



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No.	: IN-DL05509522443421U
Certificate Issued Date	: 25-Oct-2022 05:22 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SELF89060835693906U
Purchased by	: PRABODHA AGRAWAL
Description of Document	: Article 12 Award
Property Description	: INDRP CASE NO. 1618 - ARBITRATION AWARD
Consideration Price (Rs.)	: 0 (Zero)
First Party	: PRABODHA KUMAR AGRAWAL
Second Party	: NOT APPLICABLE
Stamp Duty Paid By	: PRABODHA KUMAR AGRAWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

₹100 ₹100 ₹100 ₹100

₹100



SELF PRINTED CERTIFICATE TO BE
VERIFIED BY THE RECIPIENT AT
WWW.SHCILESTAMP.COM

IN-DL05509522443421U

Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA

9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
New Delhi – 110 001 India

NBC Fourth Realty Corp., USA vs. App Cubic Softech P Ltd., India

INDRP Case no. 1618

Arbitrator: Mr. P.K.Agrawal

1 | Page

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.

AWARD

1. The Parties

The Complainant is M/s **NBC Fourth Realty Corp.**, 770, Cochituate Road, Framingham, MA 01701, United States of America.

The Respondent is APP CUBIC SOFTECH PVT. LTD., barra-4 lig-54, kanpur, PIN-208027, Uttar Pradesh, India

2. The Domain Name and Registrar

The disputed domain name is **<TJMAXX.CO.IN>**. The said domain name is registered with the Registrar – GoDaddy.com LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: DFCB49C6ACE67403BBC490102F07876F3-IN
- b. Date of creation: March 15, 2022.
- c. Expiry date: March 15, 2023.

3. Procedural History

- (a) A Complaint dated 22.09.2022 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K. Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.



- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 11.10.2022 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 11.10.2022. The Complainant was advised to amend the complaint as per WHOIS details and send copy of the amended complaint (physical delivery) to the Respondent's address as reflected in WHOIS details. The Complainant submitted & served the amended complaint through email on 14.10.2022 and through "DTDC" courier and Speed Post on 18.10.2022. The Respondent was given 14 days' time by the Arbitrator through Notice dated 11.10.2022 for reply. The Notice email was served upon the Respondent email id given in WHOIS details which was delivered; however, it could not be served upon the *postmaster@tjmaxx.co.in* as it was returned undelivered by Gmail due to non- acceptance by the recipient's server. The Complainant, through his email dated 20.10.2022 has submitted the proof of dispatch of the Complaint and annexures to the Respondent through DTDC courier and Speed Post (India Post). In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent has not responded to the Complaint served to him. Hence, these proceedings have to be conducted *ex parte*.

4. Factual Background

The Complainant in this arbitration proceedings is M/s **NBC Fourth Realty Corp.**, 770, Cochituate Road, Framingham, MA 01701, United States of America.

According to the details given in the complaint, the Complainant is the owner of the distinctive and well-known T.J. MAXX trademark (the "Mark"). As early as March 1977, and long prior to the creation of the Disputed Domain Name, Complainant commenced use of the Mark in connection with what has become the leading off-price apparel and home fashions retailer in the United States with influence worldwide through its global business connections. Since its inception, Complainant has continually used the Mark in commerce and has gained both common-law and registered trademark rights.

The Mark is extensively used and protected. Complainant, through its ultimate parent, the TJX Companies, Inc. ("TJX"), is a leading off-price retailer of apparel and home fashions in the U.S. and worldwide.

TJX's website <TJMaxx.com> receives over 102,000 U.S. monthly visitors according to the metrics used by the Similarweb.com traffic estimator. As of February 2022, TJX had over \$45 Billion in annual revenues, 4,529 stores in nine countries, four e-commerce sites, and approximately 320,000 employees. TJX also sponsors various industry events, maintains a strong social responsibility effort, and has been the recipient of numerous recognitions and awards. The T.J. MAXX mark has also been recognized in India through coverage in Indian business journals, the sourcing of Indian-made products, and the hiring of personnel, within the country, to assist the company in its Indian business dealings.

