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 Unique Doc. Reference : SUBIN-DL71730335743410918680V
 Purchased by : AJAY GUPTA ARBITRATOR
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : AJAY GUPTA ARBITRATOR
 Second Party : OTHERS
 Stamp Duty Paid By : AJAY GUPTA ARBITRATOR
 Stamp Duty Amount(Rs.) : 100
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INDRP ARBITRATION CASE NO.1771
 THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
 SOLE ARBITRATOR: AJAY GUPTA

7 Eleven International LLC(7IN)

Vs.

7 eleven shop

Any

DISPUTED DOMAIN NAME: "7eleven-shop.org.in"

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INDRP ARBITRATION CASE NO.1771
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ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

7-Eleven International LLC
3200 Hackberry Road
Irving, Texas 75063
United States of America

...Complainant

VERSUS

7elevenshop
SCO 7 VIP Road
Zirakpur-140603 (PUNJAB)
[INDIA].

...Respondent

Disputed Domain Name: "7 eleven-shop.org.in"



1. The Parties

- 1.1 The Complainant **7-Eleven International LLC (7 IN)** in this arbitration proceedings operate the convenience store chain under the brand name '7-ELEVEN', and its contact address is: 7-Eleven International LLC 3200 Hackberry Road Irving, Texas 75063, United States of America.
- 1.2 The Complainant's authorized representative in this administrative proceeding is/are Mr. Sanjay Chhabra & Mr. Bidyut Tamuly, Archer & Angel K-4, South Extension Part-II, New Delhi – 110049 – India Tel: +91-11 41954195 - Fax: +91-11 41954196 Email: schhabra@archerangel.com
- 1.3 The Respondent, in this arbitration proceedings, is 7elevenshop, SCO 7, VIP Road, Zirakpur-140603 (PUNJAB) – [INDIA] as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. The Domain Name and Registrar

- 2.1 The disputed domain name is "7 eleven-shop.org.in" and the Registrar with which the disputed domain name is registered is Hostinger Kaunas, Lithuania Hostinger, UAB Jonavos str. 60C, 44192 - Email: support@hostinger.com; abuse@hostinger.com

3. Procedural History [Arbitration Proceedings]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes under the .IN Dispute Resolution Policy and Rules framed thereunder.
- 3.2 The history of this proceeding is as follows :



- 3.2.1 In accordance with Rules 2(a) and 4(a), NIXI on 17.10.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, IN Domain Resolution Policy and the Rules framed thereunder. That the Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence Dated 17.10.2023 to NIXI.
- 3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 18.10.2023 was emailed to the Respondent on 18.10.2023 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days i.e. by 27.10.2023. The Complainant complying with the directions of this tribunal sent the copy of complaint to the respondent through mail on 18.10.2023 and hard copy of the complaint was also dispatched by complainant through courier at Respondent's postal address.
- 3.2.3 This panel vide its Arbitration Notice dated 18.10.2023 directed the Respondent to file the reply of complaint, if any, within 10 days of the notice i.e. by 27.10.2023. The counsel of the complainant vide mail dated 18.10.2023 submitted to this panel proof of delivery of the soft copy of complaint to the respondent and also the courier receipt. On 27.10.2023 and further submitted that hard copy of the complaint sent to the respondent has returned undelivered with remarks "**SHORT ADDRESS**". However, the Respondent, despite the receipt of Notice Dated 18.10.2023 and copy of complaint through mail has, neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 28.10.2023 the respondent was proceeded ex parte.

4. The Respondent's Default

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "7eleven-shop.org.in".

4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

4.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint. The INDRP 'Rules' paragraph 12 states, "In the event, any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite sufficient time given in this regard and is proceeded ex parte.

