



## INDIA NON JUDICIAL

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Certificate Issued Date : 26-Apr-2022 11:17 AM  
Account Reference : IMPACC (IV)/ dl734303/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL23711647226735U  
Purchased by : SUDHIR KUMAR SENGAR  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SUDHIR KUMAR SENGAR  
Second Party : Not Applicable  
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IN-DL23711647226735U

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

XEROX CORPORATION

Vs

ATTITUDE PAPERS

ARBITRATION AWARD Disputed Domain Name: [www.xeroupper.in](http://www.xeroupper.in)

#### Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## 1. The Parties

The Complainant in this administrative proceeding is Xerox Corporation, 45 Glover Avenue, PO Box 450, Norwalk, Connecticut 06856-4505345, United States of America. The Complainant is represented by Shwetashree Majumder & Shreya Ganguly, Fidus law Chambers, F-12, GF, Sector 8 NOIDA-201301 (Email: shwetashree@fiduslawchambers.com, shreya@fiduslawchambers.com Telephone: +91-120-4787550, 91-1204847551).

The Respondent is Attitude Papers, Gat No 198, Jyotiba Nagar, Pune, Maharashtra - 412114 (Telephone: +91.9637870408, E-Mail: rajputpapers@gmail.com)

## 2. Domain Name and Registrar

- (i) The disputed domain name is <xeroxpaper.in>.
- (ii) The Registrar with whom the domain name is registered is Endurance International Group (India) Limited, 501, IT Building 3, NESCO IT Park NESCO Complex, Western Express Highway, Goregaon (E), Mumbai City, Maharashtra 400063, (Email: compliance@publicdomainregistry.com)

## 3. Procedural History

The arbitration proceedings are in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

On March 29, 2022, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on March 29, 2022 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceedings on March 30, 2022 and the Respondent was directed to submit a response within 7 (seven) days. The respondent did not reply to the notice within the stipulated time. The Respondent was further given 3 (three) days time through email dated 6.04.2022 to respond to the notice already served through email dated 30.03.2022. The Respondent sent email on 13.4.2022 to inform this panel that he will submit response by 20.4.2022. The Respondent was allowed to file his response in time frame sought by the Respondent. However, the Respondent failed to file any response even within the extended time line. In fact, till date the respondent has not filed any response to the arbitration notice dated 30.3.2022.



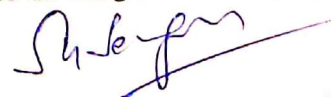


#### **4. Grounds for Administrative Proceedings**

1. The disputed domain name is identical to a name, trademark or service in which the Complainant has rights.
2. The respondent has no rights or legitimate interests in respect of the domain name.
3. The registered domain name has registered the domain name in bad faith.

#### **5. Background of the Complainant**

The Complainant, Xerox Corporation, is a company with its principal place of business at 45 Glover Avenue, PO Box 450, Norwalk, Connecticut 06856-4505345, United States of America. The Complainant submits that the Complainant is a technology and services concern and one of the world's leading document management enterprises and the Complainant offers one of the world's most widely established, accepted and trusted array of innovative document solutions, services and systems, including colour and black and white printers, digital printers, publishing systems, multifunction devices, digital copiers, laser and solid ink network printers, copiers, facsimile machines, toner, paper, ink, associated supplies, software and support specially designed for offices and production printing environments. The Complainant further submits that the Complainant is a Fortune 500 Company with global operations serving small and mid-size businesses, large enterprises, governments and graphic communications providers. The Complainant further submits that the Complainant is a global leader in administrative, manufacturing, engineering, assembly and customer operations and Complainant's operations are widespread geographically spanning several countries including India. The Complainant further submits that the Complainant launched its iconic trademark in 2008 followed by in Xerox logo in 2019 which has been in use by the Complainant worldwide. The Complainant further submits that the Complainant established its Indian subsidiary in 1983 and has been promoting and selling its goods and services through XEROX India Limited (XIL) since then (which includes its predecessors in title and interest) and the members of relevant trade circles, consumers and general public at large in India are familiar with the Complainant's business. The Complainant submits that the association of the Complainant with the trade and service mark XEROX dates as far back as 1948 and the Complainant is also the registered proprietor of the trademark XEROX in respect of goods in various classes in India. The Complainant further submits that the Complainant's trademarks are also an integral and conspicuous



