



मध्य प्रदेश MADHYA PRADESH

BN 709803

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

ARBITRAL AWARD

Date-28.07.2022

Disputed Domain Name: www.dailyshopify.in
INDRP Case no -1568

THE PARTIES

(1)

The **Complainant** is Shopify Inc. 151 O'Connor Street, Ground Floor, Ottawa,
Ontario, K2P 2L8, Canada

The **Respondent** is Mr. Pranav Kumar Sikandarpur, Gurgaon, Haryana, India –
122002



THE DOMAIN NAME AND REGISTRAR

(2)

(a) This dispute concerns the domain name bearing DOMAIN ID -.
D4D8D27802CC34AD48DE0AC4B38625708-IN and is identified
as <http://www.dailyshopify.in/>

(b) The disputed domain name: <http://www.dailyshopify.in/> is
registered with Registrar Endurance Digital Domain Technology LLP,
created on 05.05.2020 and expiry date 05.05. 2022

PROCEDURAL HISTORY

(3)

The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	03.06.2022
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 .	03.06.2022
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 03.06.2022)	10.06.2022
Complainant's response by submitting their Statement of Claim. Soft copy(PDF) Soft copy(Non PDF) Hard copy	10.06.2022 05.07.2022 09.06.2022
Due date of submission of Statement of Defense by Respondent (instructed by mail dated 03.06.2022)	25.06.2022



Respondent's response by submitting their Statement of Defense against the due date of submission as 25.06.2022 & upto 03.07.2022	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 copies vide their mail dated 10.06.2022, delivered on 07.06.2022 Vide their mail dated 05.07.2022 intimated that the Hard Copies were sent by DTDC courier, vide Tracking No. V93481212 and Reference No. 123487460703 dated 09.06.2022 which was delivered to Respondent on 14.06.2022(as per the tracking record submitted with the same mail.)	07.06.2022 14.06.2022 20.49 Hrs
Communicated by AT mail dated 03.07.2022 that the 'Respondent failed to submit the required documents within the time limit mentioned in mail dated 03.06.2022 ie 25.06.2022 & upto 03.07.2022 , therefore the Respondent lost their right to entertain it. The proceeding of this case was 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'.	03.07.2022
The language of the proceedings.	English

FACTUAL BACKGROUND

(4) The Complainant :

The **Complainant** is Shopify Inc. 151 O'Connor Street, Ground Floor, Ottawa, Ontario, K2P 2L8, Canada



Authorized Representative of the Complainant:

AZB & Partners,
AZB House, Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel Mumbai – 400013 India
Tel: +91 22 4072 9906
Fax: +91 22 6639 6888
E-mail: nandan.pendsey@azbpartners.com
Attn: Mr. Nandan Pendsey

Preferred Mode of Communication:

Electronic-only material
Method: Email
Address: nandan.pendsey@azbpartners.com
Contact: Mr. Nandan Pendsey

(5) The Respondent:

The Respondent is Mr. Pranav Kumar, Sikandarpur, Gurgaon, Haryana,
India – 122002 Mobile no +91 7834970562, email ID –
dailyshopify.in@gmail.com

(6) Complainant's Activities:

- (a) The Complainant is a leading global commerce company, providing trusted tools to start, grow, market, and manage a retail business of any size. The Complainant offers a platform and services that are engineered for reliability, while delivering a better shopping experience for consumers everywhere. Merchants use the Complainant's software to run their business across all of their sales channels, including web and mobile storefronts, physical retail locations, social media storefronts, and marketplaces. The Complainant's platform provides merchants with a single view of their business and customers across all of their sales channels and enables them to manage products and inventory, process orders and payments, fulfill and ship orders, build customer relationships, source products, leverage analytics and reporting, and access financing, all from one integrated back office. Relevant extracts



from the Complainant's website are attached and submitted as Annexure 3.

