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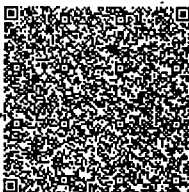
# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No.	: IN-DL14633312573464V
Certificate Issued Date	: 18-Dec-2023 11:31 AM
Account Reference	: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730393219444373583V
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 (One Hundred only)



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IN-DL14633312573464V

INDRP Case No. 1785

Disputed Domain Name: "USPAASSN.IN"

United States Polo Association

Sugarcane Internet Nigeria Limited

### Statutory Alert:

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INDRP ARBITRATION CASE No.1785  
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

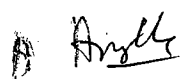
ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

United States Polo Association

Vs.

Sugarcane Internet Nigeria Limited

DISPUTED DOMAIN NAME: **"USPAASSN.IN"**



INDRP ARBITRATION CASE NO.1785  
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

UNITED STATES POLO ASSOCIATION  
1400 Centrepark Blvd., Suite 200,  
West Palm Beach, FL 33401,  
United States of America

... Complainant

VERSUS

DOMAIN ADMINISTRATOR,  
SUGARCANE INTERNET NIGERIA LIMITED,  
4 Akanbi Danmola Street off Ribadu Road,  
Ikoyi, Lagos-106104  
Nigeria (ng)  
Tech Phone:  
(+234)706064784

... Respondent

Disputed Domain Name: **"USPAASSN.IN"**



## 1. THE PARTIES

- 1.1 The **Complainant**, United States Polo Association, in this arbitration proceeding, is the governing body for the sport of polo in the United States and engaged in fashion and lifestyle business, and its contact address is 1400 Centrepark Blvd., Suite 200, West Palm Beach, FL 33401, United States of America.
- 1.2 The Complainant's **Authorized Representative** in this administrative proceeding is Saikrishna & Associates and its contact address is B-140, Sector 51, Noida-201301.
- 1.3 In this arbitration proceeding, the **Respondent** is Domain Administrator, Sugarcane Internet Nigeria Limited, 4 Akanbi Danmola Street off Ribadu Road, Ikoyi, Lagos 106104 Nigeria (ng) as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

## 3. THE DOMAIN NAME AND REGISTRAR

- 3.1 The disputed domain name is "**USPAASSN.IN**" and the Registrar with which the disputed domain name is registered is **GoDaddy.com, LLC** Address: 2155 E Godaddy Way Tempe, AZ, 85284-3409 United States Telephone: +1-480-366-3546 E-mail: [grievanceofficer@godaddy.com](mailto:grievanceofficer@godaddy.com).

## 4. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 4.1 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 28<sup>th</sup> 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.

4.2 The history of this proceeding is as follows :

4.2.1 By Rules 2(a) and 4(a), NIXI on 11.12.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures/documents, and appointed me 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 I submitted the Statement of Acceptance & Declaration of Impartiality and Independence dated 11.12.2023 to NIXI.

4.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 12.12.2023 was emailed to the Respondent on 12.12.2023 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.

4.2.3 This panel vides its Arbitration Notice dated 12.12.2023 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice. However, the respondent via mail dated 12.12.2023 revert back to this panel with auto message "**Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us**"



4.2.4 This panel vide email dated 14.12.2023 directed the Complainant to update the domain complaint with the registrant's missing details and send the same to the Respondent. The Complainant in compliance with this panel's directions via mail dated 16.12.2023 filed the updated complaint before this panel and also emailed the same to the Respondent. The Complainant via email dated 20.12.2023 submitted before this panel, the email delivery receipt dated 16.12.2023 as the proof of supply of the copy of the complaint to the respondent, and also attached/submitted the courier receipt of the courier containing physical copy of the complaint sent to the respondent.