part of its trading style, so much so that the Complainant, its business, goods and/or services are themselves readily recognized by mere reference made to them as "XEROX". The Complainant further submits that the Complainant has also registered the domain name [www.xerox.com](http://www.xerox.com) since 1986 and the Complainant also maintains country specific websites. The Complainant further submits that for India, the Complainant operates a website [www.xerox.in](http://www.xerox.in), which is accessible to and indeed targets Indian customers and members of trade. The Complainant further submits that the Complainant's products and services are readily available on complainant's websites, and anyone can purchase these products through these websites and the Complainant's trademarks are extremely well regarded and well known in India. The Complainant further submits that ever since its adoption, the Complainant has been extensively and continuously using the XEROX trademarks throughout the world, including in India and consequently, the said trademarks have come to acquire immense reputation and goodwill over the years and are one of the most instantly recognizable trademarks in the world today, and equally in India. The Complainant further submits that the goods and services of the Complainant bearing the XEROX are extensively manufactured, marketed and sold/rendered around the globe and various countries of the world including India. The Complainant further submits that the Complainant maintains global website [www.xerox.com](http://www.xerox.com) and country specific websites including [www.xerox.in](http://www.xerox.in) which details the background of the Complainant apart from explaining and listing the products and services sold or rendered by the Complainant under their trademark and trade name XEROX. The said websites are further extensions of the Complainant's intellectual property rights in the trademark XEROX. These websites are freely accessible to one and all and have served in making consumers worldwide aware of the high-quality products and services under the trademark XEROX of the Complainant. The Complainant further submits that the Complainant and its products have massive social media presence. The Complaint further submits that the Complainant has more than 1,306,683 likes on Facebook, more than 15.4K followers on Instagram, more than 173.3K followers on Twitter. The Complainant further submits that the Complainant has released a number of iconic advertisements which have, in addition, become shining examples of Complainant's relentless efforts and vigilance in maintaining the exclusivity of its trademark XEROX. The Complainant further submits that on the basis of the extensive goodwill and





reputation associated with the XEROX trade mark, the Complainant has been able restrain several third parties who were using the trade mark XEROX unauthorizedly in relation to their business. The Complainant further submits that the Complainant's rights over and priority in adoption and use of the XEROX trade marks have been upheld by various UDRP (Uniform Domain Name resolution Policy ) panelists in several cases and the Complainant's rights in the trademark XEROX have also been upheld in several INDRP proceedings. The Complainant has further submitted that the Complainant's trademark XEROX has been held as a well-known trademark by the Intellectual Property Appellate Board (IPAB).

### **The Respondent**

The Respondent is Attitude Papers, Gat No 198 Jyotiba Nagar, Pune, Maharashtra-412114 ( Telephone: +91.9637870408, E-Mail: rajputpapers@gmail.com). The Respondent has registered the nearly identical domain name <xeroxpaper.in> on April 27, 2018.

### **6. Legal Grounds**

(i) The Respondent's domain name is identical to a name, trade mark/ trade name in which the Complainant has rights:

#### **Complainant's Contentions**

The Complaint contends that the disputed domain name <xeroxpaper.in> registered by the Respondent incorporates and completely subsumes the Complainant's well-known XEROX trademark in their entirety. The Complainant further contends that regardless of the reason for the inclusion of the Complainant's trademark in the disputed domain name, due to the fame of the distinctive and reputation of the trademark XEROX, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant and moreover, people accessing the disputed domain name, even without being aware of the content, are likely to think that the disputed domain name is owned by the Complainant or is in some way connected with it. The Complainant further contends that apart from the evident malafide adoption of the Complainant's prior well-known trademark in the domain name, the Respondent has been selling paper and paper products in addition to other goods on the website hosted on the



disputed domain name. The Complainant further submits that the Complainant being a document management technology and services enterprise, offers a complete range of printing papers. The Complainant further submits that the said adoption by the Respondent is evidently in bad faith. The Complainant has relied on Ducati Motor Holding S.p.A vs. Abhishek Chordia ( INDRP Case Number. 834) wherein it was held a domain name that that a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. The Complainant further contends that addition of "paper" a generic word and a generic Top-Level Domain ".in" does not grant the disputed domain name distinctiveness regarding the trademark XEROX. The Complainant has relied on Morgan Stanley vs. Bharat Jain – INDRP Case No. 156 and Merck KGaA vs. Zeng Wei – INDRP Case No. 323. The Complainant further contends that the Complainant has been using the trade mark XEROX for over 70 years which is well prior to April 27<sup>th</sup> 2018, which is the registration date of the disputed domain. The Complainant has submitted that the Complainant has established rights in its trade mark XEROX dating back to 1948.

#### **Respondent's Contentions**

The Respondent has not submitted any response to the arbitration notice issued by this panel.

(ii) The Respondent has no rights or legitimate interests in respect of the domain name.