- (b) The Complainant's platform was launched in 2006 in Canada, and as of 2020, the Complainant has now around 1.7 million merchants worldwide on the platform with active stores in approximately 175 countries. Relevant extracts of Complainant's Annual Report for fiscal year ended December 31, 2020 available at https://s27.q4cdn.com/572064924/files/doc_financials/2021/q4/99a0d08d-4015-4a0a-a8bfe6ec66553c4.pdf filed with the the United States SEC (Security and Exchange Commission). The Complainant has subsidiary offices all over the world including in Toronto, Montreal, Kitchener – Waterloo and San Francisco and also has a presence in India. The Complainant has 4 over 5,000 employees and over 780 experts in its business network. In 2018, the Opponent recorded its billionth order on the platform overall. Relevant extracts from the Complainant's website <https://www.shopify.ca/about/economic-impact> and the Complainant's Economic Impact Report available at <https://cdn.shopify.com/static/impact-report/shopify-global-economic-impactreport-summary.pdf>.
- (c) The Complainant's Shopify Plus platform, launched in the year 2014, gives hyper growth businesses a customizable enterprise solution without high cost of time, money and development. The Complainant's scalable, powerful platform supports 1.7 million businesses from start-ups on Shopify to Fortune 500 companies on Shopify Plus. Details can be found on the Complainant's India website at <https://www.shopify.com/plus/platform>. The Complainant has grown to become a trusted brand and is recognized by billion-dollar online brands like Rebecca Minkoff, LeSportSac, and Fashion Nova, high-growth start-ups like Gymshark, Hawkers, and Leesa, celebrity entrepreneurs like Kylie Jenner, Eminem, Justin Bieber, and Kanye West and Fortune 500 companies that sell direct to consumers like GE, Nestle, Pepsi, and Unilever, amongst various others. In India, the Shopify platform has helped women entrepreneurs start their online businesses and scaled it to success such as Quirksmith, Suta, Yoga Bar, Fizzy Goblet, amongst many more. Details can be found on the Complainant's India website at



<https://www.shopify.in/blog/women-entrepreneurs-running-successful-online-businesses-onshopify>.

(7) Complainant's Trade Marks And Domain Names :

- (a) The Complainant's website, <https://www.shopify.com/>, was launched almost 17 years ago on March 11, 2005 and Shopify India website <https://www.shopify.in/> was launched on September 10, 2011. Relevant WHOIS extracts evidencing the registration dates are attached and marked as Annexure 4. The said websites serve as comprehensive guides to the Complainant's products and business activities, featuring the Complainant's SHOPIFY trademarks for worldwide and India-specific consumers.
- (b) The Complainant conceived, adopted and started rendering services under the SHOPIFY trademarks, and more particularly its house mark, trademark and trading and/or corporate name 'SHOPIFY', as early as 2006 internationally as well as in India. The Complainant has more than 6,000 apps in the Shopify App Store, available at the Shopify App Store <https://apps.shopify.com/?itcat=home&itterm=app-store>.
- (c) The Complainant regularly hosts various events and conferences, such as the 'Shopify Pursuit' an international conference which took place across five different countries in 2018 and the 2020 chapter being currently organized, additional information of which is available at <https://www.shopify.in/partners/blog/shopify-pursuit-2020>. The Complainant organized the Shopify Unite 2020 conference, under the banner 'Reunite' in May 2020, which was Shopify's first-ever livestream experience for business owners on Shopify. The Complainant's leadership team revealed new and upcoming features and provided insights into the future of commerce. Relevant extracts from Complainant's website at <https://unite.shopify.com/>.
- (d) The Complainant also undertakes sustainable efforts such as Shopify Meetups and Shopify Local programs for local and online educational content, coaching, and tools about entrepreneurship. The Complainant also has their computer education outreach program 'Dev Discover' and offers a four-year integrated learning program called 'Dev Degree', an accredited Computer Science degree with hands-on developer



experience at Shopify. In addition, Shopify routinely takes initiative towards sustainable environment and social well-being through various youth and community programs. Copy of the Complainant's Sustainability Report 2019, available at <https://cdn.shopify.com/static/sustainabilityreport/2019%20Shopify%20Sustainability%20Report.pdf>.