4.2.5 That since the respondent failed to file the reply of the complaint within 10 days i.e. by 21.12.2023 as directed in the arbitration notice dated 12.12.2023, this panel via its email dated 22.12.2023 again in the interest of justice gave one more opportunity to the respondent to file the reply of the complaint if any, within 5 days i.e. by 26.12.23. However, this panel once again received back the reply of the respondent via auto email dated 22.12.2023 with message" **Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us"**

4.2.6 There was no reply received from the Respondent even by 26.12.2023 as directed to Respondent via mail 22.12.2023 of this panel. However, on 27.12.2023 this panel once again in the interest of justice, gave Respondent one last opportunity to file the reply of complaint if any, by December 29, 2023. This time again on 27.12.2023, this panel received back the same auto

message from the mail ID of the Respondent as received earlier stating our office is closed and we are on holiday.

4.2.7 However, once again Respondent failed to respond to the mail sent by this panel and neither replied to the arbitration notice nor filed any reply to the complaint by December 29, 2023. The Respondent, as mentioned above was given many opportunities by this panel to submit his version/reply to the complaint but the respondent failed to file the same. . As this panel was to look into the interest of both the parties to the arbitration, no further opportunity could be given to the Respondent; hence, on 30.12.2023 the Respondent was proceeded ex-parte.

## 5. THE RESPONDENT'S DEFAULT

5.1 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 **"Uspaassn.in"**.

5.2 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."*

5.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN Registry discharged its

responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

- 5.4 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 to the complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The '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 repeated opportunities given in this regard and was proceeded ex parte.

**6. BACKGROUND OF THE COMPLAINANT & ITS SUBMISSIONS ABOUT THE TRADEMARK "USPA", ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION :**

- 6.1 The Complainant, in the present arbitration proceedings to support their case, has relied and placed on records documents as Annexures and made the following submissions :

- 6.1.1 The Complainant submits that the Complainant was founded in 1890 and is the governing body for the sport of polo and the second oldest official sports governing body in the United States. The Complainant submits that in order to promote the game of Polo, the complainant launched its exclusive

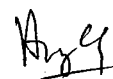


official brand- "U.S. Polo Assn." ("USPA") globally. Under this brand, the Complainant offers apparel for men, women and children, as well as accessories and travel and home goods in approximately 185 countries across the world.

6.1.2 The Complainant submits that over the course of time, the Complainant has risen in global reach and is today a premier name in the fashion and lifestyle industry. Due to the high quality of its products, the Complainant has developed into a global market leader in the men's, women's and children's apparel, accessories, handbags, eyewear, footwear, among others. The Complainant submits that its extensive sales and its global outreach are a result of worldwide distribution of the Complainant's products through over 1,200 U.S. Polo Assn. branded stores, as well as many thousands of independent retail and department stores and e-commerce platforms.

6.1.3 The Complainant submits that the trademark "USPA", an abbreviation for the Complainant's trade name/ trademark "United States Polo Association", was adopted in the year 1983. Thereafter, the Complainant commenced use of its brand "USPA" in India as far back as 1999.

6.1.4 The Complainant submits that the "USPA" trademark has acquired substantial goodwill and is an extremely valuable commercial asset of the Complainant. The Complainant is thus the proprietor of the trademark "USPA" by virtue of priority in adoption, continuous



and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade.

6.1.5 The Complainant further submits that in addition to the common law rights accruing in favour of the Complainant's "USPA" trademark, the Complainant is also the registered proprietor of the said mark. The earliest registration for the mark "USPA" in India dates back to December 05, 2013. The Complainant submits that the Complainant also holds registrations for the mark "USPA" and its formative in various international jurisdictions.

6.1.6 The Complainant submits that the Complainant's goods under the trademark "USPA" have been the subject of widespread unsolicited media publicity. The Complainant's goods under the trademark "USPA" have also been extensively publicized on various social media platforms it has widespread presence on the internet.

6.1.7 The Complainant submits that, the Complainant is extremely active and vigilant in enforcing and protecting its rights in its trademark "USPA". The Complainant further submits that the actions taken by the Complainant include filing trademark applications, registering domain names, filing domain name complaints, filing oppositions against third party infringing marks with the Indian Trade Marks Registry, regularly sending Legal Notices to third parties.

