



मध्य प्रदेश MADHYA PRADESH

BN 902532

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

**ARBITRAL AWARD**

**Date-23.12.2021**

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

**INDRP Case no -1456**

**THE PARTIES**

(1)

The **Complainant** is MAJID AL FUTTAIM HOLDING L.L.C, Located at MAF TOWER, Deira, Port Saeed, P.O. Box 124441 Dubai, United Arab Emirates

The **Respondent** is Majid Al Futtaim Holding LLC,, Majid Al Futtaim Holding LLC, Located at PO Box 91100, Dubai, United Arab Emirates, DXB, Postal Code 91100, AE



## THE DOMAIN NAME AND REGISTRAR

(2)

- (a) This dispute concerns the domain name bearing ROID-  
D0E0773E6D681432E8F0E6C5F0EEA0001-IN is identified as  
majidalfuttain.in
- (b) The disputed domain name: www. majidalfuttain.in  
and it is registered with Registrar 'Key-Systems GmbH'.

## PROCEDURAL HISTORY

(3)

The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	12.11.2021
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and NIXI .	13.11.2021
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 13.11.2021)	22.11.2021
Complainant's response by submitting their Statement of Claim. Soft copy Hard copy	14.11.2021 20.11.2021
Due date of submission of Statement of Defense by Respondent (instructed by mail dated 13.11.2021)	02.12.2021
Respondent's response by submitting their Statement of Defense against the due date of submission as 02.12.2021 & 21.12..2021	Not submitted
Complainant's response by submitting their Rejoinder. (Statement of Defense not submitted by Respondent )	Not required
Complainant's response by submitting proof of delivery of complaint along with all annexures to Respondent Soft copy through mail dated 22.12.2021 with attached mail dated 16.11.2021,18.11.2021,20.11.2001, 21.11.2021 and 01.12.2021	22.12.2021





Intimation that the 'Respondent failed to submit the required/said documents within the time limit mentioned in mail ie 02.12.2021 and even upto 21.12.2021, therefore the Respondent has lost their right to entertain it. The proceeding of this case is kept closed for award and the matter would be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy'.	21.12.2021
The language of the proceedings.	English

## **FACTUAL BACKGROUND**

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

The **Complainant** is MAJID AL FUTTAIM HOLDING L.L.C, Located at MAF TOWER, Deira, Port Saeed, P.O. Box 124441 Dubai, United Arab Emirates

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

(a) Name: Mrs. Shahdan Essam

Address: Abu-Ghazaleh Intellectual Property TMP Agents (AGIP) A26 Smart Village, Km 28 Cairo/Alex Desert Road, P.O. Box: 150 Smart Village 12577, Egypt Telephone: (+ 202) 35 37 0434 / 35 35 2900 ext.253  
Fax: (+ 202) 35 370433

E-Mail: taglegal.egypt@tag-legal.com

(b) Preferred method for communications :

#### Electronic-Only Material

Address: taglegal.egypt@taglegal.com

Contact: Mrs. Shahdan Essam

#### Material Including Hard Copy (if any)

Method: [post]

Address: A26 Smart Village, Km 28 Cairo/Alex Desert Road  
P.O. Box: 150 Smart Village 12577, Egypt

Contact: Mrs. Shahdan Essam



**(6) The Respondent:**

The **Respondent** is Majid Al Futtain Holding LLC, Majid Al Futtain Holding LLC, Located at PO Box 91100, Dubai, United Arab Emirates, DXB, Postal Code 91100, AE

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

- (a) The Complainant Majid Al Futtain Holding LLC operates as a holding company. The Company through its subsidiaries owns and develops shopping malls, retail stores, entertainment hubs, and leisure facilities. Majid Al Futtain Holding serves customers worldwide.
- (b) The Complainant owns several registrations for "Majid Al Futtain – in English and Arabic letters" in various countries around the world and provided under Annex 6.
- (c) The Complainant has also acquired a common law rights in "Majid Al Futtain" trademark; by virtue of the extensive commercial use of that name in the Complainant's business as this name has become well-known through its use in high profile trade and commercial ventures and has become inextricably linked to the Complainant and its enterprises.
- (d) "Majid Al Futtain" have been recognized by the public as a symbol that identifies and distinguishes the Complainant's business activities and services provided exclusively by the Complainant's company and its subsidiaries "Majid Al Futtain Properties", "Majid Al Futtain Retail" and "Majid Al Futtain Ventures" and that through long and continuous use, international recognition and extensive advertising and promotion, Majid Al Futtain has acquired distinctiveness and secondary meaning as a trademark and service mark.
- (e) Moreover, the Complainant has been using and operating its business under the trade name and trademark "Majid Al Futtain" for several years and





continues using it in property development, retailing; leisure and entertainment, services, food and beverages industries.