(e) The Complainant has been referred to by various reputed Indian financial news e-publishers, as below:

- The Economic Times, at:

<https://retail.economictimes.indiatimes.com/news/e-commerce/e-tailing/shopify-rides-online-shopping-wave-to-crush-profit-revenue-estimates/82309877>

- Money Control, at:

<https://www.moneycontrol.com/news/business/covid-19-pushes-shopifys-business-in-india-as-more-businesses-go-online-6123661.html>

- Business Standard, at:

https://www.business-standard.com/article/companies/rising-tech-adoption-among-small-businesses-a-big-opportunity-shopify-120121300936_1.html

- Business Insider, at:

<https://www.businessinsider.in/advertising/brands/article/how-shopify-is-helping-msmes-and-smes-sail-through-the-lockdown-by-helping-them-strengthen-their-online-presence/articleshow/76567962.cms>

- Forbes India, at:

<https://www.forbesindia.com/article/brand-connect/utkarsh-raj-%EF%BF%BD-the-youngster-creating-waves-in-the-ecommerce-industry/60289/1>

- Livemint, at:

<https://www.livemint.com/industry/retail/90-flipkart-sellers-back-new-sign-ups-up-by-125-11593242955550.html>

(f) The Complainant's SHOPIFY trademarks are unique, coined and fanciful trademarks and have neither any commonplace dictionary meaning nor are they used in common parlance in any manner whatsoever. In India, the Complainant has been using the trademark 'SHOPIFY' as early as



2006 and the Complainant's shopping bag design trademarks and composite marks since the year 2010, which have originated and/or have been derived from the Opponent's house mark 'SHOPIFY'. Relevant extracts from Web Archives Way Back Machine evidencing the use of the SHOPIFY trademarks are attached and marked as Annexure 5. In view of such long, continuous and extensive usage, the Complainant's SHOPIFY trademarks have acquired immense goodwill and reputation worldwide, including India.

- (g) A tabular matrix setting out the applications filed and/or the registrations obtained by the Complainant, in India, is attached herewith and submitted as Annexure 6 (colly). Photocopies of the trademark registration certificates issued by the Trade Marks Registry in India are attached herewith and marked Annexure 7. All such trademark registrations are currently valid and subsisting.
- (h) In addition to the above mentioned registrations and applications in India, the Complainant has also obtained registrations and/or applied for registration for the Complainant's SHOPIFY trademarks in several countries including, but not limited to, Australia, Brazil, Canada, Chile, China, the European Union, Germany, India, Indonesia, Israel, Japan, Mexico, New Zealand, Norway, Korea, Russia, Singapore, Switzerland, Turkey, Ukraine and the United States. Photocopies of the registration certificates issued by the respective foreign jurisdictions in relation to the SHOPIFY trademarks are attached and submitted as Annexure 8.
- (i) The Complainant has earned substantial revenue from the use of the SHOPIFY trademarks the world over including in India. The total revenue for the year 2018 was USD 1.1 billion and for the year 2019, the total revenue was USD 1.6 billion and for the year 2020, the total revenue was USD 3 billion. Relevant extracts from the consolidated financial statement of the Complainant in 6 its Annual Report 2020 at Page 103, available at https://s27.q4cdn.com/572064924/files/doc_financials/2020/ar/40-F.pdf with the balance sheet evidencing the revenue figures are attached and submitted as Annexure 9.
- (j) For the year 2020, the Complainant reported the total global impact of all its merchants as USD 307.4, which was a 125% growth from USD 136 billion in the year 2019. The total revenue generated by the