*Angeli*

6.1.8 The Complainant further submits that the Complainant  
Is the registered owner of various domain names.

## 7. THE ISSUES INVOLVED IN THE DISPUTE

7.1 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:-*

*The disputed domain name is identical or  
confusing similar to a trademark in which the  
Complainant has statutory/common law rights.*

*The Respondent has no rights or legitimate  
interests in respect of the disputed domain  
name.*

*The disputed domain name has been registered  
or is/ are being used in bad faith."*

7.2 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.

## 8. PARTIES' CONTENTIONS

8.1 The domain name is identical or confusingly similar to  
a trademark or service mark in which the  
Complainant has rights;

### COMPLAINANT

8.2 The Complainant submits that the present complaint is  
being filed on account of the unauthorized and illegal

registration and use of the Complainant's registered trademark "USPA" as part of the disputed domain name <uspaassn.in>. The Complainant submits that the Complainant offers for sale various products under the trademark "USPA" and is the registered proprietor of the well-known brand/trademark "USPA".

8.3 The Complainant submits that the Complainant adopted the trademark "USPA" globally in the early 1980s and in India in the late 1990s and the Complainant is the rightful proprietor of the trademark "USPA" by virtue of priority in adoption, registration, continuous and extensive use, widespread advertising and the tremendous reputation accruing in the course of trade.

8.4 The Complainant further submits that the disputed domain name subsumes the Complainant's registered and well-known trademark "USPA" and the disputed domain name comprises of the Complainant's well-known trademark "USPA" in its entirety. The Respondent has made an addition of the term "assn", which is also extensively used and protected by the Complainant as part of its trademark "US Polo Assn.". The Complainant submits that in the light of the glaring identity between the disputed domain name and the Complainant's trademark, an Internet user may be misled when coming across the disputed domain name. In this regard, the complainant has relied on the following cases :

(a) Instagram, LLC v. Osbil Technology Ltd., Case No. INDRP/1194, wherein the Panel held that "the domain name ww.instagrampanel.in is identical and confusingly similar to the trademark "INSTAGRAM" of the complainant".

- (b) The Ritz Hotel, Ltd. v. Damir Kruzicevic, Case No. D2005-1137, where the Panel stated that "...Numerous WIPO panels have found that a domain name that wholly incorporates the complainant's registered mark may be sufficient to establish confusing similarity for the purposes of the Policy...".
- (c) Nike Innovative C.V. Vs Amy Hill, Case No. INDRP/1288, where the Panel held that "The domain name www.nikestore.in substantially incorporates the Complainant's brand "NIKE" and couples it with the generic word "STORE" which clearly refers to a key element of the Complainant's business, namely a retail store. Therefore, this domain name is identical/confusingly similar to the Complainant's brand "NIKE".
- (d) Royal Multisport Private Limited. v. Deepak Jawade Case No. D2023-0048 wherein the Panel held that "where a domain name incorporates the entire trademark, the domain name will generally be considered identical or confusingly similar to the mark for purposes of UDRP standing". Given that the Complainant's distinctive trademark "USPA" has been blatantly and entirely copied by the Respondent in the disputed domain name, is sufficient to establish confusion for the purposes of the Policy.

8.5 The Complainant submits that the Complainant has established its rights in the trademark "USPA" on account of its extensive global use and trademark registrations, and any consumer when reading the disputed domain name would get confused with the Complainant's trade mark "USPA" as it consists solely of the Complainant's said registered trademark. The Complainant has relied on the



case of LEGO Juris A/S Vs Domain Administrator, Rich Premium Limited Case No. D2014-1565, wherein it was held that "The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration which predate the date of registration of the disputed domain names by several decades. The disputed domain names are identical to the Trade Mark. The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark."