5. Background of the Complainant & its Submissions about the trademark " 7-ELEVEN ", its statutory and common law rights Adoption, Domain Names and website :



- 5.1 The Complainant submits that the Complainant in these proceedings is 7-Eleven International LLC (7IN) is a Delaware limited liability company, having its principal place of business at 3200 Hackberry Road, Irving, Texas 75063, United States of America. 7IN is owned by 7 Eleven Inc ("SEI") (50%) and SEJ Asset Management & Investment Company, a Japan company, ("SAM") (50%). SEI is wholly owned by SAM. SAM is wholly controlled by Seven-Eleven Japan Co., Ltd., a Japan company, ("SEJ"). SEJ is wholly owned by Seven & i Holdings Co., Ltd., a Japan company, ("S&IH"). Therefore 7IN, SEI, SAM, SEJ and S&IH are all related entities with common ownership.
- 5.2 The Complainant submits that 7-Eleven International LLC ("7IN"), together with its parent/affiliated companies i.e., Seven-Eleven Japan Co., Ltd. and 7-Eleven, Inc., operate the world's largest convenience store chain – operating, franchising and licensing convenience stores under the brand name '7-ELEVEN' with now over 80,000 stores around the world. Founded in 1927 in Dallas, Texas, as The Southland Corporation ("Southland"), the Complainant, through its predecessor Southland, pioneered the convenience store concept during its first years of operation, when it began selling milk, bread and eggs as a convenience to guests.
- 5.3 The Complainant submits that Complainant's house mark and trading name '7-ELEVEN' was developed and adopted in 1946 – when the name of Complainant's stores was changed to '7-Eleven' and has been in use continuously ever since, with various 7-ELEVEN formative trademarks.
- 5.4 The Complainant submits that since the operation of its first store in the year 1946 under the name '7-ELEVEN', the Complainant has been selling a wide range of products at its convenience stores which have gained immense reputation and recognition worldwide.
- 5.5 The Complainant submits that in 1963, the Complainant's convenience stores began staying open 24 hours a day in Austin



(Texas) and Las Vegas (Nevada), United States of America. In a short span, the Complainant's stores expanded beyond its home country's borders. The first 7-ELEVEN store of the Complainant outside of the United States of America opened in Canada in 1969, and two years later the Complainant expanded into Mexico as well. The first 7-ELEVEN store outside North America was built in 1974 in Japan.

- 5.6 The Complainant submits that it focuses on meeting the needs of convenience-oriented guests by providing a broad selection of fresh, high-quality products and services at everyday fair prices, speedy transactions and a clean, friendly shopping environment. Additionally, Complainant is also one of America's largest independent gasoline retailers. The Complainant further submits that as a result of the exemplary quality and convenience of its goods and services, the Complainant has been handsomely awarded and felicitated for its business under the 7-ELEVEN Marks.

6. Trademarks of the Complainant

- 6.1 The Complainant submits that in Indian context by virtue of the September 30, 2022 assignment, 7-Eleven, Inc., transferred and assigned all rights, title and interests in and to the 7-ELEVEN brand and trademarks in India, together with the goodwill in the business therein to 7-Eleven International LLC. The Complainant further submits that the earliest Indian registrations for the 7-ELEVEN Marks date back to 1994 for its core classes.
- 6.2 The Complainant submits that it along with its affiliated / related companies is the genuine proprietor of the '7-ELEVEN' name, logo, brand, and the 7-ELEVEN-Marks - including without limitation the globally registered trademarks '7-ELEVEN', and the business thereunder. In order to protect the goodwill associated with these trademarks and business, the Complainant (by itself or its affiliates/successors/related companies) has secured statutory rights in its 7-ELEVEN Marks in 90 jurisdictions around the world, flowing from trademark registrations across classes relevant to its business, including



Classes 09, 14, 29, 30, 32, 35 & 43 in numerous jurisdictions such as Argentina, Australia, Brazil, British Virgin Islands, Canada, China, Egypt, European Union, France, India, Israel, New Zealand, Republic of Korea (South), Russian Federation, Singapore, Spain, 8 Switzerland, Uzbekistan, United Arab Emirates, United Kingdom, United States of America, Yemen, etc.

- 6.3 The Complainant submits that the earliest of the aforementioned registrations for the Complainant's 7-ELEVEN Marks in relation to its core business, has been valid and subsisting on the Register of the USPTO since as early as July 04, 1961, with usage in commerce claimed since 1946.