- (f) The Complainant has presence of its brand and trademark "Majid Al Futtain" in the Indian market through the incorporation and operation of "MAJID AL FUTTAIM HYPERMARKETS PRIVATE LIMITED Company", which provides back-office IT support to the omnichannel operations of Majid Al Futtain various retail businesses, and "MAJID AL FUTTAIM GLOBAL SOLUTIONS INDIA PRIVATE LIMITED", which is a captive center for the group intended to host and provide IT services from India to Majid Al Futtain various businesses ..... subsidiaries to the Complainant. In this regard, "MAJID AL FUTTAIM HYPERMARKETS PRIVATE LIMITED Company" GST Registration Certificate, Certificate of incorporation as well as the company objects outlined in the Memorandum of Association of "MAJID AL FUTTAIM HYPERMARKETS PRIVATE LIMITED Company" along with advertisement material related to the latter entities is provided as Annex 7.
- (g) The Complainant's extensive and continuous use of Majid Al Futtain trade name and trademark, and the fact that the Complainant has made significant investments over the years to promote and protect this trademark, trade name and the Complainant's business across the Internet, demonstrate that the Complainant enjoys a substantial degree of public recognition in Majid Al Futtain and have seen this mark become uniquely and distinctly associated with the Complainant. Marketing and advertisement materials bearing the complainant's trademark and trade name "Majid Al Futtain" are provided as Annex 8; more news can be found at [<http://www.majidalfuttain.com/media/news>]
- (h) The Complainant's trade name and trademark is extended to Social Media including YouTube, Facebook, Instagram, Twitter as per the links provided below; more YouTube videos for "Majid Al Futtain" can be accessed through Majid Al Futtain YouTube Channel found on the complainant's website-

<http://www.majidalfuttain.com/>



<https://www.youtube.com/user/majidalfuttaim>

[https://www.youtube.com/watch?v=e-R\\_crmKpG4](https://www.youtube.com/watch?v=e-R_crmKpG4)

<https://www.youtube.com/watch?v=oBivh4E-ydc>

<https://www.youtube.com/watch?v=ri0cDaG06YI>

<https://www.youtube.com/watch?v=h2S8Wtd5unA>

<https://www.facebook.com/MajidAlFuttaim/>

<https://www.instagram.com/majidalfuttaim/>

[Majid Al Futtaim \(@MajidAlFuttaim\) /Twitter](#)

- (i) Therefore, the Complainant has established common law trademark rights in “Majid Al Futtaim” in accordance with Consensus view of WIPO panels for establishing unregistered or common law trademark rights for purposes of the UDRP ( See: [paragraph 1.3WIPO Overview of WIPOPanel Views on Selected UDRP Questions3.0](#))
- (j) The Complainant owns a registered domain name ([www.majidalfuttaim.com](http://www.majidalfuttaim.com)) since 9/2/2002; which is connected to a website incorporating “Majid Al Futtaim” trademark and reflects its scope of business. As shown in Annex 9 & Annex 10 and found at <http://www.majidalfuttaim.com/>
- (k) The Complainant’s domain name “majidalfuttaim.com” is based on its corporate name, i.e. “Majid Al Futtaim Holding LLC” and the same was created/registered on and has been regularly renewed since February 9<sup>th</sup>, 2002.
- (l) Accordingly, the Complainant has rights in the trade name and trademark “Majid Al Futtaim” by virtue of existing trademark registrations in various countries and by extensive commercial use of Majid Al Futtaim trade name in the Real Estate and Property Development, Retail, Leisure and Entertainment, Services, food and beverage industries
- (m) Majid Al Futtaim is associated with the Complainant as simple search on google engines with the term “Majid Al Futtaim” will direct users to the Complainant as per the link provided below;





