

मध्य प्रदेश MADHYA PRADESH

BN 783673

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

ARBITRAL AWARD

Date-29.10.2022

Disputed Domain Name: www.SUBWAYFRANCHISE.CO.IN
INDRP Case no -1607

THE PARTIES

(1)

The Complainant is Subway IP Inc.¹, 8400 NW 36th Street, Doral, FL 33166
United States of America, Email: domains@subway.com

The Respondent is Apusardar, Burdwan, West Bengal, Pin code- 713519 ,
Phone- (+91)9044672079, E mail: apusarder63@gmail.com



THE DOMAIN NAME AND REGISTRAR

(2)

- (a) This dispute concerns the domain name bearing ROID - D26614E61B6294BFAA3849D787F31CC43-IN and is identified as **http:// www. subwayfranchise.co.in**
- (b) The disputed domain name: **http:// www. subwayfranchise.co.in** is registered with Registrar NameCheap, Inc., on 13.08.2021 and expiry date 13.08.2022

PROCEDURAL HISTORY

(3)

| | |
|---|--------------------------|
| The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure | 31.08.2022 |
| 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 . | 31.08.2022 |
| Due date of submission of Statement of Claim by Complainant (instructed by mail dated 05.09.2022) | 15.09.2022 |
| Complainant's response by submitting their Statement of Claim. Soft copy(PDF) | 05.09.2022 |
| Soft copy(Non PDF) | 05.09.2022 |
| Due date of submission of Statement of Defense by Respondent (instructed by mail dated 05.09.2022) | 30.09.2022 |
| Respondent's response by submitting their Statement of Defense against the due date of submission as 30.09.2022 & upto 29.10.2022 | 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 05.09.2022, delivered on 05.09.2022 And The NIXI mail dated 01.09.2022 was delivered to Respondent on 01.09.2022(in response to Respondent mail dated 01.09.2022) | 05.09.2022 01.09.2022 |



| | |
|---|------------|
| Communicated by AT mail dated 27.09.2022 that the 'Respondent failed to submit the required documents within the time limit mentioned in mail dated 05.09.2022 ie 30.09.2022 & even upto 29.10.2022 , 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'. | 27.09.2022 |
| The language of the proceedings. | English |

FACTUAL BACKGROUND

(4) The Complainant :

Subway IP Inc. , 8400 NW 36th Street, Doral, FL 33166 ,United States of America

Authorized Representative of the Complainant:

Name: FairWinds Partners LLC
Address: 1000 Potomac Street, N.W.
Washington, D.C. 20007
United States of America
E-mail: steve.levy@fairwindspartners.com
Telephone: +1-215-327-9094

Preferred Mode of Communication:

Electronic-only material
Method: E-mail
Address: steve.levy@fairwindspartners.com
Contact: Steven M. Levy, Esq.

Material including hardcopy(whenever applicable)

Method: Postal Mail or Courier
Address: FairWinds Partners LLC
1000 Potomac Street, N.W., Suite 350
Washington, D.C. 20007
United States of America
Contact: Steven M. Levy, Esq.



(5) The Respondent:

The Respondent is Apusardar, Burdwan, West Bengal , Pin code-713519

Phone- (+91)9044672079, E mail: apusarder63@gmail.com

(6) Complainant's Activities:

- a) Founded in Bridgeport Connecticut, U.S.A. in 1965, Complainant is now one of the largest franchised chains of sandwich shops in the world. In 1968, and long prior to the creation of the Disputed Domain Name, the sandwich shop was renamed "Subway". The first standalone Subway shop was opened in Fresno, California, in 1978. The first Subway shop outside of North America opened in Bahrain in December 1984. The first Subway shop in the United Kingdom was opened in Brighton in 1996. Complainant now has over 21,000 franchisees—small business owners who operate approximately 40,000 Subway shops in more than 100 countries around the world. Outside of North America, the countries with the most locations are Australia (approximately 1,300), Brazil (approximately 1,900) and the United Kingdom (approximately 2,400). In India alone, Subway has 661 restaurants in operation.
- b) Since 2007, Subway has consistently ranked in Entrepreneur magazine's Top 500 Franchises list. In 2015, it ranked #3 on the "Top Global Franchises" list and #1 as the "Fastest Growing Franchise". At the end of 2010, Subway became the largest fast-food chain worldwide, with 33,749 restaurants – 1,012 more than McDonald's. Subway also takes seriously its obligation to give back to the community and so it has ongoing programs in numerous countries worldwide to promote environmental, agricultural, and humanitarian well-being.
- c) Following its formation, the company has spread to many other nations including India (submitted Exhibits D-2, D-6, D-7, D-8, D-9, D-11, D-12, D-13, and D-16) and has continually used the SUBWAY Marks in national and international commerce. Although Subway's international headquarters are in Milford, Connecticut, U.S.A. with additional regional centers supporting the company's international operations. The regional offices for European franchises include those located in London, Amsterdam (Netherlands), Colon (Germany), and Paris; the Australian and New Zealand locations are supported from Brisbane (Australia); the Asian locations include offices in China, Japan, South Korea, and



Singapore; and the Latin American support center is in Miami, Florida (United States).