7. The Complainant's Domain Name and Website

- 7.1 The Complainant submits that it is the owner of numerous generic top-level domain names, the most prominent amongst them being <7-eleven.com> registered since October 1997) and in its entirety, comprises the Complainant's name and registered trademark 7- ELEVEN. Moreover, the Complainant also owns various other top-level as well as country-specific domain names. The Complainant's Mark 7-ELEVEN – as both words and numerals – forms a prominent part of each of the Complainant's various domain names, thus augmenting the association of the 7-ELEVEN Marks with the Complainant alone.
- 7.2 The Complainant submits that it operates its corresponding website at www.7-eleven.com (registered since October 21, 1997), where information about the Complainant and its business operating under the 7-ELEVEN Marks and the 7-ELEVEN brand in general is freely available and accessible to millions of internet users (including in India), who may be current or potential consumers.
- 7.3 The Complainant submits that it also offers for sale electronics gadgets and related accessories such as Refurbished phones, Bluetooth earphones, flash drive, etc. on Complainant's at www.speakout7eleven.ca/accessories. As per the Google

Analytics electronic data, the Complainant's official website is already immensely popular among Indians and experiences a large number of views from India alone. In 2019 alone over 65,000 Indian users viewed the www.7-eleven.com website, in over 81,000 different sessions. In 2020, over 129,000 Indian users viewed the website. In 2021 over 203,000 users viewed the site in over 237,000 sessions. In 2022, over 141,000 Indian users visited the site in over 188,000 sessions in India. The Complainant submits that these numbers clearly indicate such viewers to be essentially the Complainant's potential, if not actual consumers.

- 7.4 The Complainant submits that India has been an important jurisdiction for the Complainant's business. The Complainant inaugurated its acclaimed 7-ELEVEN stores (about 20 or more) in Mumbai. Complainant's 7-ELEVEN Marks are extensively used on store hoardings, signage, pole sign, shopping bag, store banner, billboard etc., at its multiple stores located in Mumbai, India.

8. Well-known Adjudication of Complainant's 7-ELEVEN Marks

- 8.1 The Complainant submits that different courts and quasi-judicial forums around the world have explicitly held the Complainant's 7-ELEVEN Marks as well-known, having gained immense goodwill and reputation.

- 8.2 The Complainant submits that given the immense statutory rights worldwide including in India, widespread and continuous global use for many decades, proactive promotional and enforcement efforts, as well as its impeccable trans-border reputation and unrivalled goodwill in its business under the 7-ELEVEN brand, the Complainant's 7-ELEVEN Marks have come to acquire the stature of well-known marks within the meaning of Section 2 (1) (zg) of The Trademarks Act, 1999. Further, NIXI (National Internet Exchange of India) has also recognized the Complainant's rights in respect of the 7-ELEVEN Marks.

9. Submissions of Complainant about the Respondent and its use of the domain name



- 9.1 The Complainant submits that it came across the Respondent's Dispute Domain Name, i.e., <7eleven-shop.org.in>. At the corresponding URL: www.7eleven-shop.org.in, the Respondent operates as an online retailer selling gadgets such as smartwatch, earbuds and related accessories under the mark . The Complainant further submits that, it is pertinent to mention that the following domain names < 7eleven-shop.net>; <7eleven-shop.store>, <7eleven-shop.in> & <7eleven-shop.co> & <7eleven-shop.com> redirect to <7elevenshop.org.in> and its corresponding website www.7eleven-shop.org.in. The Complainant submits that an independent investigation was undertaken by the Complainant at the address presently mentioned on the Respondent's website however no trace of physical business operation was identified. Pursuant to which the Complainant therefore initiated correspondence with the Respondent via a Legal Notice dated August 09, 2023 to the Respondent highlighting that its online business via the Disputed Domain Name and use of identical mark is concerning, however, the Respondent has remained unresponsive till date.

10. The issues involved in the dispute

- 10.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the.IN Registry on the following premises :-"

- 10.2 The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.
- 10.3 Respondent has no rights or legitimate interests in respect of the disputed domain name.
- 10.4 The disputed domain name has been registered or is/is being used in bad faith.



10.5 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.

11. Parties Contentions

11.1 The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

Complainant

11.2 The Complainant submits that the Disputed Domain Name incorporates the Complainant's 7-ELEVEN making the same conceptually, structurally and phonetically nearly identical to Complainant's registered 7-ELEVEN Marks. The essential element of the Complainant's well-10 known brand is its unique combination of numbers - SEVEN (7) followed by ELEVEN (11) with number 7 as a numeral bisected by 11 as a word. The numeral "7" is displayed with a slightly arched break between the top of the numeral and the leg of the numeral. This especial combination has been copied in the Disputed Domain Name with addition of a highly descriptive word "SHOP" & "org" as a suffix, which is insufficient for differentiation. Moreover, the corresponding website reflects the "7 Eleven-Shop" wherein the numeral 7 is bisected by the words ELEVEN-SHOP thus imitating the most essential feature / trade dress element associated with the Complainant well-known marks 7-ELEVEN.