Complainant's partners in the year 2020 amounts to USD 12.5 billion as against the year 2019 at USD 6.8 billion. The Complainant's Indian merchants supported significant impact to the economy with the total business activity impact in the amount of USD 1.98 billion in the year 2020 and GDP impact in the amount of USD 0.98 billion. The Complainant impacted a total of 149,000 jobs in India in the year 2020. In addition, Indian merchants made USD 70.1 million in exports and over 2500 Indian partners supported merchants on the Complainant's Shopify platform. Relevant extracts from the Complainant's 2020 Economic Impact Report at Pages 8, 9, 16 and 23 available at https://cdn.shopify.com/static/impact-report/Deloitte-globaleconomic-impact-report-on-Shopify-2020-update.pdf?utm_campaign=Economic-Impact-Report2021&utm_medium=Blog&utm_source=Blog substantiating the above figures are attached and submitted as Annexure 10.

- (k) Additionally, the Complainant has also obtained registrations for several domain names which incorporate the Complainant's well-known trademark and house mark SHOPIFY. A list of some of the domain names registered and owned by the Complainant is set out in Annexure 11. The Complainant obtained registration for the domain name www.shopify.com, as early as the year 2005 and for domain name registration for www.shopify.in since 2011. The trademark "SHOPIFY" is thus, exclusively associated with the Complainant and no one else. The trademark SHOPIFY has acquired tremendous fame, recognition and goodwill both in India and abroad over the last several years. The use of the name and trademark "SHOPIFY", whether as part of a domain name or otherwise, is proprietary to the Complainant and any unauthorized use/registration thereof would constitute inter alia trade mark infringement, dilution, passing off, unfair competition and cybersquatting.

The Complainant also makes significant efforts to promote the SHOPIFY trademarks. The Complainant has incurred significant expenditure in the amount of USD 350,069 in the year 2018, USD 472,841 in the year 2019 and USD 602,048 in the year 2020 and expended tremendous efforts on promotion of its services in India. The total expenditure on promotions made by or on behalf of the Complainant in India (including



direct marketing, retail marketing and press/promotion) is tabulated below:

Year	Advertising Expenditure (in USD)
2015	370,835.36
2016	237,995.97
2017	2,765,189.26
2018	1,505,001.33
2019	2,353,963.47
2020	2,679,289.76

- (l) In view of the above and on account of the quality, uniqueness and popularity of the Complainant's services provided under the SHOPIFY trademarks coupled with the huge sums of money spent 7 on promoting, popularizing, advertising and marketing the Complainant's services under the SHOPIFY trademarks, the SHOPIFY trademarks have acquired immense reputation and unparalleled goodwill in India. Due to the extensive use of the SHOPIFY trademarks by the Complainant, the SHOPIFY trademarks have come to be associated by the public and the trade exclusively with the Complainant. It is pertinent to note here that the SHOPIFY trademarks have clearly acquired the distinction of a source identifier.
- (m) It has recently come to the Complainant's notice that a domain name by the name 'www.dailyshopify.in' has been registered by the Registrar on behalf of an undisclosed third party (i.e., the Respondent). The Internet extract of the Disputed Domain Name's homepage is attached herewith and marked as Annexure 12. The said Disputed Domain Name incorporates the Complainant's house mark and registered and well known mark "SHOPIFY" in its entirety. The Disputed Domain Name is therefore identical to or deceptively similar to the Complainant's trademarks "SHOPIFY" and domain name registrations incorporating the mark "SHOPIFY". The Respondent has, without any right, authorization, legitimate interest or license from the Complainant, been using and operating the Disputed Domain Name using the Complainant's registered trademark "SHOPIFY". Therefore, by registering and utilizing the Disputed Domain Name, the Respondent is free-riding (piggybacking) on the tremendous national and international



reputation, fame and goodwill of the Complainant's well known and registered trade mark "SHOPIFY".

(8) Respondent's Identity and activities :

(a) Respondent failed to submit any document, so his identity is not clear.

