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Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
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NATIONAL INTERNET EXCHANGE OF INDIA
B Wing, 9th Floor, Statesman House Building
148, Barakhamba Road,
New Delhi-110001

L'Oréal

V/s

DOMAIN ADMINISTRATOR

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Statutory Alert:

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AWARD

1. THE PARTIES

The Complainant is **L'Oréal**, , having offices at 14 rue Royale, 75008, Paris, France, by its authorized representative Dreyfus & associates, Address: 78, Avenue Raymond Poin care, 75116, Paris, France, Telephone: +33 (0) 1 44 70 07 04, Email: contach@dreyfus.fr

The Respondent is Domain Adminstrator and the other details are provided in Annexure 1, Address: 4 Akanbi Danmole Street off Ribadu Road, Ikoyi 101233, Lagos, Nigeria, Telephone (+234). 7060647844 and E-mail sugarcane@mm,st

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name <matrixprofessional.co.in>

The disputed Domain name is <matrixprofessional.co.in>

The abovesaid domain registered particulars in detail is provided along with the complaint.

Registrar Name: GoDaddy.com, LLC

IANA ID : 146

Date of creation: 22.07.2021

Date of Expiry : 22.07.2022

Registrant Client ID : CR493095959

Registrant ROID: C7821AFCEB143448D89869B9C493456CD5-IN

Email: sugarcane@mm,st

Phone: (+234). 7060647844

3. PROCEDURAL HISTORY

(a) The Complainant has filed a complaint on 04.06.2022 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-1 to 7**. The exchange verified the complaint, satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.

(b) The NIXI has appointed Sh. R.K. Kashyap, Advocate as the Sole Arbitrator vide Email dated 31.05.2022. The Arbitrator has duly submitted his Statement of acceptance and Declaration of Impartiality and Independence on 01.06.2022, as required by the Exchange.

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(c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 07.06.2022 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice, it has also been mentioned that the respondent to file the reply/response within 10 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with vide Email dated 05.07.2022, and sent the receipt regarding the service through Email. Till date the respondent has not filed any reply/response within the stipulated time, hence, the respondent proceeded Ex-parte and Ex-parte Award is being passed.

4. **Factual Background:**

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

The Complainant, L'Oréal, is a French industrial group specialized in the field of cosmetics and beauty and is the first cosmetics group worldwide. Created in 1909 by a French chemist by the same name, L'Oréal is today one of the world's largest groups in the cosmetics business. It has a portfolio of 36 brands, employs 86,000 employees, and is present in 150 countries, the entire details are provided in ANNEX-3.

L'Oréal is richly endowed with a portfolio of international brands that is unique in the world and that covers all the lines of cosmetics: hair care, colouring, skin care, make-up and perfume. Complainant's brands, are managed within the group by divisions that each have expertise in their own distribution channel. This organization is one of L'Oréal's major strengths. It makes it possible to respond to every consumer's expectations according to their habits and lifestyle but also to adapt to local distribution conditions, anywhere in the world. MATRIX, a leading professional haircare and hair color company in the United States, is part of L'Oreal USA's Professional Products Division.

Matrix was founded in 1980 by the American husband and wife hairdressing team, Arnie and Sydel Miller. Before he founded Matrix, Mr. Miller was a hairdresser for over 20 years. He formed a firm, Ardell, to market the product to retailers and to beauty salons. Ardell eventually created and sold a hair color product. The entire relevant details are provided in ANNEX 3.

The complainant performed the preliminary research and sent a cease and desist letter to Respondent on July 30, 2021, asserting its trademark rights and asking it to cease the use of the domain name <matrixprofessional.co.in>, as well as to proceed with its transfer to Complainant free of charge and also sent

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several reminders, the only response received was the registrar's automated message denying further assistance with claims regarding the wording of a registered domain name and advising to further pursue a UDRP dispute. Respondent failed to provide any response, refer ANNEX 6.

5. **DISCUSSION AND FINDINGS:**

The Rules instructs this Arbitrator as to the Principles to be used in rendering its decision. It says that, "a panel shall decide a Complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable".

According to the Policy, the Complainant must prove that:-

- a) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;
- b) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- c) The Registrant's Domain name has been Registered or is being used in bad faith.