11.3 The Complainant submits that it has well-established rights in respect of the 7-ELEVEN Marks, with the name and mark 7-ELEVEN per se having been considered and formally declared as 'well-known' by courts and judicial forums around the world, including by the Indian Trade Marks Registry and NIXI (National Internet Exchange of India).

11.4 The Complainant submits that the Disputed Domain Name comprises of the Complainant's registered trademark 7- ELEVEN in its entirety, and in the same manner in which the



Complainant uses its name and house mark in trade with the number 7 in numeral form and the number Eleven in word form. In this regard, the complainant has referred to the decision passed in the Petitioner's favor in 7-Eleven Inc. v. Korneliusz Wietska – INDRP Case No. 1073, wherein the disputed domain was www.7-eleven.in and the Hon'ble Arbitrator held that "... *incorporating a trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name.*"

11.5 The Complainant submits that it has been continuously and extensively using the registered trademark 7-ELEVEN in commerce since its adoption in 1946 – and thus its rights in the 7-ELEVEN Marks are beyond reproach. Moreover, since the Disputed Domain Name has only been registered since March 01, 2023, it is vastly subsequent to the Complainant's common law and statutory rights in the 7-ELEVEN Marks globally as well as in India.

11.6 The Complainant submits that the condition in Paragraph 4 (i) of the INDRP is fully met by the Disputed Domain Name

Respondent

11.7 The Respondent has not replied to Complainant's contentions.

11.8 Panel Observations

11.8.1 This Panel on pursuing the pleadings, documents and records submitted by Complainant observes that the Complainant, 7-Eleven International LLC ("7IN"), together with its parent/affiliated companies, operate the world's largest convenience store chain – operating, franchising and licensing convenience stores under the brand name '7-ELEVEN' in many countries including India. This panel further observe that by virtue of long, continuous and uninterrupted use for several decades Mark '7 ELEVEN' has acquired distinctiveness and is associated solely with the Complainant.

11.8.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark "7 ELEVEN". It



is also observed by this panel that the Complainant has successfully secured registration for the 7ELEVEN in many countries including India. The Complainant in order to prove that it has trademark rights and other rights in the mark "7ELEVEN" has submitted substantial information and documents in support of it.

11.8.3 It is observed by this panel that the trademark that the Disputed domain "7eleven-shop.org.in" comprises the Complaint's trademarks "7eleven" in their entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant. It is further observed that especial combination of 7eleven in its entirety has been copied in the Disputed Domain Name with addition of a highly descriptive word "SHOP" & "org" as a suffix, which is insufficient for differentiation and also not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

11.8.4 It is rightly submitted by the complainant that the Disputed Domain Name incorporates the Complainant's 7-ELEVEN Marks and the essential element of the Complainant's well known brand is its unique combination of numbers - SEVEN (7) followed by ELEVEN (11) with number 7 as a numeral and 11 as a word. This special combination has been copied in the Disputed Domain Name with addition of a descriptive word "-shop.org" as a suffix, which is insufficient for differentiation.

11.8.5 This panel, therefore, is of opinion that the disputed domain name "7eleven-shop.org.in" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "7 ELEVEN" of the Complainant.



11.8.6 It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner and the respondent has miserably failed in following this condition.

11.8.7 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.

12. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

12.1 Complainant

12.1.1 The Complainant submits that under Paragraph 6 of the INDRP, the following conditions (*in particular but without limitation*) must be met for the Registrant to have rights or legitimate interests in the disputed domain name :

- (a) 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 bonafide offering of goods or services;
- (b) 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
- (c) the Registrant is making 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.

12.1.2 The Complainant submits that the Respondent in the present case has not fulfilled any of the aforementioned conditions for it to have demonstrable rights or legitimate interests in the Disputed Domain Name.

12.1.3 The Complainant submits that the mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In Deutsche



Telekom AG Vs. Phonotic Ltd. (WIPO Case No.D2005-1000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*".