- 8.6 The Complainant submits that owing to the disputed domain name subsuming Complainant's multiple registered trademarks in India and globally along with the extensive use of the trademark "USPA", the relevant public and the people visiting the disputed domain name will definitely associate the said disputed domain name with the Complainant alone. The Respondent further submits that the Respondent applied for the disputed domain in September 2023, which is much subsequent to the date of adoption & use of the trademark "USPA" by the Complainant, i.e., the 1980s. As such, the disputed domain name is identical to the Complainant's prior marks in which the Complainant has prior rights.
- 8.7 The Complainant further submits that an Internet user who carries out a WhoIs search for the disputed domain name will find that the registration of <uspaassn.in> is not in the name of the Complainant. This will further exacerbate the severe confusion in the mind of such a user and would mislead a user into believing that the Respondent is in some way associated with or affiliated to the Complainant, or that the Respondent is acting with the consent or endorsement of the Complainant, which is not the case. The Complainant further submits that, it is also pertinent to

state that a Google search for the trademark "USPA" would reveal several web links to the Complainant's goods under the trade mark "USPA".

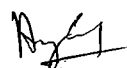
- 8.8 The Complainant submits that the disputed domain name <uspaassn.in> is identical with the Complainant's well-known brand/trademark "USPA".

### **RESPONDENT**

- 8.9 The Respondent has not replied to Complainant's contentions.

### **9. PANEL OBSERVATIONS**

- 9.1 This Panel on pursuing the documents and records submitted by Complainant observes that the complainant United States Polo Association is the governing body and promoter for the sport of polo based in United States, and has launched its exclusive official brand- **"U.S. Polo Assn."** (**"USPA"**) globally. The Complainant is a premier name in the fashion and lifestyle industry worldwide and under this brand, offers apparel for men, women and children, as well as accessories and travel and home goods in many countries across the world.
- 9.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark **"USPA"**. It is also observed by this panel, that the Complainant has successfully secured registrations globally for the **USPA** marks including in India. The Complainant has proved that it has trademark rights and other rights in the mark **"USPA"** by submitting substantial documents in support of it. This panel further observe that the term



**"assn"**, is also extensively used and protected by the Complainant as part of its trademark **"US Polo Assn."**.

- 9.3 It is further observed by this panel that the trademark **"USPA"** and **"ASSN"** together in the Disputed Domain Name **"uspaassn.in"** comprises the Complainant's trademarks 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 by this panel that suffix **"in"** is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.
- 9.4 This panel, therefore, is of opinion that the disputed domain name **"upsaassn.in"** being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to the 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 **"USPA"** of the Complainant.
- 9.5 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.
- 9.6 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name **"USPAASSN"** 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.

**The Respondent has no rights or legitimate interest in respect of the disputed domain name**

**9.7 COMPLAINANT**

9.7.1 The Complainant submits that the Respondent has no proprietary or contractual rights in the Complainant's trademark "USPA" in whole or in part. It is submitted by the complainant that Respondent could have no possible justification for registering the disputed domain name which comprises solely of the Complainant's well-known trademark "USPA". The Respondent has, therefore, registered a domain name that is identical to the Complainant's well-known trademark, without the Complainant's consent or authorization and with no rights or legitimate interests with respect of the disputed domain name. The Complainant has relied on the findings by the Panel in F. Hoffmann-La Roche AG v. WhoisGuard, Inc. Case No. D2018- 2495 wherein, it was held that "...the Complainant makes it clear that it has given no license or authorization to the Respondent to use the KLONOPIN trademark, and that its use without the Complainant's authorization would violate the Complainant's rights in its KLONOPIN trademark...At the same time there is no evidence that the Respondent has any right or legitimate interest in the disputed domain name... the Panel finds that the

Respondent has no rights or legitimate interest in the disputed domain name...".

9.7.2 The Complainant submits that it is the registered proprietor of the trade mark "USPA", in several jurisdictions. As such, the trade mark "USPA" has become highly distinctive of the Complainant's goods and is well-known. The Complainant has relied on the findings by the Panel in Aditya Birla Management Corp v Chinmay INDRP 1197, wherein the Panel relied upon Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000- 0003 which held that "Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration."

