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 Unique Doc. Reference : SUBIN-DL71730382923857883847V
 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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Please write or type below this line IN-DL09312007468677V

INDRP Case No. 1794
 Disputed Domain Name: "THEWHOLETRUTHFOODS.IN"
 FITSHIT HEALTH SOLUTIONS PRIVATE LIMITED
 Vs.
 AKSHAY SINGH SHEKHAWAT

[Signature]

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INDRP ARBITRATION CASE NO.1794
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

FITSHIT HEALTH SOLUTIONS PRIVATE LIMITED

Vs.

AKSHAY SINGH SHEKHAWAT

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



INDRP ARBITRATION CASE NO.1794
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

FITSHIT HEALTH SOLUTIONS PRIVATE LIMITED
4th Floor, A Wing, Krislon House
Krishanlal Marwah Road, Saki Vihar Road
Andheri (East), Mumbai-400072 (MAHARASHTRA)
India. ...Complainant

VERSUS

AKSHAY SINGH SHEKHAWAT
AB 332, Nirman Nagar
Jaipur-302019 (RAJASTHAN). ... Respondent

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



1. The Parties

- 1.1 The Complainant FITSHIT HEALTH SOLUTIONS PRIVATE LIMITED in this arbitration proceeding is a wellness solutions and health food manufacturing company, and its contact address is: Fitshit Health Solutions Private Limited 4th Floor, A Wing, Krislon House, Krishanlal Marwah Rd, Saki Vihar Rd, Andheri East, Mumbai-400072 (MAHARASHTRA) - [INDIA].
- 1.2 The Complainant's Authorized Representative in this administrative proceeding is/are Arpit Kalra & Pranit Biswas S.S. Rana & Co., Advocates Registered Office Address: 317, Lawyers Chambers, High Court of Delhi, New Delhi - 110003, India Telephone: +91-11 - 40123000, 8448584675, 9311953442 Fax: +91-11-40123010 Email ID : inf@ssrana.com.
- 1.3 In this arbitration proceeding, Mr. Akshay Singh Shekhawat, address: AB 332 Nirman Nagar, Jaipur-302019 (RAJASTHAN) is the Respondent 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 "THEWHOLETRUTHFOODS.IN" and the Registrar with which the disputed domain name is registered is GoDaddy.com, LLC Email: infoe, Q.odaddv.com, abuse(@godaddv.com, arb<@godaddv.com, care@scrsvices.godaddy.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 04.12.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures, 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 and Declaration of Impartiality and Independence Dated 04.12.2023 to NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 05.12.2023 was emailed to the Respondent on 05.12.2023 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.

3.2.3 This Authorized Representative of the Complainant via email dated 05.12.2023 informed



this panel about the compliance of direction for supply of copy of complaint with annexures to the respondent, and in support of this also attached/ furnished the proof of service of the same. The Complainant via its email dated 13.12.2023 also submitted the proof of delivery of the copy of the complaint to the Respondent.

3.2.4 This panel vide its Arbitration Notice dated 05.12.2023 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice and therefore respondent was supposed to file the reply of the complaint by 14.12.2023.

3.2.5 However, since the Respondent failed to file the reply of Complaint, if any, within time i.e. by 14.12.2023 as directed by this panel, this panel again in the interest of justice vide its mail dated 15.12.2023 granted a further period of 05 days i.e. by 19.12.2023 to the respondent to file the reply of the complaint. The Respondent, despite the receipt of Notice Dated 05.12.2023 and reminder dated 15.12.2023 neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 20.12.2023 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 **"thewholetruthfoods.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 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 these circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has



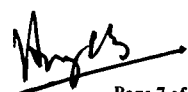
not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. Background of the Complainant & its Submissions about the trademark " THE WHOLE TRUTH ", its statutory and common law rights Adoption :

5.1 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 :

5.1.1 The Complainant submits that Fitshit Health Solutions Private Limited (hereinafter referred to as "Complainant") is a company incorporated under the Companies Act, 2013, and includes its predecessors- in- interest, group companies including subsidiary companies and sister concerns, franchisees, licensees, affiliates, associates, dealers/sub-dealers retailers and distributors etc.