[https://www.google.com.eg/search?q=majid+al+futtaim&source=hp&ei=ZVx1YKGiJZGuUsqZgJgN&iflsig=AINFCbYAAAAAYHVqdc9q5XZ\\_ZLfu0II\\_pXUNM0b58e&oq=majid+al+futtaim&gs\\_lcp=Cgnd3Mtd2l6EAMyAggAMgIIADICCAyAggAMgIIADIICC4QxwEQrwEyAggAMgIIADICCAyAggAOggIABCxAXCDAToFCAAQsQM6BQguELEDogIILjoLCC4QsQM0xwEQowI6CAguELEDEIMBOgUIABDJA1CVBlizJmCmKGgAcAB4AIA BngGIAaYOkGEEMS4xNZgBAKABAAoBB2d3cy13aXo&sclient=gwswwz&ved=0ahUKEwjh6PXI7PrvAhURLxQKHcoMANMQ4dUDCAY&uact=5](https://www.google.com.eg/search?q=majid+al+futtaim&source=hp&ei=ZVx1YKGiJZGuUsqZgJgN&iflsig=AINFCbYAAAAAYHVqdc9q5XZ_ZLfu0II_pXUNM0b58e&oq=majid+al+futtaim&gs_lcp=Cgnd3Mtd2l6EAMyAggAMgIIADICCAyAggAMgIIADIICC4QxwEQrwEyAggAMgIIADICCAyAggAOggIABCxAXCDAToFCAAQsQM6BQguELEDogIILjoLCC4QsQM0xwEQowI6CAguELEDEIMBOgUIABDJA1CVBlizJmCmKGgAcAB4AIA BngGIAaYOkGEEMS4xNZgBAKABAAoBB2d3cy13aXo&sclient=gwswwz&ved=0ahUKEwjh6PXI7PrvAhURLxQKHcoMANMQ4dUDCAY&uact=5)

- (n) Moreover, "Majid Al Futtaim" is derived from the Complainant's company name "Majid Al Futtaim Holding L.L.C". Hence, Majid Al Futtaim brand is not only protected as a trademark but it is also protected as a trade name; this is in accordance with Article 8 of Paris Convention which stipulates that "A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark".
- (o) In addition, a number of UDRP cases have been decided in the Complainant's favor by which a number of domain names incorporating "Majid Al Futtaim" trademark have been transferred to the Complainant. As submitted in Annex 11.
- (p) USDRP case as well has been decided Complainant's favor by which the disputed domain name "majidalfuttaim.us" has been transferred to the Complainant. As shown in Annex 12.
- (q) All the above affirms that the trademark "Majid Al Futtaim" is exclusively associated with the Complainant to which it owns rights over the said mark and trade name to prevent any third party from using it. Such rights accorded to the complainant by virtue of the provisions of the national laws and international agreements as stipulated below-
- (r) According to article 16 (1) of the Trips Agreement on Trade-Related Aspects of Intellectual Property Rights

*"The owner of a registered trademark shall have the exclusive right*



*to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use".*

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

**(a) United Arab Emirates**



Trademark Registration Nos. 201644 protected since 26/11/2013 for Class 16 goods; 201645 protected since 26/11/2013 for Class 35 services; 201647 protected since 26/11/2013 for Class 36 services, 201648 protected since 26/11/2013 for Class 41 services.

**(b) Jordan**



Trademark Registration Nos. 132829 protected since 22/12/2013 for Class 36 services; 132830 protected since 22/12/2013 for Class 16 goods; 132831 protected since 22/12/2013 for Class 35 services; 132832 protected since 22/12/2013 for Class 41 services

**(c) Bahrain**



Trademark Registration Nos. 101034 protected since 4/12/2013 for class 16 goods; 101035 protected since 4/12/2013 for class 35 services; 101036 protected since 4/12/2013



for class 36 services, 101037 protected since 4/12/2013 for class 41 services.

(d) **Egypt**



Trademark Registration No.96038 protected since 7/6/1995 for class 35 services.

(e) **Oman**



” MAJID AL FUTTAIM

Trademark Registration Nos.84687 protected since 18/12/2013 for class 16 goods; 84688 protected since 18/12/2013 for class 35 services; 84689 protected since 18/12/2013 for class 36 services, 84690 protected since 18/12/2013 for class 41 services.