9.7.3 The Complainant further submits that, the Respondent is not commonly known by the disputed domain name nor does the Respondent engage in any business or commerce under the trademark and/or 10 trade name "USPA". The Complainant has no relationship with the Respondent. In this regard, the Complainant has relied on the decision of this Hon'ble Tribunal in The Toro Company Vs Dick Egy, Case No. FA1404001553926, wherein it was held that "if a respondent is not commonly known by the disputed domain name, then the Respondent cannot have any

legitimate rights or interests in the same". As such, the Respondent's rights and legitimate interests in the disputed domain name are highly questionable.

9.7.4 The Complainant submits that the Respondent's lack of rights and legitimate interest is further substantiated by the fact that the Respondent has not made any legitimate use of the disputed domain name. The Complainant further submits that, there is no evidence whatsoever of the Respondent's use of, or demonstrable preparations to use, the disputed domain name, in connection with a bona fide offering of goods and/or services. To the contrary, the Respondent almost certainly registered the disputed domain name to divert Internet users to the Respondent's pay-per-click parking page. The Complainant submits that, it appears that under the attendant circumstances, the Respondent's use of the disputed domain name for a payper-click parking page does not constitute use of the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Complainant has relied on the Panel's findings in SGII, Inc. v. New Ventures Services, Corp. WIPO Case No. D2019-2748 wherein, it was held that "...The factual record does not suggest that Respondent is commonly known as the disputed domain name or any portion thereof. Moreover, Respondent's use of the disputed domain name in connection with a pay-per-click website as done here is not a legitimate or bona fide use.". The Complainant further submits that, the third-party pay-per-click links leading directly to websites of third

parties also engaged in the same industry, i.e., apparel industry, violate the Complainant's rights in its registered trade mark "USPA". This further substantiates the Respondent has no rights or legitimate interest in the disputed domain name.

9.7.5 The Complainant has put reliance on Facebook, Inc. Vs S. Demir Cilingir WIPO Case No.D2018-2746 wherein the Panel was satisfied that "although the disputed domain name does not currently resolve to an active website, there is no evidence that the Respondent has made any preparations to use that domain name in connection with a bona fide offering of goods or services. The fact that the disputed domain name temporarily resolved to a parking page ...does not in the present case give rise to any rights or legitimate interests in the Domain Name."

#### 9.8 **RESPONDENT**

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

#### 10. **PANEL OBSERVATIONS**

10.1 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.

10.2 This panel observes that the Complainant by placing documents/records and evidence along with the complaint has been able to prove that the Complainant is trading and doing its business under the mark '**USPA**' in many countries including India. The Complainant by 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 '**USPA**' mark in respect of its business.

- 10.3 Whereas, it is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that , the Respondent has no proprietary or contractual rights in the Complainant's trademark "**USPA**" in whole or in part and the Respondent could have no possible justification for registering the disputed domain name which comprises solely of the Complainant's well-known trademark "**USPA**". The Respondent has also failed to rebut the allegations of the complainant that the Respondent has registered a domain name that is identical to the Complainant's well-known trademark, without the Complainant's consent or authorization and with no rights or legitimate interests with respect of the disputed domain name.
- 10.4 It is also observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the Respondent is not commonly known by the disputed domain name nor does the Respondent engage in any business or commerce under the trademark and/or trade name "**USPA**", and the Complainant has no relationship with the Respondent.
- 10.5 It is further observed by this panel that the Respondent has failed to rebut the contention of the Complainant, that the Respondent has not made any legitimate use of the disputed domain name and that there is no evidence whatsoever of the Respondent's use of, or demonstrable preparations to use, the disputed domain name, in connection with a *bona fide* offering of goods and/or services. That the Respondent also failed to rebut the

allegations of the complainant that the Respondent registered the disputed domain name to divert Internet users to the Respondent's pay-per-click parking page, and under the attendant circumstances, the Respondent's use of the disputed domain name for a payper-click parking page does not constitute use of the disputed domain name in connection with a *bona fide* offering of goods or services.

10.6 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.