#### **Complainant's Contentions**

The Complainant contends that that the Respondent has no legitimate interest in the disputed domain name, rather the sole purpose of the Respondent is to misappropriate the reputation associated with the Complainant's famous trade mark XEROX. The Complainant submits that the Complainant has not authorized the Respondent to use its trade mark/ trade name/trading style and the Respondent has no rights or legitimate interests in the word XEROX. The Complainant further contends the disputed domain name has not been used in connection with any bonafide offering of goods and services. The Complainant contends that the Respondent's trade name allegedly is 'Attitude Paper' yet they have registered the disputed domain name that completely subsumes the Complainant's well-known trademark and that clearly indicates the Respondent's intention to bank on the





reputation of the Complainant. The Complainant submits that the term XEROX is Complainant's registered trade mark and was adopted by the Complainant around 1948 and the trade mark XEROX has no other meaning save in relation to the Complainant and its products and services, or those of any authorized licensees or franchisees. The Complainant contends that the Respondent is not a licensee or franchisee of the Complainant and has adopted the identical trade mark with a view to ride upon the goodwill associated with the Complainant's well-known trade mark XEROX. The Complainant contends that under paragraph 7 of the IN-Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name

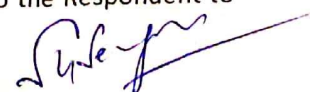
- (a) Before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services.
- (b) The Respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights.
- (c) The Respondent 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 trade mark or service mark at issue.

The Complainant contends that the Respondent has not used the domain name in connection with any bonafide offering of goods or services by the Respondent. The Complainant further contends that the Respondent appears to be squatting on the said domain name, with no operational website and the domain name has been registered by the Respondent solely for misleading the consumers. The Complainant contends that the Respondent has only adopted the name XEROPAPER with the aim to ride on the goodwill of the Complainant and the question of being known by the domain does not arise in the first place. The Complainant submits that the Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. The Complainant contends that such unlicensed, unauthorized use of the Disputed domain incorporating the Complainant's trademark is strong evidence that Respondent has no rights or legitimate interest in the



Disputed domain name . The Complainant contends 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 authorized, licensed, or permitted the Respondent to register or use the domain name or to use the XEROX trade mark. The Complainant further contends that the Complainant has prior rights in the trade mark XEROX which precedes the registration of the disputed domain name by the Respondent. The Complainant has relied on Red Bull GmbH v. Harold Gutch, D2000-0766 wherein the panel held that "The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating any of those marks. Combination of the words 'Red' and 'Bull' is a purely fanciful combination of words, as there does not exist a red colored bull. Therefore, no trader would legitimately choose this mark unless seeking to create an impression of association with the Complainant. Accordingly, the Respondent has no rights or legitimate interests in respect of the disputed domain name." The Complainant has also relied on Inter- Continental Hotels Vs Abdul Hameed INDRP/278, wherein it was observed that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant has also relied on Shulton Inc. vs Mr. Bhaskar INDRP/483, wherein it was established that if the Respondent does not have trade mark rights in the word corresponding to the disputed domain name and in the absence of evidence that the Respondent was commonly known by the disputed domain name, the Respondent can have no rights or legitimate interest. The Complainant contends that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances. The Complainant further contends that the Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name or to use the XEROX trademark. The Complainant contends that the Complainant has prior rights in the trademark XEROX which precedes the registration of the disputed domain name by the Respondent. The Complainant further contends that the Respondent is neither using the disputed domain for bonafide offering of goods and services and nor making legitimate, non- commercial and fair use of the Complainant's trademarks as per the policy. The complainant submits that the Complainant has established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to -

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produce evidence demonstrating rights or legitimate interests in respect of the Domain Name. The Complainant contends that the Respondent registered the disputed domain name for commercial gain as is clear from the fact that there are products listed on the Respondent's website and creating a wrong impression in the minds of consumers of the any kind of association with the Complainant. The Complainant further contends that the fact that the disputed websites offers paper and paper products clearly demonstrates that the Respondent is attempting to pass off its products and the Respondent has put the disputed domain name to an illegitimate commercial purpose or for unfair use by way of attempting to capitalise on the goodwill and reputation of the Complainant. The Complainant contends that there is a clear intent for commercial gain to misleadingly divert consumers.

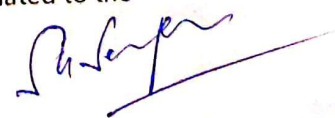
#### **Respondent's Contentions**

The Respondent has not submitted any response to the notice issued by this panel.

(iii) The disputed domain name has been registered in bad faith.