In this regard, Copies of the Registration Certificates of the Complainant's trademark "Majid Al Futtaim – in English and Arabic letters" are provided as Annex 6.

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

Since the Respondent, information has been redacted in the Whois database of the Registrar as shown in Annex 2. We have obtained the Respondent information from .IN Registry as shown in Annex 3 and provided below;

[a.]Name: [Majid Al Futtaim Holding LLC]

[b.]Organization: [Majid Al Futtaim Holding LLC]

[c.]Address:[PO Box 91100,Dubai, United Arab Emirates, DXB,Postal Code 91100,AE]

[d.] Telephone: [(+971).42949999]

[e.] Fax: [N/A]

[f.] E-Mail: [info@maf.us.com]

It is worth noting that the above whois information is not the Respondent information. However, it is a fraudulent information used by the Respondent to impersonate the Complainant. In this regard, the Complainant contact details -which are fraudulently copied by the Respondent- is provided as Annex 4 and can be accessed through the Complainant's official website found at <https://www.majidalfuttaim.com/en/contact-us>  
The E-mail Address: [info@maf.us.com](mailto:info@maf.us.com) is the only contact details that does not relate to the Complainant.

### **SUBMISSIONS BY COMPLAINANT**

- (10) Complainant submitted Domain name complaint with pages 1 to 18 and annexure from from 1 to 13.  
As per the INDRP Rules of Procedure, Clause 4(a) –  
*The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted Pleadings of more or less 5000 words and annexure with in 100 pages. The application is submitted as per the INDRP Rules and Procedures.

- (11) Complainant was directed to submit proof of delivery of complaint along with all annexure (to Respondent) to the AT.  
(a) In this regard, it is observed that Complainant had sent the soft copy of their complaint along with all annexures & other documents (vide their mail dated 14.11.2021-3.07PM, 14.11.2021-3.14PM and 14.11.2021-5.03PM) to all concerning along with at Respondent's registered E mail address ie [info@maf.us.in](mailto:info@maf.us.in) (as per Domain name information of Respondent) Therefore it is very well established that





the mails sent by NIXI, AT and Complainant were delivered to Respondent at their mail ID- [info@maf.us.in](mailto:info@maf.us.in)

(b) For the proof of delivery of their physical documents, Complainant submitted soft copy of tracking report of Courier service provider (DLH, with Waybill number – 5694790953 dated 16.11.2021), which indicate that “the documents sent by complainant were returned back to the shipper on 28.11.2021 due to non availability of contact name.”

### **THE CONTENTIONS OF THE COMPLAINANT**

**(12) The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:**

- (a) The Complainant has established registered and common-law rights in “Majid Al Futtain” trademark by virtue of existing trademark registrations in various countries and by extensive commercial use of the same in the Real Estate and Property Development, Retail, Leisure and Entertainment, Services, food and beverage industries.
- (b) Accordingly, the disputed domain name “majidalfuttain.in” is identical to the Complainant’s “Majid Al Futtain – in English and Arabic letters” trademark and trade name as it incorporates such mark and name in its entirety.
- (c) Therefore, the actual use of the disputed domain name was in all (visually and phonetically) likelihood in conflict with the Complainant’s trade name and trademark “Majid Al Futtain” to which the Complainant has rights.
- (d) The addition of a country code top-level domain “.in” does not have any impact on the overall impression of the dominant portion of the Disputed Domain Name and is therefore irrelevant to



determine the confusing similarity between the trademark and the Disputed Domain Name.

- (e) It has been long established in decisions under the UDRP and the Policy that the specific ccTLD designation such as “.in” is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable suffix may itself form part of the relevant trademark (see section 1.11 of WIPO Overview 3.0).
- (f) Previous panels have found that the addition of a ccTLD does not distinguish a disputed domain name from the mark that it resembles. See *Audigier Brand Mgmt. Grp., LLC v. bai wentao*, FA 1286108 (Nat. Arb. Forum Nov. 16, 2009).
- (g) It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar (See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, [WIPO Case No. D2000-1525](#); *Rollerblade, Inc. v. Chris McCrady*, [WIPO Case No. D2000-0429](#)).
- (h) The Complainant submits the appropriate documents, which prove that their common law and registered trademark “Majid Al Futtain” enjoys a worldwide reputation. It goes on to state that the Disputed Domain Name “majidalfuttain.in” is identical to the Complainant’s “Majid Al Futtain” common law and registered trademark, and reproduces that trademark and trade name in its entirety.
- (i) Therefore, the Disputed Domain Name is identical to Complainant’s Majid Al Futtain trademark under Policy 4(a).