10.7 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."*

- 10.8 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): For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name" **USPAASSN.IN".**

**The domain name was registered or is being used in bad faith.**

#### **COMPLAINANT**

- 10.9 The Complainant submits that Paragraph 7 of the Policy lists three circumstances that, without limitation, shall be evidence of the registration and use of a domain name in bad faith. These circumstances should be given close attention in the light of the facts of this case :
- (a) circumstances indicating that you have 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 your documented out-of-pocket costs directly related to the domain name; or

- (b) you have registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, if you have engaged in a pattern of such conduct; or
- (c) by using the domain name, you intentionally attempt to attract Internet users to your website and 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 your website or location or of a product or service on your website or location; or

10.10 The Complainant submits that the Respondent has registered the disputed domain name solely with an ulterior motive to make monetary profits by providing a space for advertisement of third party websites listing the Complainant's products to disrupt the legitimate business of the Complainant set up through its authorized channels of distribution and sale.

10.11 The Complainant submits that the lack of any legitimate, good faith use suggests the Respondent's strong bad faith. The disputed domain name was registered by the Respondent after complete knowledge of the Complainant's extremely popular trademark "USPA" with an ill-motive to gain unfair advantage.

10.12 The Complainant further submits that the Respondent has parked the disputed domain consisting of the Complainant's well-known trademark "USPA" and such dishonest use amounts to use and registration in bad faith. The disputed domain name is not only registered in bad faith but is also being used by the Respondent in bad faith, as it has never been used in relation with any active website but simply



lists pay-per-click advertisement links of the Complainant's competitors. In support, the Complainant has relied on the Panel's decision in *Overstock.com, Inc. v. Metro Media*, WIPO Case No. DME2009-0001 "the Respondent's use of the Domain Name is not "non-commercial or fair use" under paragraph 4(c)(iii) of the Policy, given that Respondent is seeking commercial gain from its use of the Domain Name by establishing a parked page with pay-per-click advertisements that compete with Complainant's services. Therefore, the Domain Name is used for commercial purposes and paragraph 4(c)(iii) is not applicable.". This was referred to by the Panel in *Sodexo v. Domain Privacy, Above.com Domain Privacy Case No. D2021-0592*.

10.13 The Complainant submits that, it is not unlikely that the Respondent is receiving pay-per-click fees from the linked competitors' websites that are listed on the disputed domain name and are being used for its own commercial gain. The use of the disputed domain name to host a parked page comprising pay-per-click links of the complainant's competitors does not represent a bona fide offering. The Complainant places reliance on *Ferring B.V. v. Domain Administrator, Fundacion Privacy Services LTD. Case No. D2021-0784* wherein it was observed that –

*"As regards bad faith use, the Domain Name redirected at times to websites displaying links to third party websites, which suggests that, presumably, Respondent received PPC fees from the linked websites that were listed thereon. It has been recognized that such use of another's trademark to generate revenue from Internet advertising can constitute registration and use in bad faith.". Reliance is also placed on *Actavis Pharma PTC vs Actavis Pharma INDRP 1516**

*which relied upon the decision in Mayflower Transit LLC v Domains by Proxy Inc / Yariv Moshe WIPO D2007-1695 "That Respondent combined MAYFLOWER with "movers" and linked its domain name to a search page with sponsored links for moving services indicates that Respondent intended to create confusion with Complainant's trademark. As Respondent itself appears to be in the moving business, Respondent's efforts to register the domain name and use it on a sponsored links page indicates the registration was made to disrupt the business of Complainant, a competitor."*

10.14 The Complainant submits that the Respondent has no intention of bona fide use of the disputed domain name and, instead, is seeking to make unfair and illegal commercial gain, and cause immense losses to the complainant. The Complainant further submits that if the motive of the Respondent was bona fide, the Respondent could well have chosen a domain name that was not identical to Complainant's and/or in which Complainant had no rights. Hence, the Respondent registered the disputed domain name with mala fide intentions.