#### **Complainant's Contentions**

The Complainant contends that if 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 shall be evidence that the Registrant's registration and use of the domain name is in bad faith. The Complainant further contends that the disputed domain name is identical to the Complainant's registered trademark XEROX, in which the Respondent cannot have any rights or legitimate interest. The Complainant contends that Respondent had registered the disputed domain name for sole purpose to mislead consumers and by doing so the Respondent has intentionally attempted create a likelihood of confusion with the Complainant's registered trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. The Complainant contends that despite trading under the name Attitude Papers, the Respondent has registered and is using the domain name <xeroxpapaer.in> for commercial purpose by misleading and mispresenting itself to be associated to the



Complainant . The Complainant further contends that the well-known status of the trademark XEROX, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of Complainant's trademark. The Complainant further contends that it has been 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 itself create a presumption of bad faith. The Complainant has relied on *Motorola, Inc. v. New Gate Internet, Inc.*, WIPO Case No. D2000-0079 wherein it was held that "... the use of somebody else's trademark as a domain name (or even as a meta-tag) clearly does not constitute a "bona fide" offering of goods or services when the web site owner has no registered or common law rights to the mark, since the only reason to use the trademark as a domain name or meta-tag is to attract customers who ... were looking for the products or services associated with the trademark. Such use of a trademark can create customer confusion or dilution of the mark, which is precisely what trademark laws are meant to prevent. And actions that create, or tend to create, violations of the law can hardly be considered to be "bona fide". The Complainant also relied on *Yahoo Inc. vs Akash Arora & Anr* (1999 PTC (19) 210 Delhi), wherein it was held that defendant's domain name could be perceived as being another domain of the plaintiff. The Complainant has also relied on *Colgate- Palmolive Company and Colgate Palmolive (India) Ltd. vs. Zhaxia INDRP/887* where it was observed that by registering the impugned domain name, the Respondent has attempted to attract internet users by creating likelihood of confusion with the Complainant's mark/source of origin.

#### **Respondent's Contentions**

The Respondent has not submitted any response to the notice issued by this panel.

#### **7. Discussion and findings**

The Complainant is a company XEROX CORPORATION, having registered office in USA, offers document solutions, services and systems which include kinds of printers, publishing systems, multifunction devices, copiers, facsimile machines, toners, papers and associated support services. The Complainant is operating in many countries of world including India. The Complainant's Indian subsidiary XEROX India Limited was established in 1983 for selling its goods and services in India. The Complainant has been using the mark XEROX





since 1948 and the Complainant registered the trademark in 1948. The Complainant has also registered the domain <xerox.com> in 1986 and operates India specific domain <xerox.in> since 2006. The Complainant's trade mark are well known and people associate the goods and services with the Complainant. The Complainant has significant presence on social media platforms such as facebook, twitter and instagram. The Complainant spends substantially on advertisement to promote its goods and services. The Respondent registered the nearly identical domain name <xeroxpapers.in> on 27.4.2018 years after registering of trademark/domains of the Complainant. The Respondent's trade name is Attitude papers yet domain name registered by the respondent is <xeroxpapers.in>. The Respondent is also offering papers and paper products in addition to other goods. The respondent has failed to submit response to rebut the contentions of the Complainant.

#### **Respondent's Default**

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not filed response to the notice issued by this panel.

**The domain name <xeroxpaper.in> is nearly identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'XEROX' by submitting substantial documents. The mark comes under category of well known trademark. The mark is widely used by the Complainant in advertising and has a significant presence in social media platforms. The disputed domain contains name which is nearly identical and similar to mark 'XEROX' as the disputed domain contains



Complainant's mark completely. Addition of top level domain (CCTLD) extension '.in' is insignificant and does little to make it different. The mere addition of generic word 'paper' also does not provide distinctiveness to the domain name. There can't be coincidence that the respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level domain <xerox.com> was registered by the Complainant in 1986 years before registration of disputed domain by the respondent on 27.04.2018. The respondent has failed to submit response to the notice issued by this panel to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

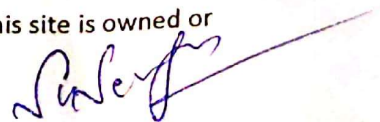
**The Respondent has no rights or legitimate interests in respect of the Domain Name.**

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark XEROX. The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate noncommercial use of disputed domain name. The Respondent has also failed to respond to the contentions of the Complainant. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

**The Domain Name was registered or is being used in bad faith**

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been using the mark for several years when the Respondent registered the disputed domain name in April, 2018. The panel finds that the Respondent has used the well known mark of the Complainant in disputed domain name giving impression that this site is owned or





Associated with the Complainant. The sole purpose of the respondent is to create confusion to an ordinary internet user. The respondent is using disputed domain to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has preferred not reply to contentions of the Complainant.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.

### Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to file any response to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is nearly identical/confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

April 26,2022

  
Sudhir Kumar Sengar 26/4/22

Sole Arbitrator