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

- (a) There is no evidence that Respondent owns any trademark or service mark rights or registrations that are identical, similar, or in any way related to the Disputed Domain Name.
- (b) The Complainant in our proceeding have never authorized nor licensed the Respondent to use its common law and registered trademark “Majid Al Futtain” nor to seek the registration of any domain name incorporating the said trademark and trade name.
- (c) The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name “majidalfuttain.in” for the following reasons:
  - The Respondent is not affiliated with the Complainant in anyway.
  - The Respondent has no prior rights or legitimate interests in the disputed domain name.
- (d) since the fact that the Complainant operation of “Majid Al Futtain” brand comes back to year 1992 and its registration of trademark “Majid Al Futtain” comes back to year 1995 and its registration of the domain name “majidalfuttain.com” comes back to year 2002, hence the Complainant’s brand “Majid Al Futtain” has been in use for 2.9 decades / 29 years preceding the Respondent’s registration of the disputed domain name at issue which was on May 17<sup>th</sup>, 2021. Therefore, no evidence of prior rights or legitimate interests for the Respondent in the disputed domain name before the date of the Complainant’s usage of the brand “Majid Al Futtain” and registration of the “Majid Al Futtain – in English and Arabic letters” trademark and domain name “majidalfuttain.com”, the fact that proves that the



Complainant is the proprietor and legitimate owner of the said trademark and trade name.

- (e) The Respondent is not commonly known in the market by the disputed domain name "majidalfuttaim.in" and it provided false WhoIs information by claiming that the Registrant Organization was "Majid Al Futtaim Holding LLC" and providing false contact information (street addresses and telephone number linked to the Complainant's as shown in Annex 3 & Annex 4 ). There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain.
- (f) Furthermore, the disputed domain name redirects internet users to the Complainant's official website. Hence, such redirection is not a bona fide offering of goods or services under Policy 6(a) or a legitimate noncommercial or fair use of the disputed domain name pursuant to Policy 6(c). Annex 13 shows the redirection.
- (g) Use of the disputed domain name to redirect Internet users to Complainant's own website cannot confer any rights or legitimate interest in the disputed domain name to Respondent. See, e.g., *Ann Summers Limited v. Domains By Proxy, LLC / Mingchun Chen*, WIPO Case No. D2018-0625 ("Furthermore, panels have found that unauthorized redirection to Complainant's website does not serve as evidence of rights or legitimate interests. *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. D2017-2533."). See also *My Space, Inc. v. Gomez*, D2007-1231 (WIPO Oct. 17, 2007) (finding that "the linking of the disputed domain name to the Complainant's commercial website is not a legitimate non-commercial or fair use of the domain name" and that the respondent's use "cannot give rise to a right or legitimate interest in the disputed domain name").



- (h) The fact that the Respondent listed "Majid Al Futtaim Holding LLC" as the Registrant Organization and used the Complainant's contact details when registering the disputed domain name, together with the Respondent's conduct represented in the redirection of the disputed domain name to the Complainant's official website clearly confirms that the Respondent knew the Complainant and its trademark rights and provide clear and convincing evidence of the Respondent's intent to capitalize fraudulently on the Complainant's name and reputation and to give the impression that the disputed domain name is legitimate, when it is not.
- (i) Since the registration of the disputed domain name, there is no evidence shows the Respondent use of, or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services; which confirms the Respondent lack of rights and legitimate interests in the disputed domain name.
- (j) Registering the disputed domain name incorporating the Complainant's trademark and trade name merely was to create a connection to the Complainant and to take unfair advantage of its common law and registered trademark "Majid Al Futtaim" and hence, misleading the users.
- (k) Accordingly, a domain name that misleads users does not confer legitimate rights or interests in favor of the Respondent. This view has been upheld in several decisions. See WIPO" Case No. D2014-0027 "Byram Healthcare Centers, Inc. v. ICS Inc. / Contact Privacy.
- (l) Mere registration of the disputed domain name may not of itself confer rights or legitimate interests in the disputed domain name (*Terrain Inc. v. Geocaching Zero*, WIPO Case No. D2008- 0666).
- (m) Accordingly, Respondent has no rights or legitimate interests in the Disputed Domain Name under INDRP Policy 4(b)