12.1.4 The complainant submits that the Respondent is using the Disputed Domain Name and corresponding website, for commercial gain to misleadingly divert consumers or to tarnish the Complainant's 7-ELEVEN Marks. Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non-commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name. The Complainant has relied on the case of Facebook, Inc. Vs. Domain Admin, Whois Privacy Corp. WIPO Case No. D2016-1832 wherein it was observed "Given the widespread reputation of the Complainant's trademark, the Panel does not consider that the Respondent could actively use the disputed domain names in a legitimate way. Any use of the disputed domain names would likely result in misleading diversion and taking unfair advantage of the Complainant's right.

12.1.5 The Complainant submits that it has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its 7-ELEVEN Marks. The Complainant relies on the case of Marriott International, Inc. v. Thomas, Burstein and Miller, WIPO Case No. D2000-0610 "no evidence was presented that at any time had the Complainant ever assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the marks MARRIOTT REWARDS or MARRIOTT in any manner."

12.1.6 The Complainant submits that the inclusion of the well-known mark '7eleven' in the Disputed Domain Name in its entirety, suggests that the intention of the respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent. The Complainant submits that the panel also held in Orange Brand Services Limited Vs. P.R.S. Reddy <orangesms.in> - NDRP/644



“...the disputed domain name incorporates the “Orange” mark, a mark in which the Complainant has the sole and exclusive right and that has become well known owing to the Complainant’s efforts” and also held that “It is also a well settled principle that the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision: The Ritz Carlton Hotel Company LLC v Nelton! Brands Inc., INDRP/ 250]”.

12.1.7 The Complainant submits that the inclusion of the well-known mark ‘7eleven’ in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. The Complainant has relied on the decision in the Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516 wherein it was held “It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark”.

12.1.8 The Complainant submits that it enjoys exclusive rights in the mark ‘7-ELEVEN’ qua its specific products and services – including those under Classes 09, 14 & 35. The mark 7- ELEVEN does not indicate in any manner goods or services relating to its business. In fact, a general search for the term ‘7-ELEVEN’ on the popular search engine Google directs to websites which either belong to the Complainant or to third parties providing information on the Complainant’s business under the mark 7- ELEVEN, thereby augmenting the indisputable association between the Complainant and its 7- ELEVEN Marks and lending the 7-ELEVEN Marks an additional layer of distinctiveness in commerce.

12.1.9 The Complainant submits that there is no justification for the Respondent’s registration and/or use of the Disputed Domain



Name. By virtue of dishonest adoption and malafide intent of the Respondent, as established above, there is no scenario wherein the Respondent can claim to make legitimate non-commercial or fair use of the domain name.

12.1.10 The Complainant submits that in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), the consensus view has been adopted that *"While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore, a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP..."*.

12.1.11 The Complainant submits that it has amply established a prima-facie case for the absence of rights or legitimate interests in the Disputed Domain Name in favour of the Respondent.

12.1.12 The Complainant submits that the Respondent's mere registration of the Disputed Domain Name does not establish rights or legitimate interests in a domain name so as to avoid the application of paragraph 4(a)(ii) of the Policy. The Complainant submits that support for this contention can be drawn from Potomac Mills Limited Partnership v. Gambit Capital Management, WIPO Case No. D2000-0062 and Orange Brand services Limited v. Ancient Holdings, LLC, Wendy Web be, WIPO Case No. D2014-0397

12.2 Respondent

12.2.1 The Respondent has not replied to Complainant's contentions.



13. Panel Observations

- 13.1.1 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 13.1.2 This panel observes that the Complainant by placing documents/ records and evidence in the form of annexures along with the complaint has been able to prove that the Complainant is doing its business under the mark '7ELEVEN'. The Complainant by virtue of its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the '7ELEVEN' mark in respect of its business, products and services.
- 13.1.3 It is observed by this panel that respondent has failed to rebut the allegations of the complainant that mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. The Respondent has further failed to rebut the allegation of the complainant that the Respondent is using the Disputed Domain Name and corresponding website, for commercial gain to misleadingly divert consumers or to tarnish the Complainant's 7-ELEVEN Marks, therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non-commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.
- 13.1.4 It is observed by this panel that Respondent has failed to rebut the allegations of the complainant that the Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its 7-ELEVEN Marks.
- 13.1.5 It is observed by this panel that Respondent has failed to rebut the allegations of the complainant that the inclusion of the well-known mark 'seven' in the Disputed Domain Name in its



entirety, suggests that the intention of the Respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent.