(A). **Identical or Confusingly Similar:**

- 1) The complainant and its trademark MATRIX enjoys a worldwide reputation and owns numerous MATRIX trademark registrations around the world, as well as in India. The complainant is the owner of various trademark registrations, the entire details are provided in ANNEX 4. The complainant also operates (directly or through its US subsidiary), among others, the following domain names reflecting its trademark in order to promote its services (ANNEX 5):
 - <matrix.com> registered on April 13, 1990;
 - <matrixprofessional.in> registered on March 24, 2016;
 - <matrixprofessional.com> registered on June 29, 2012.
- 2) The disputed domain name <matrixprofessional.co.in> is virtually identical or at least confusingly similar to Complainant's prior trademarks MATRIX and the official domain name <matrixprofessional.in>.
- 3) The domain name <matrixprofessional.co.in> reproduces Complainant's trademark MATRIX in its entirety. In many decisions, Panels considered that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered trademark (WIPO Case No. D2013-0150 *Swarovski Aktiengesellschaft v. mei xudong*; INDRP Case No. INDRP/887 <colgate.in> decided on May 26, 2017, INDRP Case No. INDRP/741 <goodyear.in> decided on February 8, 2016). The complainant further relied upon the following decisions:-

WIPO Case No. D2011-1627

WIPO Case No. D2010-1059

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WIPO Case No. D2000-0113
WIPO Case No. D2011-0692
WIPO Case No. D2009-1050
WIPO Case No. D2008-1302
WIPO Case No. D2013-0368
WIPO Case No. D2015-2333

- 4) Furthermore, the structure of the disputed domain name **<matrixprofessional.co.in>** is confusingly similar to the MATRIX trademark in that it reproduces entirely Complainant's trademark associated with the generic term "professional" and the mere addition of the extension ".co.in", which does not mitigate any possible confusion. On the contrary, it rather contributes to the likelihood by leading consumers into believing the disputed domain name will direct them to an official website offering Complainant's products intended for the Indian market. It is also important to note here that the addition of the term "professional" also strongly reminds consumers of Complainant's trademark "L'OREAL PROFESSIONAL".
- 5) The Complainant uses the trademark MATRIX in connection with a wide variety of products and services around the world, refer **ANNEXES 3 and 4**. The public has learnt to perceive the goods and services offered under these trademarks as being those of Complainant. Therefore, the public would reasonably assume that the disputed domain name belongs to Complainant or is at least, related to Complainant.
- 6) Accordingly, with the registration of the disputed domain name, Respondent created a likelihood of confusion with Complainant's trademarks. It is likely that this domain name could mislead Internet users into thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.
- 7) The Complainant has been continuously and extensively using the registered trademark Matrix in commence since its adoption in 1980 - both internationally - and thus its rights in the **Matrix** Marks are beyond reproach.
- 8) The Respondent's domain name **Matrixprofessional.co.in** is identical to the Complainant's trademark **Matrix**. Therefore, the Complainant is the sole legitimate owner of the trade/service mark **Matrix**.
- 9) Respondent's registration and use of the domain Matrixprofessional.co.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship or approval of the Complainant, when it is not so.
- 10) The distinctive and the dominant element in the Respondent's domain, the word Matrix hence, the domain Matrixprofessional.co.in is identical to the trade/service mark **Matrix** in which the Complainant has statutory and common law rights.

The disputed domain name clearly incorporates the famous trademark **Matrix** of the Complainant in its entirety.

(B). Rights or Legitimate Interests :

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- I. The respondent is neither affiliated with Complainant in any way nor has he been authorised or licensed by Complainant to use and register its trademarks, or to seek registration of any domain name incorporating the previously mentioned trademark. In addition, Respondent is not known by the name of MATRIX. The complainant relied upon:-