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

- (a) The Complainant contends that the Disputed Domain Name has been registered in bad faith as it is implausible that the Respondent was unaware of the Complainant's brand "Majid Al Futtaim"; when the Respondent registered the Disputed Domain Name; because the Complainant has been operating the "Majid Al Futtaim" brand since 1992; registered its trademark "Majid Al Futtaim" since 1995; established its company and registered its domain name "majidalfuttaim.com" since 2002.
- (b) The Complainant's "Majid Al Futtaim" trademark is well known throughout the world and that it is incorporated in its entirety in the Disputed Domain Name, which demonstrates that the Respondent must have been aware of the existence of the Complainant's trademark "Majid Al Futtaim". This matter is also confirmed by the Complainant's trademark usage and registrations years ago as well as the public and media recognition all over the World. The bad faith is clear from the fact that the Disputed Domain Name is so obviously connected with a well-known trademark. (Carrefour v. Simon Lundgren- WIPO Case No. DAE2014-0001).
- (c) No doubt that the Respondent was aware of the Complainant's trademark and trade name at the time of registering the disputed domain name, this is due to the fact that the Respondent has registered the disputed domain name "majidalfuttaim.in" comprising the same letters in the same order as of the Complainant's trademark and trade name "Majid Al Futtaim". The bad faith is clear from the Respondent conduct.
- (d) The Respondent acted in opportunistic bad faith when registering the disputed domain name, as they are so obviously connected with the Complainant's Majid Al Futtaim services that its



selection by the Respondent, which have no connection with the Complainant, suggests the disputed domain name has been registered with a deliberate intent to create an impression of an association with the Complainant and/or its licensee/s. See, along these lines, *General Motors LLC v. desgate*, WIPO Case No. D2012-0451 and *Rapid Share AG, Christian Schmid v. Ali Private Company, Ali Kamran*, WIPO Case No. D2010-0610.

- (e) Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See Section 3.1.4 of the WIPO Overview 3.0
- (f) The Respondent has used the disputed domain name to redirect internet user's to the Complainant's website, the Respondent's use of the disputed domain name to link to the Complainant's own site evinces use in bad faith, as the disputed domain name is likely to be perceived as belonging to, controlled by or authorized by the Complainant, when it is not.
- (g) Moreover, the Complainant contends that the Respondent may at any time monitor, misdirect or otherwise affect traffic attempting to reach the Complainant's website through the disputed domain name.
- (h) Accordingly, Respondent's awareness of Complainant's existence and business is clear from the immediate redirection of users who visit the Disputed Domain Name to Complainant's own website. *See Statoil ASA v. Domains By Proxy, LLC / John Brendon*, WIPO Case No. D2013-1074. There is no conceivable explanation by which Respondent could have registered the Disputed Domain Name in good faith.
- (i) Panels have found that a Respondent redirecting a domain name to the Complainant's website can establish bad faith insofar as the



Respondent retains control over the redirection thus creating a real or implied ongoing threat to the Complainant.

- (j) The use of the Domain Name to redirect the traffic to the Complainant's own website also implies bad faith as there is a risk that the Respondent may at any time cause Internet traffic to redirect to a website that is not that of, or associated with, the Complainant (See *MySpace, Inc. v. Mari Gomez*, WIPO Case No. D2007-1231) and as it may increase customer confusion that the Domain Name is somehow licensed or controlled by the Complainant (see *PayPal Inc. v. Jon Shanks*, WIPO Case No. D2014-0888).
- (k) The Respondent's use of privacy service coupled with the registration of the disputed domain name containing the Complainant's common law and registered mark in its entirety is evidence of bad faith registration and use of the disputed domain name.
- (l) In WIPO Case No. D2016-2299; the Panel notes the following:  
"One of the disputed domain names was registered through Whois Agent, Whois Privacy Protection Service, Inc., a company offering a privacy registration service. As established in many previous decisions, the use of a privacy registration service is not per se an indication of bad faith. However, the manner in which such service is used can in certain circumstances constitute a factor indicating bad faith. It is this Panel's opinion that when it is combined with other elements such as the registration of a domain name corresponding to and/or containing a renowned third-party trademark, the use of a privacy shield is, on the balance of probability, to be considered an inference of bad faith registration and use of the disputed domain name.
- (m) The fact that the Respondent provided false contact information, together with the Respondent's choice to register the Disputed Domain Name with a privacy shield, demonstrates bad faith on the