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

- (a) Founded Trademark Rights Complainant is the owner of the distinctive and famous SUBWAY trademarks and their corresponding logos (the "SUBWAY Marks").
- (b) Complainant extensively promotes the SUBWAY Marks through print, web, television, and trade show advertising. Subway is the second-largest fast-food advertiser in the United States, behind only McDonald's. It spent hundreds of millions of US Dollars on measurable advertising in 2021. Subway has also sponsored a number of sporting events, particularly NASCAR races, including the Subway 400 (2002–2004), Subway 500 (2003–2007), Subway Fresh 500 (2005–2013) and the Subway Firecracker 250 (2009–2016). Subway sponsored the Subway Super Series ice hockey tournament from 2009–2014. Complainant has also been the subject of extensive media coverage including stories in USA Today, The LA TIMES, www.DailyMail.co.uk, and many other outlets.
- (c) Subway generates significant sales revenue as a result of the advertising and marketing it conducts on its various websites including www.Subway.com. As a result of Complainants' long usage and promotion of its SUBWAY Marks, they have become overwhelmingly famous and widely recognized around the world. Examples of how the SUBWAY Marks are used and promoted in relation to Complainant's goods and services and was submitted as Exhibit D.
- (d) Finally, the SUBWAY Marks are aggressively protected through registration and enforcement. Complainant owns many trademark registrations in India and around the world for the SUBWAY Marks, including those provided at Exhibit E. Also provided are copies of trademark assignment documents from Complainant's predecessor Doctor's Associates Inc. to Complainant Subway IP Inc.

(8) Respondent's Identity and activities :

- (a) Respondent failed to submit required documents, so his identity is not clear.



SUBMISSIONS BY COMPLAINANT

- (9) Complainant submitted Domain name complaint with pages 1 to 12 and annexure from A to F

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 around 5000 words and annexures of less than 100 pages, which is as per the above norms of the INDRP Rules of Procedure.

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 <SubwayFranchise.co.in> domain name is confusingly similar, on its face, to Complainant's registered and distinctive SUBWAY Mark. Trademark registrations for the Mark were obtained, and the Mark became globally famous long prior to the creation date of the Disputed Domain Name.
- b) The Disputed Domain Name is confusingly similar to Complainant's SUBWAY Mark as has already been decided in a UDRP case against the <subwayfranchise.in> domain name, one that is nearly identical to that presently in dispute. In Subway IP Inc. v. Shanti Lal Mali, Case No. 1578 (NIXI July 12, 2022), the Panel noted that "the <SubwayFranchise.in> domain name is confusingly similar, to Complainant's registered and distinctive SUBWAY Mark." See also, Nike Inc. and Nike Innovative C.V. v. Zhaxia, Case No. INDRP/804 (12-Jul-2016) ("the disputed domain name <nike.co.in> is confusingly similar/identical to the trade mark of the Complainant and the Complainant has satisfied



the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.”)

- c) Worse still, Respondent’s use of the word “franchise” actually enhances confusion as it directly relates to Complainant’s operation of its restaurants on a franchise model. Referred Exhibit D-10. *Marriott International, Inc. and Marriott Worldwide Corporation v. Manpreet Badhwar*, FA 1762333 (FORUM Jan. 18, 2018) (“The Panel finds that the disputed domain name [Marriott.menu] is effectively identical to Complainant’s mark as it incorporates its mark entirely, while merely adding the ‘.menu’ gTLD, which only heightens the confusing similarity as the word ‘menu’ is highly relevant to Complainant’s business.”); *Dow Jones & Company, Inc. v. John Alias*, FA 1921038 (FORUM Dec. 23, 2020) (Panel accepts Complainant’s assertion “that the term ‘digital’ heightens the confusing similarity of the disputed domain name because it refers to Complainant’s digital editions of THE WALL STREET JOURNAL newspaper.”)
- d) Even if users eventually discover that they are not at one of Complainant’s websites, based upon the appearance of the famous SUBWAY Mark in the Disputed Domain Name, they will be led to believe that the Complainant has endorsed, sponsored or affiliated itself with the domain name and any services offered at the resolving website when this is not the case.
- e) Finally, the addition of the .co.in TLD does nothing to alleviate confusion between the SUBWAY Mark and the Disputed Domain Names. Referred *Nike Inc. and Nike Innovative C.V. v. Zhaxia*, supra (“‘CO.IN’ is an essential part of any top level Indian domain name, therefore, it does not distinguish the Respondents domain name <nike.co.in> from the Complainants trade/service mark NIKE. This has also been held by prior panels in *Lego Juris A/S v. Robert Martin* INDRP/125 and *AB Electrolux v. GaoGou of Yerec*, INDRP/630.”)
- f) For all of the above-stated reasons, the Complainant has clearly proven that it has rights to its claimed trademark and that the Disputed Domain Name is confusingly similar to such mark under 4(a) of the Policy.