WIPO Case No. D2013-0188

WIPO Case No. D2010-0138

- II.)The respondent has no prior rights or legitimate interests in the disputed domain name. The registration of the MATRIX trademarks preceded the registration of the disputed domain name for years, refer **ANNEXES 1 and 4**. Moreover, the domain name in dispute is virtually identical to the Complainant's MATRIX trademark and the official domain name <matrixprofessional.in>. The respondent wishes to give an overall impression that the disputed domain name is related to Complainant and misleadingly divert consumers for fraud or commercial gain, therefore, such composition cannot constitute fair use, further demonstrating a lack of legitimate interests regarding said domain name.
- III.)It is most likely to be believed that Respondent has no legitimate interest or rights in the disputed domain name. It cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name and the complainant relying upon the following decisions:-
- WIPO Case No. D2009-1529
- INDRP Case No. INDRP/167
- WIPO Case No. D2001-0903
- WIPO Case No. D2010-1017
- WIPO Case No. D2003-0269
- IV.)The complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark and virtually identical to the official domain name,
- V.)There is no justification for the Respondent's registration and/or use of the Disputed Domain Name. By virtue of a dishonest adoption and *malafide* intent of the Respondent, as established in the preceding paragraphs of this Complaint, together with its brazen usage of the Complainant's **MATRIX** Marks, there is no scenario wherein the Respondent can claim to make legitimate non-commercial or fair use of the Disputed Domain Name.
- VI.) The Complainant is the sole legitimate owner of the trade mark **MATRIX**. The Complainant neither licensed nor permitted the Respondent to use trade/service mark **matrixprofessional.co.in** or to apply for any domain name incorporating the said trade/service marks.

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VII.) The Respondent has not made any legitimate use of the domain name **matrixprofessional.co.in** since the date of its registration and is prejudicially blocking the domain register. It is pertinent to note that the impugned domain name is a mere copy of the Complainant's trademark **Matrix**. The malafide intent of the Respondent to infringe the Complainant's trade mark rights is apparent. Further, in view of the popularity of the Complainant's trade mark **Matrix**, the disputed domain name **matrixprofessional.co.in** is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship or approval of the Complainant. The respondent wants to misappropriate and usurp the reputation and goodwill of the Complainant's trademark **Matrix**.

(C). **Registered and Used in Bad Faith:**

- I. It is implausible that respondent was unaware of Complainant when he registered the disputed domain name. Bad faith can be found where respondent "*knew or should have known*" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interests. The complainant relied upon the following decisions:-
WIPO Case No. D2009-0320
WIPO Case No. D2009-0113
WIPO Case No. D2011-0692
WIPO Case No. D2009-1050
- II. The complainant relied upon **Annexure 1,3,4 and 5**
Bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith, reffered the following judgements:-
WIPO Case No. D2010-0494
WIPO Case No. D2006-0303
WIPO Case No. D2008-0226
WIPO Case No. D2000-0270
WIPO Case No. D2006-0464
WIPO Case No. D2008-0287
WIPO Case No. D2007-0077
WIPO Case No. D2000-0055
WIPO Case No. D2008-0281
- III. The respondent is taking undue advantage of Complainant's trademark to generate profits. The use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy and relied upon:-
WIPO Case No. D2007-0956
WIPO Case No. D2009-1231
WIPO Case No. D2007-1736
- IV. The Complainant would like to emphasize the fact that the initial Respondent, Sugarcane Internet Nigeria Limited, most likely to be the current owner of the disputed domain name, is a well-known cyber-squatter that has been the

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subject of a number of UDRP proceedings. Find below a few examples of the proceedings that have been instituted against the Respondent:

WIPO Case No. D2020-0991

WIPO Case No. D2020-1779

WIPO Case No. DCO2021-0014

WIPO Case No. DCO2020-0045

- V. It is finally submitted that the Disputed Domain Name was registered and is being used in bad faith. If the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant, loss and hardship will be caused to the Complainant.
- VI. The respondent has fraudulently provided links to various third party e-commerce sites under the domain name matrixprofessional.co.in. It is obvious that the Respondent is making monetary gains by attracting unwary customers by misrepresenting an association with the Complainant. Further, considering the incessant use, reputation and the well-known brand of the Complainant's marks, the illegitimate registration and use of the impugned domain name amounts to brand dilution which cannot be compensated monetarily. Hence, it becomes critical that unscrupulous individuals are not allowed usurp renowned trademarks and domain names to unfairly benefit from such act.

The very use of a domain name by someone with no connection with the Complainant suggests opportunistic bad faith, refer **INDRP case No. 1167**.

6. **DECISION**

In light of the foregoing findings, namely, that the Domain name is confusingly/deceptively similar to Complainant's well-known brand "MATRIX", a mark in which the Complainant has rights, that the Respondent has no claims, rights or legitimate interests in respect of the disputed Domain name and that the disputed Domain name was Registered in bad faith and is being used in bad faith, in accordance with the policy and the rules, the Arbitrator orders that the Domain name "**matrixprofessional.co.in**" be transferred to the Complainant.

- a.) This award is passed at New Delhi on this 15th day of JULY, 2022

R. K. KASHYAP
SOLE ARBITRATOR