part of the Respondent and an intention to prevent efficient enforcement of the Complainant's legitimate trademark rights. The use of a privacy shield and the provision of false contact information, having regard to the choice of the Disputed Domain Name and purposes for which it has been used, further demonstrates bad faith. Given that the Respondent is using the Disputed Domain Name to redirect the traffic to the Complainant's own website also implies bad faith use of the Disputed Domain Name under the Policy.

- (n) Panels have moreover found the following types of evidence to support a finding that a Respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark:
- (i) actual confusion,
  - (o) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use." See Section 3.1.4 of the WIPO Overview 3.0
  - (p) In view of the totality of the present circumstances here, namely the intentional registration of the disputed domain name containing the Complainant's common law and registered mark in its entirety, the use of this disputed domain name to cause user confusion and diversion, the redirection to the Complainant's website and the use of false whois information - that is linked to the Complainant - when registering the disputed domain name proves that the Respondent has registered and used the disputed domain name in bad faith under the general bad faith provision of Policy 4(c).



(q) The bad faith is clear from the whole conduct of the Respondent and hence, the Respondent's registration and use of the disputed domain name was in bad faith. Accordingly, the Complainant has established the bad faith of the Respondent in the disputed domain name in accordance with Policy 4(c) and 7.

**(15) Remedy Sought:**

The Complainant requests that the Panel issue a decision that the domain-name registration be transferred to the Complainant and to award costs. Rule 4(b)(vii); Policy 10.

**(16) Other Legal Proceedings:**

To Complainant's knowledge, no other legal proceedings have been commenced or terminated in connection with or relating to the Disputed Domain Name. Rule 4(b)(viii).

**RESPONSE BY THE RESPONDENT**

(17) As per AT mail dated 13.11.2021, Respondent was directed to submit their Reply of Complaint(Statement of Defense) by 02.12.2021. But the Respondent failed to submit the said documents by 02.12.2021 and even up to 21.12.2021. It was intimated to all concerning by AT mail dated 22.12.2021 that 'The Respondent has lost their right to entertain it. The proceeding of this case is kept closed for award and the matter would be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy..

**REJOINDER BY THE COMPLAINANT**

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



## DISCUSSION AND FINDINGS

- (19) After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure by NIXI and Respondent has been notified of the complaint of the Complainant.
- (20) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) from 13.11.2021 to 21.12.2021. But Respondent failed to submit the same within said time limit, therefore the Respondent had lost their right to entertain it. The proceeding of this case was kept closed for award on 22.12.2021 and now the matter is to be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.
- (21) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant must prove each of the following three elements of its case:
- (a) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
  - (b) The Respondent has no rights or legitimate interest in respect of the domain name; and
  - (c) The Respondent's domain name has been registered or is being used in bad faith.





- (22) The Respondent's domain name is identical or confusingly Similar to a trademark or service mark in which the Complainant has rights:**

**Facts & Findings**

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

- (23) The Respondent has no rights or legitimate interest in respect of the domain name:**

**Facts & Findings**

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

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

**Facts & Findings**

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



(25) **ARBITRAL AWARD**

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

*Arbitral Tribunal orders that the disputed domain name*

WWW.MAJIDALFUTTAIM.IN

*be forthwith TRANSFERRED from Respondent to Complainant.*

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

AT has made and signed this Award at Bhopal (India) on 23.12.2021 (Twenty Third Day of December, Two Thousand Twenty One).

**Place: Bhopal (India)**

**Date: 23.12.2021**

  
23/12/2021  
(RAJESH BISARIA)

**Arbitrator**