5.1.2 The Complainant submits that the Complainant with a mission to serve people with facts and wellness solutions had started a fitness blog in 2017, covering various health topics revolving around the idea of going from fat-to-fit which were published on The Quint and Medium.com. The said fitness blogs, now available on the website fitshit.in, also provide health and wellness tips, focusing on topics such as Diet & Body Busies. Intermittent Fasting. Myth Buster. Filnc Hacks Product Reviews and sheds light on transformational stories as well.



- 5.1.3 The Complainant submits that by 2019, the Complainant's blog gained significant traction which lead the Complainant to launch their brand of healthy range of food products under the name/mark THE WHOLE TRUTH which is a 100% clean and simple alternative to commonly consumed packaged foods, offering a variety of healthy options from protein bars to chocolates and beyond. THE WHOLE TRUTH products are made of homely ingredients and minimally processed dry fruits like cashews, almonds and dates, mixed with pure cocoa with raw, unadulterated whey for that extra boost of protein.
- 5.1.4 The Complainant submits that, it with the motive to spread awareness amongst its consumers as well as the general public has also started an initiative under the name THE WHOLE TRUTH food and provides courses on food & Nutrition.
- 5.1.5 The Complainant submits that the domain THEWHOLETRUTHFOODS.COM was registered on May 05, 2020 and the Complainant is the registered proprietor of the trade mark THE WHOLE TRUTH and variations thereof in various classes, in India.
- 5.1.6 The Complainant submits that the said registrations are valid and subsisting and by virtue of the said registrations, Complainant has the exclusive and statutory rights to use the said trade marks in respect of the

goods/services for which they have been registered. The Complainant further submits that it has also registered the trade mark THE WHOLE TRUTH in different classes in various countries.

5.1.7 The Complainant submits that it has earned substantial revenue running into 5 crores of rupee by sale of THE WHOLE TRUTH products. Further, the Complainant has been spending substantial amount since its inception for promoting its brand THE WHOLE TRUTH by means of print and electronic media.

5.1.8 The Complainant further submits that the Complainant's start up initiative THE WHOLE TRUTH has been covered by various print media houses.

5.1.9 The Complainant further submits that in addition to Complainant's official websites, Complainant also uses the medium of social networking to promote its brand THE WHOLE TRUTH. Therefore, the Complainant has been promoting its business on various social networking sites such as Facebook (9.7K Followers as on October 26, 2023), LinkedIn (27.3K Followers as on October 26, 2023), Instagram (249K Followers as on October 26, 2023), YouTube (37.3K Followers as on October 26, 2023) and X (formerly Twitter) (3.9K Followers as on October 26, 2023).



5.1.10 The complainant submits that Complainant's THE WHOLE TRUTH products are available for sale on various well known and popular online shopping websites in India, such as www.amazon.in, www.flipkart.com, www.blinkit.com, etc. It is pertinent to mention that with the internet, the Indian consumer's awareness of Complainant's products and the marks/names associated with them has been heightened considerably.

5.1.11 The Complainant further submits that by virtue of continuous extensive use and quality of Complainant's products, Complainant's business has acquired substantial reputation in the industry and its trade marks THE WHOLE TRUTH which are always associated with its business and products alone. Complainant's trademark The Whole Truth/is well known and famous in India within the meaning of Section 2(1)(zg) of the Act. The Trade Marks Act, 1999 provides for protection of well-known marks in India.

5.1.12 The Complainant submits that it make every effort to protect its trade mark rights. Protection of Complainant's trademarks extends beyond registration activities to enforcement actions, which include sending cease and desist letters to infringers of the identical or marks similar to Complainant's trademarks.



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

6.1 The Complainant submits that it was recently brought to the Complainant's notice that a domain name, namely <THEWHOLETRUTHFOODS.IN> was registered on January 27, 2020 by the Respondent/Registrant. An internet search revealed that a parked page hosting several pay-per-click advertisements (that too pertaining to similar products) is being hosted at the said webpage.

