainant but had failed to submit reply, detail statement in the above arbitral reference, that too even after receipt of notice of 16th November 2021 and



second notice of 2nd of December 2021. That clearly shows that the Respondent is fully aware of this arbitration proceedings and intently avoided of his participation in the same.

5.11 Keeping in view of the statement as stated above it clearly that the respondent is not interested in pursuing the present arbitration proceedings as such the sole arbitrator forecloses the opportunity of filing of reply or statement granted to the respondent Mr. Madhur Mujral, of QA 1901, South City, New Delhi 122003, till 12th of December 2021

5.12 The Complainant counsel states that the Complainant despite lapse of substantial time since the exchange of correspondence the Respondent has neither transferred the Disputed Domain Name **www.starbucks.org.in** to the Complainant nor complied with the Complainant's other reasonable requisites As such the Respondent continues to own / use the Disputed Domain Name.

***I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.***

5.13 The Complainant complaint is based solely on the premise as being prior adopter and user of trademark **Star Bucks** and its domain **starbucks.org.in** in worldwide of the said trademark for many years, submitted that it is the sole proprietor of and has sole and exclusive rights to use, the said trademarks, which includes the trademark 'Star Bucks' and '**www.starbucks.com**'.

5.14 The Complaint is the registered proprietor of the many marks having word per se and with logo "Star Bucks world over. The Complainant submits that as the disputed domain name is '**www.starbucks.org.in**' the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

**II) The Respondent has no rights or legitimate interests in respect of the disputed domain name**

5.15 The Complainant submitted that the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration





of the disputed domain name of the complainant anywhere. The Complainant has further submitted that the Respondent has failed to submit any tangible proof of prior adoption and use of the disputed domain name or of a trademark or a service mark in connection with any goods or services prior to the complainant and after the registration of the disputed domain name in its favour. The Complainant has further submitted that the Respondent has no legitimate rights under trademark law or has any legitimate interest in respect of the disputed domain name www.starbucks.org.in.

**III) The Respondent's disputed domain name has been registered or is being used in bad faith.**

5.16 The Complainant counsel has argued that the Respondent's adoption and registration of the disputed domain name www.starbucks.org.in is dishonest and malafide. The Respondent had no previous connection with the disputed domain name www.starbucks.org.in and has clearly registered the disputed domain name in order to prevent the Complainant to own this domain, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name www.starbucks.org.in.

5.17 Thus any use of the similar disputed domain www.starbucks.org.in name even for the key for search in Google by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the Complainant by the trade and public in India and all over the world.

5.18 It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith.





## **B. Contention of the Complainant**

**5.19** The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

## **6. Discussion and Findings:**

**6.1** The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand *Star Bucks*. Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark '*Star Bucks*' in its domain. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name.

**6.2** Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

### **[a] The Respondent's Default:**

**6.3** As per INDRP Rules of Procedure, it requires as defined under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) be read as follows

***"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."***

**6.4** Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:



*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

6.5 The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

6.6 As previously indicated; as per categorical statement made by the respondent herein specifically in his email dated 15th November 2021 and sent through his email account address [syndic8web@gmail.com](mailto:syndic8web@gmail.com) addressed to [abuse@openprovider.zenndesk.com](mailto:abuse@openprovider.zenndesk.com) despite of the statement made through an email acknowledging right of the complainant but had failed to submit reply, detail statement in the above arbitral reference, that too even after receipt of notice of 16th November 2021 and second notice of 2nd of December 2021.

6.7 That clearly shows that the Respondent was fully aware of this arbitral proceeding and intently has avoided of his participation in the same. Further the Respondent has failed to file any reply to the Complaint and has not sought to answer nor presented the counter for assertions, evidence or contentions of the complainant in any manner. The undersigned as being arbitrator opined that the Respondent had been given a fair opportunity to present his case, but on the basis of non-filing of the reply by the Respondent and further to his reply email dated 15<sup>th</sup> of November 2021, it clearly proved that the respondent is not interested in appearing in before the Arbitrator, as such the arbitrator has no alternative other than to proceed to decide on the Complaint of the complainant on to its merit and in accordance to laws..

6.8 The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the



Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

**[b] The issues involved in the dispute:**

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

**"Brief of Disputes:**

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and**
- (iii) the Respondent's domain name has been registered or is being used in bad faith.**

6.9 The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

6.10 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

- I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

6.11 It has been proved by the Complainant that it has intellectual property, particularly



Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

**[b] The issues involved in the dispute:**

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

**"Brief of Disputes:**

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and**
- (iii) the Respondent's domain name has been registered or is being used in bad faith.**

**6.9** The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

**6.10** According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

**I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

**6.11** It has been proved by the Complainant that it has intellectual property, particularly



trademark, and other rights in the mark "Star Bucks" by submitting substantial documents of its prior adoption and continuous use. The Complainant counsel states that the mark STARBUCKS was incorporated in 1985 and STARBUCKS opened its first location in 1967 outside of Seattle in Vancouver, British Columbia, Canada, and a second location in Chicago, Illinois, United States. At present the Complainant has at least 32,943 retail store locations in 83 countries and territories around the world. Every week, more than 100 million customers visit the Complainant's stores around the world and are served by more than 400,000 individuals who proudly wear the green apron in STARBUCKS branded stores, or otherwise work for Starbucks Corporation and its affiliates.

