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SI.No. 13002 Date: 19/5/2022

Sold to

For whom

Dr Vedula. Gopinath s/o L.V.K. Chenulu.

Sett

DA 305249
BOLAGANA RAMA RAO
LICENCED STAMP VENDOR
L.No. 03/11/001, 1990 RL.No. 03/11/05/20
51-4-3/1, Seethammadhara
Visakhapatnam, Gtll: 9849243254

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**THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award No. INDRP/1554, dated June 20, 2022

In the matter of Arbitration Between

L'Oreal

14 rue Royale

75008 Paris. France

Complainant

AND

Domain Administrator,

4 Akanbi Danmole Street Off. Ribadu Road

Ikoyi, Lagos 10123, Nigeria

(Respondent)




Dr. VEDULA GOPINATH,
MEMBER-ICAI R
SOLE ARBITRATOR

II. THE PARTIES : 1. Complainant L'Oreal authorised representative in this administrative proceedings is

Dreyfus & Associates, 78, Avenue Raymond Poincare 75116 Paris, France

2. Respondent has not authorised any person for representation. Details of Respondent as per WHOIS is as under:

Domain Administrator,


4 Akanbi Danmole Street, Off Ribadu Road Akoyi, Lagos, 10123, Nigeria (also found that Sugarcane Internet Nigeria Limited is deemed to be the beneficial owner of the disputed name).

III. Disputed Domain Name and Registry.

- a. The following is the name under dispute in these proceedings
MATRIXPROSSIONAL.IN
- b. The Registry is National Internet Exchange of India (NIXI).
- c. The details of sponsoring Registrar is given below

GoDaddy.com LLC
2155E GoDaddy Way
85284 Tempe
Arizona USA




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IV. PROCEDURAL HISTORY / BACK GROUND :

31-05-2022	The .1N REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure.
01-06-2022	Consent of the Sole Arbitrator along with declaration was given to the .1N REGISTRY according to the INDRP Rules of Procedure.
31-5-2022	.1N REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to Respondent.
01-06-2022	Notice of Arbitration was sent to all concern by the Sole Arbitrator
02-06-2022	Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 7 days, marking a copy of the same to the Complainant's representative and .1N Registry.
03-06-2022	Complainant has served complaint on the Respondent.

The pleadings are communicated through Electronic mail in English language.



[Signature]
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V. COMPLAINANT'S DETAILS

1. Complainant, L'Oréal, is a French based industrial group specialized in the field of cosmetics and claimed to be the first cosmetics group worldwide. Established 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. The Complainant has a portfolio of 36 brands, employs 86,000 employees, and having presence in 150 countries (details given as per ANNEX 3 of complaint).

2. L'Oréal is claimed to be richly endowed with a portfolio of international brands and that covers all the lines of cosmetics: perfume etc. Complainant's brands, are managed within the group by divisions that each have expertise in their own distribution channel.

3. MATRIX, a leading professional haircare and hair colour company in the United States, is part of L'Oréal USA's Professional Products Division. It is well known around the world including India.

VI. A.COMPLAINANT'S CONTENTIONS :

1. Complainant's attention was drawn by the registration of the domain name the domain name <matrixprossional.in> which entirely reproduces its trademark MATRIX and associates it with the misspelled generic term "prossional", which does not prevent any likelihood of confusion. On the contrary, this term along with the extension ".in" increases the likelihood of confusion since it targets directly Complainant's field of activity. Therefore, Internet users may be led into believing that the domain name is endorsed by Complainant or that it will direct them to an official website displaying Complainant's products intended for the Indian market. The disputed domain name redirects Internet users towards a parking page displaying sponsored links related to hair products, directly targeting complainant's field of activity (details per Anx I of complaint).



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2. Complainant is in particular the owner of the following trademark registrations (details given as per Annexure 4 of the Complaint):

<matrix.com> registered on April 13, 1990;

<matrixprofessional.in> registered on March 24, 2016;

<matrixprofessional.com> registered on June 29, 2012.