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

- a) The Section 6 of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate Respondent's rights or legitimate interests to the Disputed Domain Name. None of these circumstances apply to Respondent in the present dispute.
- b) Respondent's actions are most certainly not a bona fide offering of goods or services under Policy 6(a). Respondent is not affiliated with, nor authorized by Complainant to use the SUBWAY Mark yet the disputed domain name gives the false impression that it is so affiliated and authorized. Further, where a domain name is confusingly similar to a famous trademark yet resolves only to a parking page or does not resolve to any website at all, panels have not hesitated to hold that no legitimate interest exists on the part of a respondent. In a case that highlights this point, a Panel found that the respondent had no rights or legitimate interests in the <harrywinston.tokyo> domain name because "parked pages do not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use under Policy 4(c)(i) or 4(c)(iii)." Harry Winston, Inc. v. Sean Romaro / Searom Global Pty Ltd, FA 1608000 (FORUM Apr. 17, 2015). See also, Société Air France v. Gary Van Til, Response Science Ltd, D2017-0203 (WIPO Mar. 15, 2017) (no rights or legitimate interest found where "the websites to which the Disputed Domain Names resolve are blank."); Victoria's Secret Stores Brand Management, Inc. v. Travis Martin c/o Dynadot Privacy, FA 1250363 (FORUM Apr. 22, 2009) ("the failure of Respondent's confusingly similar <victoriassecret.com> domain name to resolve to any website is evidence that Respondent has not made a bona fide offering of goods and services under Policy 4(c)(i) or a legitimate noncommercial or fair use under Policy 4(c)(iii).") Here, the <SubwayFranchise.co.in> domain name does not resolve to any website content (referred Exhibit F) thus



indicating that it is being passively held by the Respondent with no real intention to make a legitimate use of it. This is hardly a bona fide offering of goods or services using a domain name that copies such a famous trademark as SUBWAY.

- c) With respect to Policy 6(b), Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the Disputed Domain Name or to use the SUBWAY Mark in connection with any domain name or website. Further, the public Whois record for the Disputed Domain Name does not list any identifying information for the Respondent and only identifies the Respondent's name as "Redacted for Privacy Purposes". Referred Exhibit B. Upon information and belief, Respondent is not commonly known by the Disputed Domain Name or the name "SUBWAY" nor does Respondent operate a legitimate business or other organization under the SUBWAY Mark or this domain name and does not own any trademark or service mark rights in the "SUBWAY" name. See, *Sopra Steria Group v. Xu Xiantao*, Case No. INDRP/796 (6-Jun-2016) (The domain soprabanking.in was ordered to be transferred to the complainant where the respondent is not commonly known by the disputed domain name).
- d) Next, Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain, and so its actions do not fall within Policy 6(c). The second level of the domain copies the famous SUBWAY Mark and the domain does not resolve to any website content. Referred Exhibit F. Therefore, the Disputed Domain Name is not being used for any generic or descriptive meaning. Rather, Respondent uses the <SubwayFranchise.co.in> domain name to confuse and misleadingly divert consumers to its blank website, and to tarnish the well-known SUBWAY Mark or perhaps it is planning to create a phishing site based on the franchise page of Complainant's www.Subway.com website. Such use cannot be considered fair and it also does not fit in to any accepted category of fair use such as news reporting, commentary, political speech, education, etc. Rather, based upon the popularity and globally



famous reputation of the SUBWAY Mark, those who see the <SubwayFranchise.co.in> domain name will immediately perceive the domain to refer to Complainant. Any claim otherwise must be viewed with great skepticism. See, e.g., DD IP Holder LLC v Manpreet Badhwar, 1562029 (FORUM Jul. 14, 2014) (Respondent's claim that its <Dunkin.menu> domain would be used to promote its basketball classes – i.e., “dunkin” the ball – held not credible and provided it with no rights or legitimate interests in the domain); Target Brands, Inc. v. Nathan Lytlepinhey, FA 1657101 (FORUM UM Feb. 29, 2016) (“Respondent's only assertion of a good faith use (that the domain Names [cvstargetrx.com and cvspharmacytarget.com] were for use in connection with the “Central Valley Stars” – an unsupported allegation) is, in the context of the facts of this case, unbelievable.”)