10.15 The Complainant submits that the date of registration of the disputed domain name appears to be September 2023, and is significantly subsequent to the dates of adoption & use of the Complainant's mark USPA. The Complainant is extremely well-known and popular and there is virtually no possibility that the Respondent was unaware of its existence or presence in the market. The Complainant submits that it has been observed in Signify Holding B.V. v. Private Registration / Tomas Baran, Case No. D2019-3135, that "In any event it is well established that registration of

a well known trade mark as a domain name is itself likely to give rise to a finding of bad faith". Previously in *Mari Clarie Album v. Marie-Claire Apparel Inc.* D2003-0767, *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. Herreveld*, D2000-0776, *Adidas-Salomon AG v. Domain Locations* D2003- 0489, it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is sufficient to amount to bad faith. The Complainant accordingly submits, that by no stretch of imagination can it be conceived that the Respondent was unaware of the staggering presence of the Complainant and its rights in the trademark "USPA".

10.16 The Complainant submits that the Respondent has registered the domain name primarily for the purpose of disrupting the business of the Complainant and the disputed domain name, therefore, has been registered in bad faith.

### **RESPONDENT**

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

### **11. PANEL OBSERVATION**

11.1 Paragraph 7 of the INDRP provides that 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."*

11.2 This panel while going through the complaint and documents which are placed in the form of exhibits has observed that the Respondent registered the disputed domain name in September 2023, by which time the Complainant has been using the mark **USPA** mark for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark **USPA** worldwide including in India and Complainant is also using the **USPA** mark on the internet, in other domain names, and as a trading name before registration of disputed domain name. It is observed by this panel that given 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 **USPA**.

- 11.3 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that the Respondent has registered the disputed domain name solely with an ulterior motive to make monetary profits by providing a space for advertisement of third party websites listing the Complainant's products to disrupt the legitimate business of the Complainant set up through its authorized channels of distribution and sale.
- 11.4 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant s that the lack of any legitimate, good faith use suggests the Respondent's strong bad faith and the disputed domain name was registered by the Respondent after complete knowledge of the Complainant's extremely popular trademark "**USPA**" with an ill-motive to gain unfair advantage.
- 11.5 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that the date of registration of the disputed domain name appears to be September 2023, and is significantly subsequent to the dates of adoption & use of the Complainant's mark **USPA**. The Complainant is extremely well-known and popular and there is virtually no possibility that the Respondent was unaware of its existence or presence in the market.
- 11.6 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that , the Respondent has parked the disputed domain consisting of the Complainant's well-known trademark "**USPA**" and such dishonest use amounts to use and registration in bad faith and the disputed domain name is not only registered in bad faith but is also being used by the Respondent in bad faith,

as it has never been used in relation with any active website but simply lists pay-per-click advertisement links of the Complainant's competitors.

- 11.7 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. 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 in its favor in bad faith.

## 12. **REMEDIES REQUESTED**

- 12.1 The Complainant has prayed to this Administrative Panel for the transfer of domain name **<uspaassn.in>** to the complainant, and awarding the costs of present proceedings in favour of the Complainant and against the Respondent.

## 13. **DECISION**

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

- 13.1.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark **"USPA"** is a well-established name globally including India in fashion and lifestyle industry. The Complainant has established that the trademark **USPA** is inherently distinctive of

the products, services, and business of the Complainant and has secured trademark protection for **USPA** by registering trademarks in many countries including India.

13.1.2 The Respondent, despite repeated opportunities given, 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.

13.1.3 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 gain 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 rather than any bona fide offering of goods thereunder. While considering the complaint and records in the form of annexures submitted by the Complainant, this panel has concluded that there exist circumstances as stated in para 7(C) of INDRP Policy.

13.1.4 Taking into account the nature of the disputed domain name "**USPAASSN.IN**" and in particular, the ".in" extension alongside the Complainant's marks **USPA** and addition of the term "**ASSN**", which is also extensively used and protected by the Complainant as part of its trademark "**US Polo Assn.**" is confusingly similar, and 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.

13.1.5 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.

13.1.6 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 also failed to do that. The Respondent's registration and use of the domain name **[uspaassn.in]** are in bad faith for illegal commercial gains. 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 **[uspaassn.in]** be transferred from the Respondent to the Complainant, requesting NIXI to monitor the transfer.



**New Delhi, India**  
**Dated : 31 December, 2023**

**[AJAY GUPTA]**  
**Sole Arbitrator**