Complainant's <TJMaxx.com> and <TJX.com> websites provide information to customers, investors, and other users. Complainant offers for sale such products as lingerie, clothing, cookware, and bedsheets and blankets.

According to the Complainant, as a result of Complainant's long and extensive use and efforts to promote the T.J. MAXX Mark, the Mark has gained significant common-law and registered rights and serves to identify and indicate the source of Complainant's services to the public, and to distinguish its services from those of others. The Mark has become famous and widely recognized by consumers and business partners in the United States, India, and around the world. Complainant's T.J. MAXX Mark is aggressively protected through registration and enforcement.

The Complainant claims that the Complainant is the legal proprietor of all right(s), title and interest in and to the said trade mark 'T.J. MAXX' and is entitled to protect and enforce the proprietary rights vested in it in respect of the same.

Respondent's Identity and Activities

The Respondent's activities are not known as per WHOIS details. The Respondent has not responded to the Notice or various emails sent to him.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the

by

Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the <TJMaxx.co.in> domain name is identical, on its face, to Complainant's registered and distinctive T.J. MAXX 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.

According to the Complainant, the Disputed Domain Name is confusingly similar to Complainant's T.J. MAXX Mark. Similar domain names have already been held to be confusingly similar in prior UDRP cases e.g. *NBC Fourth Realty Corp. v. Privacy.co.com / Savvy Investments, LLC*, FA 1891363 (FORUM May 27, 2020) ("Respondent's <tjmaxx.co> domain name is identical on its face to Complainant's TJMAXX mark, adding only the ".co" TLD."); *NBC Fourth Realty Corp. v. qiang zhang*, FA 1987716 (FORUM Apr. 7, 2022) ("the Panel finds that Respondent's <tjmaxxpro.com> domain name is confusingly similar to Complainant's T.J. MAXX mark.") Further, considering the fame of the T.J. MAXX Mark and the prominent use of the Mark's associated graphic logo on Respondent's website, it is not possible that the Respondent chose the Disputed Domain Name for any reason other than its confusing similarity with the Complainant's Mark. Even if users eventually discover that they are not at one of Complainant's websites, based upon the appearance of the famous T.J. MAXX 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.

Finally, the addition of the .co.in TLD does nothing to alleviate confusion between the T.J. MAXX Mark and the Disputed Domain Names. The Complainant has referred to *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*.")

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that

Respondent's actions are most certainly not a *bona fide* offering of goods or services. Respondent's website under the <TJMaxx.co.in> domain name is an impersonation site which diverts visitors, likely those seeking information about Complainant, to a website that is passing itself off as Complainant. Arbitrators have found that leading consumers, who are searching for a particular business, to a false impersonation page that offers cryptocurrency services is not a *bona fide* use. *Bloomberg Finance L.P. v. Dahra Hargaalga*, FA 1995311 (FORUM June 22, 2022) (Panel holds that "Respondent is not using the disputed domain name for any *bona fide* offering of goods or services, nor any legitimate noncommercial or fair use under Policy 4(c)(i) and (iii)" where the disputed domain name's website "displayed Complainant's BLOOMBERG mark and claimed to be a cryptocurrency trading platform, while inviting users to submit their personal information.") Here, the <TJMaxx.co.in> domain name resolves to a page that impersonates Complainant, using its distinctive T.J. MAXX logo, and invites users to "Buy and Sell TJ Maxx" cryptocurrency. Reinforcing the impersonation is a copyright notice at the bottom of each page: "2022 TJ Maxx Organization". *Id.* When a user clicks on the "Business Plan" link at the home page, they are brought to a page that specifically describes Complainant as "The TJ Companies, Inc. (NYSE: TJ), the leading off-price apparel and home fashions retailer in the U.S. and worldwide, was ranked 97 in the 2021 Fortune 500 company listings and operates four major divisions...". The site also has a "Contact" page and the "About Us" page mentions that "TJ Maxx is the world's first advanced decentralized cash and installment organize." When a user clicks on the "Login Account" link at Respondent's home page, it is brought to a "Member Login" page that seeks the user's login credential and there is a risk that Respondent is seeking to improperly capture login credentials used by Complainant's customers for the legitimate TJMaxx.com website. One tip-off that the website is a fraud is the photographs and names on the home page under the heading of "Consultants." A photo of a woman shows the name "Richard Wagner" below it, a photo of a man shows the name "Lisa Anderson," and another photo of a woman displays the name "Tommy Atkins." This gender mis-match indicates that these are not real people and that Respondent is seeking to lend an air of legitimacy to its website in order to lull users into a false sense of security. When a potential cryptocurrency customer contacts Respondent, it is quite likely that either they are defrauded of funds or are, at least, invited to invest in Respondent's cryptocurrency under the guise that it is affiliated with Complainant. In view of the content and clear intent of Respondent's <TJMaxx.co.in> website, it cannot possibly be viewed as a *bona fide* offering of goods or services.