13.1.6 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

13.1.7 It is further observed by this panel that Para 6 of the IN Domain Name Dispute Resolution Policy (INDRP) states :

"Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

- (a) 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;*
- (b) 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*
- (c) 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."*

13.1.8 This panel observe that the respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b). *This Panel holds that the Complainant has proved that the Respondent does not*



have any rights or legitimate interests in the disputed domain name "7ELEVEN-SHOP.ORG.IN.

14. The Registrant's domain name has been registered or is being used in bad faith

14.1 Complainant

14.1.1 The Complainant submits that it is vested with worldwide statutory and common law rights in its 7- ELEVEN Marks since the year 1946 in multiple classes including Classes 09, 14 & 35. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the grave likelihood of creating confusion in the minds of the public. It is probable that consumers searching for the Complainant's 7-ELEVEN stores and products online or the merchandise offered by them may perceive the Disputed Domain Name to be an India-specific domain name of the Complainant. The Complainant submits that this is the Respondent's desired outcome and is in itself evidence of its bad-faith and mala-fide intentions.

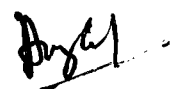
14.1.2 The Complainant submits that the Disputed Domain Name was adopted/ registered by the Respondent on March 01, 2023 which is much subsequent to the Complainant's adoption and use of the 7- ELEVEN Marks and despite being aware of the complainant's well-known trade mark and trade name and the goodwill attached to the same. Such conduct of the Respondent clearly reflects its dishonesty and shows the mala-fide intention of the Respondent. Registration of a domain name containing a well-known mark is strong evidence of bad faith. The Complainant has placed Reliance on Confédération nationale du crédit mutuel v. Yu Ke Rong (WIPO Case No. D2018-0948) wherein the Administrative Panel opined that "Given the reputation and fame of the Complainant's trademark and the Complainant's prior registration of almost identical domain names, the registration of the disputed domain name is clearly intended to mislead and divert consumers to the disputed domain name. Even a cursory Internet search would have

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already made it clear to the Respondent that the Complainant owns a trademark in CREDIT MUTUEL and uses it extensively... In the Panel's view, this clearly indicates the bad faith of the Respondent, and the Panel therefore rules that the Respondent registered the disputed domain name in bad faith." Further reliance has been placed on *Compagnie Générale des Etablissements Michelin Vs. Terramonte Corp, Domain Manager* (WIPO Case No. D2011-1951), wherein it was held that "it is clear in this Panel's view that, at the time the disputed domain name (<mchelin.com>) was registered, Respondent had actual knowledge of Complainant's preexisting rights in the MICHELIN trademark. The Panel, therefore, concludes that Complainant has established that Respondent registered the disputed domain name in bad faith". The Complainant submits that in the present case, at the time of registration of the Disputed Domain Name <7eleven-shop.org.in>, the Complainant had been known by its business/corporate/trade name 7-ELEVEN for nearly seventy-seven years. Even so, the Respondent chose to register the Disputed Domain Name so as to misappropriate the Complainant's 7-ELEVEN Marks in an unabashed and unauthorised manner. .

14.1.3 The Complainant submits that in the case of Amazon.com Inc., Amazon Technologies, Inc. Vs. Giovanni Laporta/Yoyo.Email (WIPO Case No. D2015-0009), while directing the transfer of the domain name amazon support.email> to the Complainant, the Administrative Panel held that: *"A further indication of Respondent's bad faith under the Policy is the fact that the AMAZON Mark predates Respondent's registration of the Disputed Domain Name by twenty (20) years Therefore, based upon the evidence submitted in this proceeding, the Panel finds that Complainant has shown sufficient facts to support a finding that the Disputed Domain Name was registered and used in bad faith pursuant to the Policy paragraph 4(a)(iii)".*

14.1.4 The Complainant has also relied on an arbitral order passed in favour of the Complainant in 7-Eleven, Inc. Vs. Korneliusz Wieteska INDRP Case No.1073 wherein the Independent Arbitrator opined that "The Panel is prepared to accept the