(b) Received mail dated 03.06.2022 , 4.53 PM from MAILER-DAEMON@yahoo.com(mailer-daemon@yahoo.com) with the following message-

Sorry, we were unable to deliver your message to the following address.

<postmaster@dailyshopify.in>:

Unable to deliver message after multiple retries, giving up.

(c) Received mail dated 04.06.2022 , 3.23 PM from PublicDomainRegistry.com (arbitration@publicdomainregistry.com) , with the following message-

We acknowledge the receipt of this email.

Regards,

Jennifer

(d) Received mail dated 06.06.2022 , 6.01 PM from PublicDomainRegistry.com (compliance@publicdomainregistry.com), with the following message-

Hello,

We acknowledge receipt of this email.

Regards,

Kurt



SUBMISSIONS BY COMPLAINANT

- (9) Complainant submitted Domain name complaint with pages 1 to 12 and annexure from 1 to 13 (Pages from 1 to 100)

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 less than 5000 words and annexures with in 100 pages. The application is submitted as per the INDRP Rules and Procedures.

THE CONTENTIONS OF THE COMPLAINANT

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

- (a) The Complainant states and submits that it is the sole and exclusive owner and the registered proprietor of the trademark and house mark "SHOPIFY" and other SHOPIFY formative marks. The details of some of the trademark registrations obtained by the Complainant have already been mentioned in the foregoing paragraphs. Further, the Complainant has also obtained registration for various domain names containing the trademark "SHOPIFY", details whereof have also been set out in the foregoing paragraphs. The trademark SHOPIFY is exclusively associated with the Complainant and no one else and has acquired tremendous fame, recognition and goodwill in a number of countries, including India. In view of the same, the use of the trademark SHOPIFY, whether as part of the Disputed Domain Name or otherwise, would constitute inter alia trademark infringement, dilution, passing off, unfair competition and cybersquatting.



- (b) The Disputed Domain Name is identical and/or confusingly similar to the Complainant's trademark, trade name and house mark and contains the Complainant's trademark SHOPIFY in its entirety, which constitutes a blatant infringement of the Complainant's trademark SHOPIFY. Further, there is a high likelihood of confusion and wrongful association of the Disputed Domain Name with the Complainant.
- (c) Further, the mere addition of the term 'daily' as a prefix alongside the Complainant's trademark SHOPIFY is irrelevant and does not detract from the fact that the Respondent has, without any authorisation, used the Complainant's registered trademark SHOPIFY as part of the Disputed Domain Name. Moreover, the leading, essential and the most memorable element of the Disputed Domain Name is SHOPIFY and the addition of other generic term like "daily" is insufficient to avoid confusing similarity. Thus, anyone seeing the Disputed Domain Name would unarguably associate it with the Complainant only and no one else.
- (d) Numerous INDRP decisions have held that a domain name which entirely incorporates the 8 Complainant's trademark is sufficient to establish confusing similarity of the disputed domain name with the trademark. See, Kent RO Systems Limited and Mahesh Gupta v. Kent RP System [INDRP/1253] and Akshaya Private Limited v. Mr. Prabhakar Jayapathy (INDRP/277).
- (e) Further, it is settled law that the mere addition of a common/generic/dictionary word to a trademark does not prevent the disputed domain name from being confusingly similar to the trademark. In support of the same, the Complainant hereby relies on the following cases:
- Kent RO Systems Limited and Mahesh Gupta v. Kent RP System [INDRP/1253]
 - Central Park Estates Pvt. Ltd. and Ors. v. Godrej Skyline Developers Private Limited and Ors (2019 SCC OnLine 11580)
 - Adobe Inc. v. Seeds Provider [INDRP/1255]
- (f) The Complainant contends that owing to the enormous goodwill and reputation of the Complainant, and its marks, as well as its already existing registered domain names, the use of the Disputed Domain Name will inevitably confuse or deceive the public and create a false



impression in the minds of the public that the Disputed Domain Name is associated with the Complainant and the business of the Complainant