6.2 The Complainant further submits that as the domain name <THEWHOLETRUTHFOODS.IN> incorporates the Complainant's registered trade mark THE WHOLE TRUTH in entirety; registered domain "THEWHOLETRUTHFOODS.COM"; and its label/ brand under the name The Whole Truth, the Complainant is constrained to file the present complaint, in order to safeguard its valuable Intellectual Property Rights.

7. The issues involved in the dispute

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/is being used in bad faith.

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 <THEWHOLETRUTHFOODS.IN> is identical to a trade mark in which Complainant has rights.

COMPLAINANT

- 8.2 The Complainant submits that it is the registered proprietor of the trademark THE WHOLE TRUTH in many countries around the world, including in India, and has been continuously and exclusively, using the same in relation to its business for many years. The Complainant further submits that it has continuously been in use of the brand since the year 2020, which is much prior to the date on which Respondent registered the domain, <THEWHOLETRUTHFOODS.IN>. By virtue of long standing use and registration. Complainant's trademark THE WHOLE TRUTH qualifies to be a well-known mark is bound to be protected.
- 8.3 The Complainant submits that the impugned domain name <THEWHOLETRUTHFOODS.IN> comprises of the Complainant's registered trade mark THE WHOLE



TRUTH in toto and is identical to the prior registered domain THEWHOLETRUTHFOODS.CO and is therefore visually, phonetically, deceptively and confusingly identical to the Complainant's prior registered trade mark THE WHOLE TRUTH as well as its existing domain containing the name/mark THEWHOLETRUTHFOODS.

- 8.4 The Complainant submits It is a well-settled principle and has been held by numerous prior panels deciding under the INDRP that, where the disputed domain name wholly incorporates the Complainant's trade mark, the same shall be sufficient to establish deceptive similarity.
- 8.5 The Complainant submits that the Hon'ble Supreme Court of India had in the case of Satyam Infway Ltd. v. Sifynet Solutions Pvt. Ltd., [2004S11pp. (2) SCR 465/ held that the domain name has acquired the characteristic of being a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. This has been observed by prior panels in numerous cases, including but not limited to, Dell Inc. v. Mani. Soniya INDRI'/753, Patagonia Inc. v Doublefist Ltd. (INDRP/1185), Factory Mutual Insurance Company v. Rhianna leatherwood WIPO Case No. D 2009 and Avanti Feeds Limited v. Pradeep Chaturvedi (INDRP/1388). Further, it has also been observed by the panel in Zippo Manufacturing Company Inc. Vs Zhaxia (INDRP/840) - "the Respondent has picked up the mark without changing even a single letter when a domain name wholly incorporates a



complainant's registered mark that is sufficient to establish identity or similarity for purpose of the Policy."

- 8.6 The Complainant has also placed Reliance on a prior decision of this Panel in M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705 wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much before the date of creation of the disputed domain name <americancagle.co.in> by the Respondent, wherein it was held that –

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."

- 8.7 The Complainant further submits that in the present dispute as well, the Complainant has acquired rights in the mark THE WHOLE TRUTH by way of trademark registrations, and by virtue or use as part of their domain names since much prior to the date on which the Respondent created the impugned domain <THEWHOLETRUTHFOODS.IN> incorporating the Complainant's registered trade mark as well as well



as its existing domain containing the name/mark <THEWHOLETRUTHFOODS.COM>.

8.8 The Complainant submits that the evident identity between Respondent's domain name and Complainant's marks, domain names and brand name incorporating "THEWHOLETRUTH" is likely to mislead, confuse and deceive Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of Respondent's domain name. As evidenced in the preceding paragraphs, Complainant's rights over the marks THE WHOLE TRUTH significantly predate Respondent's registration of the impugned domain <THEWHOLETRUTHFOODS.IN>, which as per the WHOIS records, was only registered/created on January 27, 2023.

RESPONDENT

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

8.10 Panel Observations

8.10.1 This Panel on pursuing the pleadings, documents and records submitted by Complainant observes that Complainant Fitshit Health Solutions Private Limited is a wellness solutions and Health food manufacturing company in India with presence globally. This panel further observes that by virtue of long, continuous and uninterrupted use the products being manufactured under the House Mark 'THE WHOLE TRUTH' have acquired distinctiveness and are associated solely with the Complainant.