Complainant's contentions that its 7-ELEVEN and other related trademarks and the corresponding business are famous. With regard to Famous Names, successive UDRP panels have found bad faith registration because Complainant's name was famous at the time of registration: WIPO/D2000-0310 [choyongpil.net]". The Complainant further submits that in the present case, the adoption, use and registration of the trademark 7- ELEVEN by the Complainant not only significantly precedes the registration of the Disputed Domain Name but also the mark and the corresponding business have been adjudicated 'famous' and 'well known' by various judicial authorities worldwide - including India. The Complainant submits that therefore, it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

14.1.5 The Complainant submits that given the adoption and use of the Disputed Domain Name more so incorporating the Complainant's well-known mark post its widely publicized commercial launch in India, it can be inferred Respondent had actual knowledge of Complainant's rights in the 7-ELEVEN Marks at the time of registering the Disputed Domain Name.

14.1.6 The Complainant submits that the Disputed Domain Name was registered and/or is being used in bad faith. If the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant, irreparable and insurmountable loss and hardship will be caused to the Complainant.

15. Respondent

15.1 The Respondent has not replied to Complainant's contentions.

16. Panel Observation

16.1 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Respondent registered the disputed domain name in July 2023, by which time the Complainant has been using the mark 7ELEVN mark for many decades. It is observed by this panel that the Complainant has statutory and common law rights in the mark



7ELEVEN and is also using the mark 7ELEVEN on the internet, in other domain names, and as a trading name prior to registration of disputed domain name. It is observed by this panel that in view of the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark 7ELEVEN.

16.2 This panel observe that the Respondent has failed to rebut the contentions of the Complainant that the Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the grave likelihood of creating confusion in the minds of the public and the probability that consumers searching for the Complainant's 7-ELEVEN stores and products online or the merchandise offered by them may perceive the Disputed Domain Name to be an India-specific domain name of the Complainant.

16.3 This panel observe that the Respondent had constructive notice of the Complainant's trademark 7ELEVEN its business, products and services, its wide use on the Internet or otherwise. The Respondent's knowledge in this regard is an indicator of bad faith on its part in having registered the disputed domain name 7ELEVEN-SHOP.ORG.IN.

16.4 According to Paragraph 7 of the INDRP the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

- "(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for 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 over the Registrar's documented out of pocket costs directly related to the domain name; or*
- (b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding*



domain name, provided that the Respondent has engaged in a pattern of such conduct; or

- (c) *by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."*

16.5 The complainant has rightly established that the respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in clause 7(c) of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore, the Panel concludes that the registration by Respondent is in bad faith and has been done with intention to attract internet users to earn monetary benefit. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/ registered the domain name www.7eleven-shop.org.in in its favor in bad faith.

17. Remedies Requested

17.1 The Complainant has prayed to this Administrative Panel: That the .IN Registry of NIXI be directed to transfer the domain name of the Respondent '7 eleven-shop.org.in' to the Complainant;

18. Decision

18.1 The following circumstances are material to the issue in the present case :

18.2 Through its contentions based on documents/records and evidence, the Complainant has been able to establish that the mark "7ELEVEN" is a well-established name globally including India. The complainant has established that the 7ELEVEN, is popularly known exclusively concerning the Complainant. The Complainant has also established that the trademark 7ELEVEN

is inherently distinctive of the products, services and business of the Complainant and has secured trademark protection for 7ELEVEN by registering trademarks.

18.3 The Respondent despite giving the sufficient opportunity, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

18.4 The Complainant has rather has been able to establish by its contentions and records in the form of annexures, that the Respondent has attempted to attract Internet users for profit which is evidence of bad faith. It is therefore established by the complainant that the domain name by itself is being used for attracting internet users for monetary benefits rather than any bona fide offering of goods/services thereunder. This panel while considering the complaint and records in the form of Annexures submitted by the complainant, has concluded that there exist circumstances as stated in para 7(C) of INDRP Policy.

18.5 Taking into account the nature of the disputed domain name and in particular, the “-shop.org.in” extension alongside the Complainant’s mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant’s group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.


18.6 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else’s rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.

18.7 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name [7 **eleven-shop.org.in**] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name [7 **eleven-shop.org.in**] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated : 30 OCTOBER, 2023


AJAY GUPTA
Sole Arbitrator