- e) It is also worth noting that Respondent's use has tarnished and diluted Complainant's Mark. Respondent has diminished the public's capacity to associate the SUBWAY Mark with the quality products and services offered under the Mark by Complainant as a result of its using the Mark in association with a non-resolving website. Respondent's use creates a situation in which Complainant's trademark is being associated with activity over which it has no control.

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

- a) Respondent intentionally use the famous SUBWAY Mark without consent from Complainant. Respondent was on actual notice of Complainant's rights in its well-known Mark as a result of Complainant's extensive use of the Mark which long predates the date on which Respondent acquired the Disputed Domain Name. More telling yet, in view o the content of Respondent's website, the Respondent could only have created the Disputed Domain Name upon its knowledge of Complainant's Mark rather than out of its own original imagination. See, Subway IP Inc. v. Shanti Lal Mali, supra



("The Complainant is a well-known fast-food chain worldwide. Respondent intentionally used the famous SUBWAY Mark..."); Subway IP LLC v. Hassaan Khan, supra, ("Respondent's prior knowledge is evident from the notoriety of Complainant's trademark and from Respondent's use of the domain name to pass itself off as Complainant in furtherance of fraud"); Doctor's Associates Inc. (DAI) v. DECO Solutions Group Inc. D2006-0892(WIPO Sep. 23, 2006) where the Panel found that the "Respondent's awareness of Complainant's SUBWAY trademark may be inferred because the SUBWAY trademark is well known." Also, Subway IP Inc. v. Cetinje S.R.O., supra, (in awarding a transfer of the domain name<subway.ro>, the Panel stated "[t]he only reasonable conclusion, in the Panel's mind, is that the Respondent does not have any credible and reasonable answer to the Complainant's evidence and that its true purpose for the disputed domain name [is] to unjustly benefit from the considerable goodwill and reputation attached.") Therefore, in the present case Respondent intentionally registered and used the Disputed Domain with knowledge of, and in violation of Complainant's trademark rights.

- b) However, these are not exclusive. Guess? IP Holder L.P. and Guess?, Inc. v. Luke Guess / Guesswork, FA 2000776 (FORUM July 27, 2022) (UDRP 4(b) "recognizes that mischief can assume many different forms and takes an open-ended approach to bad faith, listing some examples without attempting to enumerate all its varieties.") Next, in numerous UDRP decisions the international fame of a trademark has been held, alone, sufficient to create a presumption of bad faith. See, WIPO Overview 3.0, at par. 3.1.4 ("Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.") In Alberto-Culver International, Inc. v. Goodstead Limited / Domains by Proxy, Inc., D2009-1643 (WIPO Mar. 2, 2010), the Panel agreed with Complainant's position that "[w]hen a trademark is famous, there is a prima facie inference of bad faith"), citing, Microsoft Corporation v. Charlie Brown, D2001-



0362 (WIPO Aug. 16, 2001). See also, Natixis v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Johnson, Johnson web, D2020-0099 (WIPO Mar. 14, 2020). See also, Digi Int'l v. DDI Sys., FA124506 (FORUM Oct. 24, 2002) ("there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively"). In light of the global fame and reputation of the SUBWAY Mark, the presumption of Respondent's bad faith registration and use of the Disputed Domain Name should be applied in the present case.

- c) As noted above, Respondent has no substantive content at the website affiliated with the <SubwayFranchise.co.in> domain name and has merely passively held the name despite the potential for improper use. However, beginning with Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003 (WIPO Feb. 18, 2000), a number of Panels have held that, after considering all the circumstances of a given case, it is possible that a "[r]espondent's passive holding amounts to bad faith." Telstra, supra (stating that "paragraph 4(b) recognizes that inaction (e.g., passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must give close attention to all the circumstances of the Respondent's behaviour."). Also referred Teachers Insurance and Annuity Association of America v. Wreaks Communications Group, D2006-0483 (WIPO June 15, 2006) and Autosshop 2 Di Battaglia Ferruccio C. S.N.C. v. Willamette RF Inc., D2004-0250 (WIPO June 2, 2004) (collecting cases citing Telstra). Here, given the Respondent's obvious targeting of the SUBWAY Mark and those hoping to purchase a franchise restaurant, it is more than reasonable for the Panel to conclude that the circumstances of this case support a finding of bad faith through passive holding.
- d) At a minimum, Respondent is creating initial interest confusion by registering and using the Disputed Domain Name. A respondent's use of a disputed domain name to cause Internet users' initial interest confusion as to affiliation with a complainant has been