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations:*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:*

*the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*

*the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

6.12 The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, I have come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' "Star Bucks" mark. Accordingly, I conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

6.13 The impugned domain name *starbucks.org.in* is comprised of the Complainant's trademark STARBUCKS in toto. Therefore, the domain name *starbucks.org.in* is visually, phonetically, conceptually, deceptively and confusingly identical and similar to



Complainant's corporate and trade name STARBUCKS CORPORATION, trade mark STARBUCKS, and also wholly similar to the Complainant's domains *starbucks.com* and *starbucks.in*>.

## **II. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

**6.14** The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

**6.15** The Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name in its favour. The Respondent has also not used the disputed domain name as a trademark or a service mark in connection with any goods or services after the registration of the disputed domain name *www.starbucks.org.in* in its favour. The Respondent has also not registered the trademark "Star Bucks" in its favour in India.

**6.16** Moreover, the burden of proof is on a Complainant to prove that the respondent is using the domain name without any legal authorization of the complainant and regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

**6.17** The Respondent has failed to rebutt the contentions of the Complainant and has failed to produce any documents or submissions to establish his interest in protecting his own legitimate right and interest in the impugned domain name. Further, the respondent has admitted in his email dated 15th November 2021 that the domain "*www.starbucks.org.in*" is being used as keyword for testing coffee mug business and not being used as domain name".

**6.18** As such after seeing the copy of email, it is very crystal clear that the respondent is very much well aware of reputation attached to the domain name "*starbucks.org.in*" and further made an statement that the respondent is not using the domain name "*starbucks.org.in*" for his business as the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonfide offer of goods or services. Further, the Respondent is not commonly known by the disputed domain



name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name **www.starbucks.org.in**

For these reasons, the Arbitrator opines that the Respondent has no right or legitimate interest in the disputed domain name and the disputed domain name is being used illegally by the respondent herein.

**The disputed domain name has been registered or is being used in bad faith.**

6.19 It has been contended by the Complainant that the Respondent has registered intently the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.20 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

*"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

6.21 From the circumstances of the case and from the evidences placed before me by the Complainant herein, I am of the considered opinion that the Respondent had no previous connection with the disputed domain name and has clearly registered the disputed domain name as squatter, in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

6.22 Moreover, use of similar disputed domain name **www.starbucks.org.in** by the



Respondent, would certainly result in to confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the complainant, by the trade and public in India and all over the world.

6.23 Further the Respondent has prevented the Complainant, who is the owner of the service mark "**StarBucks**" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "Star Bucks" as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the Respondent has not given any proper contact details and has not been replying to the communications sent by the complainant.

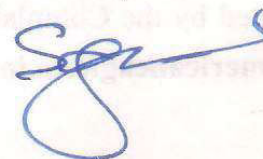
Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

## 7. DECISION

7.1 Thus 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 by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein

7.2 The Complainant counsel has given sufficient evidence to prove trademark rights on the disputed domain name **www.starbucks.org.in**. Further; the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. The Respondent had no previous connection with the disputed domain-name and has clearly registered the disputed domain name in order to prevent the Complainant who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

7.3 The Respondent has not given any reason to register the domain name **www.starbucks.org.in** rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.





**[Relevant WIPO decisions:**

**Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. Sanchai Aree D2002-0358; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-06611**

7.4 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore 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, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Thus it is very much clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

**[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupo d.d. v. WACHEM d.o.o. D2004-01101**

7.5 The Complainant counsel has submitted that given the identity of the impugned domain name <starbucks.org.in> with the Complainant's name and trade mark STARBUCKS, the same is bound to cause confusion and deception in the minds of the public that the Respondent has some connection, association or affiliation with Complainant, when it is not so. It has been held by prior panels deciding under the INDRP that incorporating a trademark in its entirety (particularly a well-known trade mark such as STARBUCKS) is sufficient to establish that the domain is identical or confusingly similar to the Complainant's registered mark

(reliance placed on Starbucks Corporation v. Aditya Khanna INDRP/614). Further, a TLD/ccTLD such as ".org.in" is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent's domain name <STARBUCKS.ORG.IN> from the Complainant's trademark STARBUCKS.

The Complainant counsel further placed his reliance on a prior decision of this Panel in M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705 wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,





*"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier. A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for **AMERICAN EAGLE** products in India or elsewhere would mistake the disputed domain name as of the Complainant. "*

7.5 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name [www.starbucks.org.in](http://www.starbucks.org.in) be transferred from the Respondent to the Complainant herein with a request to NIXI to monitor the transfer in time bound manner.

NEW DELHI

DATE 27-12-2021



**SANJEEV KUMAR CHASWAL  
SOLE ARBITRATOR  
INDRP ARBITRATION NIXI**