ly

The Complainant further submits that the 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 T.J. MAXX Mark in connection with the offering of any goods or services. Further, the public Whois record for the Disputed Domain Name lists Respondent's name only as "Appcubic softech pvt ltd". Upon information and belief, Respondent is not commonly known by the Disputed Domain Name or the name "T.J. Maxx" nor does Respondent operate a legitimate business or other organization under the T.J. MAXX Mark or this domain name and does not own any trademark or service mark rights in the "T.J. MAXX" 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).

The Complainant contends that the 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. As can be seen from the content of Respondent's website referring to false cryptocurrency opportunities, the Disputed Domain Name is not being used for any generic or descriptive meaning of the terms therein. Rather, Respondent uses the Disputed Domain Name to confuse and misleadingly divert consumers, or to tarnish the well-known T.J. MAXX Mark. Such use cannot be considered fair and does not fit into any accepted category of fair use such as comment, criticism, political speech, education, etc. Based upon the global fame of the T.J. MAXX Mark, those who see the <TJMaxx.co.in> domain name and the resulting fraudulent cryptocurrency site will immediately perceive it to refer to Complainant and for the Respondent to claim otherwise would be disingenuous and highly suspect. See, e.g., *Subway IP Inc. v. Cetinje S.R.O.*, DRO2019-0007 (WIPO Jul 4, 2019) ("even to an English speaker, the word 'subway' neither exclusively nor necessarily bears the dictionary meaning which the Respondent claims. *** [Respondent's] claim of use of this term to create any relevance for property searches seems somewhat incredible."); *DD IP Holder LLC v Manpreet Badhwar*, FA 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 Feb. 26, 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.”)

The Complainant submits that 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 T.J. MAXX Mark with the quality products and services offered under the Mark by Complainant as a result of it using the Mark in association with a website that attempts to divert and defraud users who are seeking information on a new cryptocurrency. Respondent's use creates a situation in which Complainant's trademark is being associated with fraudulent activities over which Complainant has no control.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that Respondent intentionally use the famous T.J. MAXX 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 of the use of the T.J. MAXX graphic logo on 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 e.g., *NBC Fourth Realty Corp. v. Privacy.co.com / Savvy Investments, LLC*, FA 1891363 (FORUM May 27, 2020) (“Complainant contends that Respondent had actual knowledge of Complainant's T.J. MAXX mark due to the extensive global fame of the mark, which long predates the creation of the <tjmaxx.co> domain name. The Panel agrees and finds that Respondent had actual knowledge of Complainant's interests in its own protected mark before using and attempting to exploit it; the Panel finds bad faith under Policy 4(a)(iii).”); *NBC Fourth Realty Corp. v. Carolina Rodrigues / Fundacion Comercio Electronico*, FA 1919472 (FORUM, Dec. 2, 2020) (“Respondent used a privacy registration service to register a domain name incorporating Complainant's famous mark and obviously intended to create confusion with Complainant.”); *NBC Fourth Realty Corp. v. Protection Domain*, FA 1822152 (FORUM Jan. 28, 2019) (“The Panel agrees that Respondent had actual knowledge of Complainant's rights in the T.J. MAXX mark when it registered the disputed [tjnaxx.com] domain name, in bad faith under Policy 4(a)(iii).”) Therefore, in the present case it is an absolute certainty that Respondent

intentionally registered and used the Disputed Domain with knowledge of, and in violation of Complainant's trademark rights.