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

- (a) The Complainant states that the Respondent has no authorization or permission from the Complainant to either use or register the Disputed Domain Name. The Complainant further contends that the Respondent is not associated with the Complainant in any manner. Hence, the Respondent has no legitimate justification or interest in the Disputed Domain Name.
- (b) The Complainant additionally asserts that the Respondent has registered the Disputed Domain Name without any legitimate interest in the Disputed Domain Name. The Respondent is not commonly known by the name "SHOPIFY". Moreover, the trademark SHOPIFY is synonymous only with the Complainant and no one else.
- (c) The Complainant is the rightful owner of the trademark SHOPIFY along with its formative marks and is entitled to the use of the same to the exclusion of all others, including the Respondent and the Respondent has no rights or legitimate interests in the Disputed Domain Name. Furthermore, the leading and essential features of the Disputed Domain Name are the Complainant's trademark SHOPIFY over which the Complainant enjoys exclusivity. It is also inevitable that the Disputed Domain Name will misleadingly result in diversion of the internet traffic of web surfers from the Complainant's website, to it, given the high degree of similarity between the domain names of the Complainant's websites and the Disputed Domain Name.
- (d) One cannot have any rights or legitimate interest in a domain name that incorporates in its entirety, a mark in which another party has the sole and exclusive right. See, e.g., Wells Fargo & Co.



and Wells Fargo India Solutions Private Limited v. SreeDas Kumar [INDRP/666]. In Six Continental Hotels, Inc v. The Hotel Crown, INDRP/151, it was held that misleading users by incorporating a third party's trademarks in a domain name gives a false impression to users and does not constitute a bona fide use under the Policy. That ruling applies equally in the instant case. There is clear evidence that Respondent intended to infringe Complainant's trademark rights and take advantage of the reputation and goodwill associated with the SHOPIFY name.

- (e) As provided in Shulton Inc. v. Mr. Bhaskar [INDRP/483], 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 registration of the Disputed Domain Name.
- (f) Therefore, in view of the fact that the trademark SHOPIFY is associated exclusively with the Complainant only; there can be no justification for the Respondent to adopt, register or use the Disputed Domain Name, which contains the Complainant's trademark SHOPIFY in entirety.

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

- (a) The trademark SHOPIFY has been exclusively associated with the Complainant and the Complainant has been using this trademark continuously and extensively over a significant period of time worldwide, including in India. A mere Google search of the term SHOPIFY would return pages of results evidencing the Complainant's significant commercial rights and reputation in the SHOPIFY trademark. It is therefore highly unlikely that the Respondent did not have prior knowledge of the SHOPIFY mark or the business of the Complainant. The Respondent, despite being aware of the reputation and goodwill of the SHOPIFY trademarks associated with the Complainant and the fact that



the trademark SHOPIFY belongs to the Complainant, has dishonestly and with malafide intention adopted and registered the Disputed Domain Name.

- (b) The Respondent has, despite such knowledge, both actual and constructive, registered the Disputed Domain Name without the Complainant's authorization, consent or permission, and clearly with the malafide intention of diverting internet traffic to the Disputed Domain Name. Moreover, it is reiterated that the Respondent has no bona fide reason for adopting the Disputed Domain Name.
- (c) Previous INDRP decisions have consistently found that it ought to be presumed that the Respondent had constructive notice of the Complainant's trademark if it is shown by the Complainant to be well known or in wide use on the internet or otherwise. Such knowledge of the Respondent is an indicator of bad faith on its part in having registered the Disputed Domain Name. See, Reliance Industries Limited and Reliance Retail Limited v. Jiomartfranchise.in [INDRP/1264].
- (d) It is therefore settled law 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. Thus, the Respondent's act of registration of the Disputed Domain Name which incorporates the registered trademarks of the Complainant is clear evidence of bad faith.
- (e) The Complainant further contends that the Respondent, by registering the Disputed Domain Name, is intentionally attempting to attract for commercial gain, customers of the Complainant and public at large towards the Disputed Domain Name, by free-riding upon the tremendous reputation and fame of the Complainant by causing deception and/or confusion or likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. Thus, innocent users of the internet would invariably be diverted to the website hosted on the Disputed Domain Name due to the confusion or deception caused by it, assuming it to be an authorized, legitimate or official website of the Complainant.
- (f) When a domain name is used to generate revenue by diverting internet traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith,