found to be evidence of bad faith pursuant to Policy 4(a)(iii). Referred Medline Industries, Inc. v. Super Privacy Service LTD c/o Dynadot, FA 1886034 (FORUM Mar. 31, 2020). In Converse Inc. v. Perkins Hosting, D2005-0350 (WIPO May 17, 2005), the Panel noted that users might eventually realize they had reached a website that did not originate with the complainant brand owner. However, with respect to the UDRP, it noted that:

[i] The question under Policy paragraph 4(a) is whether the Domain Name itself, without regard to the content of an associated website, creates confusion as to the sponsorship of the domain. This approach is necessary because cybersquatters – those who register and use domain names in bad faith – frequently achieve their purposes simply by creating “initial interest confusion” at the point where an Internet user types an address or selects one of the results of a search engine query in an effort to find a website related to the trademark owner.

[ii] Here, even if Respondent claims that users who browse to the <SubwayFranchise.co.in> domain name will ultimately realize that the resulting website is not affiliated with Complainant, the harm will have already been done by such users having been drawn to the disputed domain name in the first place by the famous SUBWAY Mark. As such, this further supports the conclusion that Respondent has engaged in bad faith registration and use.

e) Thus, the facts here strongly demonstrate that Respondent has registered and used the Disputed Domain Names in bad faith under Policy 4(iii).

(13) Other Legal Proceedings:

Upon information and belief, no other legal proceedings have been commenced or terminated in connection with or relating to the Disputed Domain Name.

(14) Remedy Sought:

In accordance with Paragraphs 4 and 10 of the Policy, for the reasons described above, the Complainant requests the Arbitrator appointed in this



administrative proceeding to issue a decision that the Disputed Domain Name be TRANSFERRED to Complainant.

RESPONSE BY THE RESPONDENT

(15) Respondent failed to submit the required documents (Statement of Defense) within the time limit mentioned in mail dated 05.09.2022 ie 30.09.2022 & up to 29.10.2022 , therefore the Respondent lost their right to entertain it and it was also informed to all concerning vide AT mail dated 27.10.2022 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 .

(16) Received mail from Namecheap Domain Team from support@namecheap.com dated 05.09.2022 and 16.09.2022 as follows:

Rajesh bisaria,

Thank you for contacting us. This is an automated response confirming the receipt of your ticket. Our team will get back to you as soon as possible. When replying, please make sure that the ticket ID is kept in the subject so that we can track your replies.

Ticket ID: ROL-998-76671

Subject: INDRP Case No: 1607: Submission of documents in INDRP Domain Dispute Complaint relating to the domain name - SUBWAYFRANCHISE.CO.IN

Department: General

Type: Issue

Status: Awaiting Staff Response

Priority: High

Kind regards,

Namecheap.com

This mail reflects that the mails regarding submission of their documents(SOD) were received by them.

(17) Received mail from Apu Sarder from apusarder63@gmail.com on 01.09.2022 as follows:

Dear Mr. Dhawan,



I'm Apu Sarder, I'm not the owner of this website. I'm a freelancer and my order was only but domain and hosting for my clients. Even I did not make the website. Please release me from this problem.

Thanks

This mail reflects that the mails regarding Complainant's complaint along with annexures were received by them.

REJOINDER BY THE COMPLAINANT

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

DISCUSSION AND FINDINGS

- (19) After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the Complainant.
- (20) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) by 30.09.2022 & up to 29.10.2022 . 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 27.10.2022 and the matter is be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.
- (21) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant 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

- (22) **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 & WIPO 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 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.

(24) **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. www. SUBWAYFRANCHISE.CO.IN

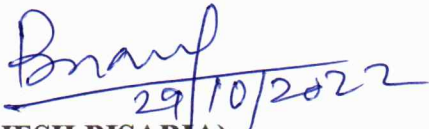
be forthwith TRANSFERRED from Respondent to Complainant.

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 29.10.2022 (Twenty Ninth Day of October, Two Thousand Twenty Two).

Place: Bhopal (India)

Date: 29.10.2022


(RAJESH BISARIA)

Arbitrator