The Complainant submits that bad faith may be found where Respondent, by using a domain name, intentionally attempts to attract, for commercial gain, Internet searchers to its website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location, or where Respondent has registered the domain name primarily for the purpose of disrupting Complainant's business. Respondent's creation of a website that seeks to impersonate Complainant alone constitutes bad faith as it disrupts Complainant's business and seeks to capitalize on confusion with the T.J. MAXX Mark. In a case whose facts are very similar to those of the present dispute, "the website to which the disputed domain name resolves, which is annexed to the Complaint, on which Respondent purports to offer cryptocurrency services, and which prominently presents a copy of Complainant's SCOOPY-DOO character on the main page." *Hanna-Barbera Productions, Inc. v. Streep Je*, FA 1982153 (FORUM Mar. 2, 2022). The Panel in that case found that "[Respondent] has intentionally attempted to attract, for commercial gain, Internet users to his web site by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site and the cryptocurrency products purported to be offered on Respondent's website." The Complainant has also referred to *Amazon Technologies, Inc. v. Privacy Protect, LLC (PrivacyProtect.org) / Marc, Dubai Gold*, DIO2021-0027 (WIPO Feb. 15, 2022) (where "Respondent's website displays derivatives of the Complainant's figurative trademark and its smile logo" and "the disputed domain name is used in a website that offers for sale newly created cryptocurrency identified as 'ACC' or 'Amazon Crypto Coin'", "the Panel considers that the disputed domain name was registered and is being used targeting the famous AMAZON trademark, in bad faith, with the intention of obtaining a free ride on the established reputation of the Complainant and its trademarks.") Here, as in the above-cited decisions, Respondent's use of the famous T.J. MAXX graphic logo, and its impersonation of Complainant's own www.TJMaxx.com website address is indicative of its intent to confuse users for its own commercial gain and to disrupt Complainant's business by drawing users to the infringing <TJMaxx.co.in> website. The fact that visitors to Respondent's

site are invited to engage in the purchase of a highly questionable cryptocurrency and enter their personal contact information and perhaps T.J. Maxx login credentials clearly shows that Respondent is seeking to defraud users of funds and perhaps also harvest their information with the goal of engaging in identify theft, and other cybercrimes.

The Complainant contends that as the owner of the Disputed Domain Name, Respondent is entirely and solely responsible for the content of its resolving website. Reference is made to *Disney Enterprises, Inc. v. Il*, FA 1336979 (FORUM Aug. 31, 2010) (Respondent acted in bad faith, despite its claimed lack of control over the content on its parked, pay-per-click website); *Transamerica Corporation v. Domain Administrator / Sandesa, Inc.*, FA 1704763 (FORUM Jan. 4, 2017) (Respondent is responsible for the use made of the domain name. Knowingly registering a domain containing another's mark and parking it without limiting the ability of the parking service to improperly use it is sufficient evidence of bad faith registration and use.”)

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has not responded to the complaint. He has not submitted any evidence or argument indicating his relation with the disputed domain name <TJMAXX.CO.IN> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct 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:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

ly

- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

Although Respondent has not offered any arguments to defend himself on this complaint, the default does not automatically result in a decision in favour of the Complainant. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

The disputed domain name < *TJMAXX.CO.IN* > was registered by the Respondent on March 15, 2022.

The Complainant is an owner of the registered trademark "T.J. MAXX" for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <*TJMAXX.CO.IN*>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "T.J. MAXX" products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <*TJMAXX.CO.IN*> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in

ly

the domain name by proving any of the following circumstances:

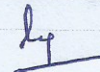
- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Respondent has not responded in this case despite sufficient notice. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not T.J. MAXX as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark "T.J. MAXX" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general



public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <TJMAXX.CO.IN> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains

by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <TJMAXX.CO.IN> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 26th October, 2022