In addition, Complainant operates (directly or through its US subsidiary), among others, the following domain names reflecting its trademark in order to promote its services (details given as per Annexure 5 of the Complaint).

<matrix.com> registered on April 13, 1990;

<matrixprofessional.in> registered on March 24, 2016;

<matrixprofessional.com> registered on June 29, 2012.

3. disputed domain name <matrixprossional.in> is virtually identical or at least confusingly similar to Complainant's prior trademarks MATRIX and the official domain name <matrixprofessional.in>. The domain name <matrixprossional.in> reproduces Complainant's trademark MATRIX in its entirety. It was submitted that in many decisions, Arbitration 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.

4. The disputed domain name <matrixprossional.in> is almost identical to Complainant's domain name <matrixprofessional.in> differing only in two letters, which makes potential typing error by Internet users more likely to happen, and as result diverting the traffic from Complainant's site to the Respondent's. The omission of the letters "f" and "e" does not significantly affect the appearance or pronunciation of the domain name. The practice is commonly referred to as "type" squatting and creates virtually identical and/or confusingly similar marks to the Complainant's trademark.



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5. The disputed domain name <matrixprossional.in> has been registered in the TLD “.in”. The presence of the suffix “.in” is not to be taken into account when assessing the likelihood of confusion between Complainant’s trademark and the disputed domain name. Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name, such as “.in” or “.co.in”, has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant’s trademark

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) Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the dispute

8) Further, the Complainant contends that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and therefore is not making a legitimate, fair or bona fide use of the domain name.

9, 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 for many years.




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VI B. RESPONDENS CONTENTIONS.

The Respondent in-spite of Notices didn't submit any response. The Complainant has also served the complaint to the Respondent. The Respondent sent a general mail to the Arbitral Tribunal duly stating their office is closed and communications will be delayed. This vague reply is not accepted by the Tribunal and advised the Respondent to be specific in their reply for any possible delay. The Respondent did not reply within a reasonable time. The Respondent appears to be preferring not replying to the notices and also do not have a valid counter-argument.

VII DISCUSSION AND FINDINGS / REASONING:

(I) .IN Domain Name Dispute Resolution Policy (INDRP).

The Arbitral Tribunal after examination of the matter in details arrived the following conclusion of Complainant's Compliance of INDRP Policy. In order to obtain the transfer of the Disputed Domain Name, Complainant should, accordingly, prove all the following three elements to paragraph 4 of the Policy.

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.



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The Complainant has proved the aforesaid aspects to the satisfaction of the Arbitral Tribunal.

II. Further pursuant to paragraph 6 & 7 of INDRP Policy, the Respondent have no legitimate interest and the disputed name used in bad faith.

III. Having performed the preliminary research, Complainant 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 <matrixprossional.in>, as well as to proceed with its transfer to Complainant free of charge. Considering that Respondent's details are masked under the privacy service, the letter was sent to the attention of the owner of the domain name through the Registrar, along with the online form available. Having sent 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 INDRP dispute. Respondent failed to provide any response (details given in ANNEX 6 of complaint).

IV) There also have been few cases decided against the Respondent at various fora cited by complainant.

(V) In case of failure of default of Respondent in sending response or reply to the complaint, the Arbitrator is empowered to announce the judgment as he thinks proper and appropriate as per applicable laws.

(VI) The allegations levelled by Complainant against Respondent appears to have been proved basing on the evidential value of the documents submitted by complainant.



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VIII. In view of the foregoing discussion, the Arbitral Tribunal arrives at a Logical conclusion of accepting the prayer of the Complainant.

IX. DECISION: For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark **MATRIX** and also the disputed Domain Name **MATRIXPROSSIONAL.IN** be transferred to the Complainant((L'Oreal). There is no order as to costs.

National Internet Exchange of India (NIXI) are advised to take ancillary and incidental action required for transfer of the disputed domain name in favour of the Complainant.

This is adjudicated.

Dated 20th June .2022


Dr. Vedula Gopinath
Sole Arbitrator



Dr. VEDULA GOPINATH
MEMBER - ICAADR
SOLE ARBITRATOR

~~CALCULATION/ FORMULAS~~