See. e.g., Adobe Inc. v. Seeds Provider [INDRP/1255] and Paris Hilton v. Dipak Kumar, [WIPO Case No. D2010-1364].

- (g) From the foregoing, it is clear and evident that the Respondent is guilty of cybersquatting.
- (h) As provided in Wells Fargo & Co. and Wells Fargo India Solutions Private Limited v. SreeDas Kumar [INDRP/666], domain names are a part and parcel of corporate identity. Unscrupulous individuals should not be allowed to usurp trademarks and domain names and unfairly benefit from such acts.
- (i) In this regard, the Complainant submits that there have been numerous instances in the past where the Arbitrator has transferred domain names which have been used and registered by the respondent in bad faith. In support of the same, the Complainant additionally relies on the following cases decided by the WIPO Arbitration and Mediation Center:
 - Clariant AG v. Workplace [INDRP/025]
 - Pentair Inc. v. Bai Xiqing [INDRP/827]

(13) **Other Legal Proceedings:**

The Complainant is hereby filing this Complaint in relation to the Disputed Domain Name (i.e.) www.dailyshopify.in and confirms that no other proceedings have been initiated or are pending between the parties to this Complaint.

(14) **Remedy Sought:**

In accordance with Paragraph 11 of the Policy, the Complainant requests the Arbitrator appointed in this administrative proceeding to transfer the Disputed Domain Name to the Complainant.

RESPONSE BY THE RESPONDENT

- (15) Respondent failed to submit the required documents(Statement of Defense) within the time limit mentioned in mail dated 03.06.2022 ie 25.06.2022 & up to 03.07.2022 , therefore the Respondent lost their right to entertain it and it was also informed to all



concerning vide AT mail dated 03.07.2022 that 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

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

DISCUSSION AND FINDINGS

- (17) 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 and Respondent has been notified of the complaint of the Complainant.
- (18) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) by 25.06.2022 & up to 03.07.2022 . 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 03.07.2022 and the matter is be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.
- (19) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant has filed a complaint to .IN Registry on the following premises:
- (a) the Registrant's domain name is identical or confusingly similar to a Name , Trademark or Service Mark in which the Complainant has rights; and
 - (b) the Registrant's has no rights or legitimate interest in respect of the domain name; and
 - (c) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose



- (20) **The Registrant's domain name is identical or confusingly similar to a Name , Trademark or Service Mark in which the Complainant has rights:**

Facts & Findings

On the basis of the referred Awards of INDRP cases, other above mentioned facts 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.

- (22) **The Registrant's has no rights or legitimate interest in respect of the domain name:**

Facts & Findings

On the basis of the referred Awards of INDRP cases, other above mentioned facts 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.

- (23) **The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose:**

Facts & Findings

On the basis of the referred Awards of WIPO & INDRP cases , other above mentioned facts 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.



(22) **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 5, 17 and 18 of the INDRP Rules of Procedure and Clause 11 of .IN Domain Name Dispute Resolution Policy (INDRP), as follows:

Arbitral Tribunal orders that the disputed domain name

www.dailyshopify.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 11 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 28.07.2022 (Twenty Eighth Day of July, Two Thousand Twenty Two).

Place: Bhopal (India)

Date: 28.07.2022


28/07/2022
(RAJESH BISARIA)

Arbitrator