8.10.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark "THE WHOLE TRUTH". It is also observed by this panel that the Complainant has successfully secured registration for the THE WHOLE TRUTH marks not only in India but also in other countries. The Complainant has proved that it has trademark rights and other rights in the mark "THE WHOLE TRUTH" by submitting substantial information and documents in support of it.

8.10.3 It is observed by this panel that the trademark that the Disputed domain "thewholetruthfoods.in" comprises the Complaint's trademarks "THE WHOLE TRUTH" 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 and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark. It is further observed by this panel that the impugned domain name <THEWHOLETRUTHFOODS.IN> is identical to the Complainant's prior registered domain THEWHOLETRUTHFOODS.CO.

8.10.4 This panel, therefore, is of opinion that the disputed domain name "thewholetruthfoods.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 "THE WHOLE TRUTH" of the Complainant.

8.10.5 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.

8.10.6 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.

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

Complainant

9.1 The Complainant has submitted that Respondent has no rights or legitimate interests in the domain name <THEWHOLETRUTHFOODS.IN> and the Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name THE WHOLE TRUTH and/or its phonetic equivalents/variations, and Respondent does not have any affiliation or connection with Complainant or with Complainant's goods under the name/mark THE WHOLE TRUTH. It is further submitted by the complainant that THE WHOLE



TRUTH is a unique combination of terms coined by the Complainant, having no dictionary meaning, and the Respondent does not prima facie have any reason, to use the Complainant's well-known trade name/trading style and registered trademark "THE WHOLE TRUTH". The same constitutes prima facie proof in favour of the Complainant under Paragraph 4 (b)-that the Respondent does not have any rights or legitimate interests in the domain name. Reliance is placed on Career Builder, LLC Vs Stephen Baker, Case No.D2005-0251.

- 9.2 The Complainant further submits that , the Respondent cannot assert that it has made or that it is currently making any legitimate non-commercial or fair use of the domain name, in accordance with Paragraph 6 of the .IN Policy and the same is also corroborated by the fact that no website is currently operational from the said domain. Instead, a parked page featuring several pay-per-click (PPC) links advertising various related services, are currently featuring on the impugned domain. It has been held by prior panels that use of such PPC links do not constitute legitimate right or interest and in addition is prima facie evidence of bad faith.
- 9.3 The Complainant submits that the Respondent is also ineligible to sustain their rights under the ambit of Paragraph 6 (b) of the INDRP, given the fact that the Respondent has held the impugned domain for 09 months, despite having no legitimate use thereof. Thus, they most certainly are not in any capacity



commonly known by the impugned domain name <THEWHOLETRUTHFOODS.IN> and in no way have any claim under Paragraph 6 of the INDRP.

- 9.4 The Complainant submits that , it is also clear that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 6 (c) of the INDRP. Further, any use of the domain name <THEWHOLETRUTHFOODS.IN> in the future by Respondent is likely to create a false association and affiliation with the Complainant and its well-known trade mark as well as brand name THE WHOLE TRUTH. Therefore, it is submitted by the Complainant that the Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate non-commercial or fair use of the domain name in accordance with Paragraph 6 of the .IN Policy.
- 9.5 The Complainant submits that the Respondent herein has registered the disputed domain <THEWHOLETRUTHFOODS.IN> approx. 3 years after the creation / registration of the domain name <THEWHOLETRUTHFOODS.COM> by Complainant as well as Complainant's use on the marks THE WHOLE TRUTH and its trademark registrations. Under the circumstances of this case, Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 6 (c) of the .IN Policy since there is no apparent legitimate justification for Respondent's registration of the <THEWHOLETRUTHFOODS.IN> domain name, that is



visually, phonetically, conceptually deceptively and confusingly similar/ identical to Complainant's trade name/mark.

- 9.6 The Complainant submits that the continued ownership of the disputed domain name <THEWHOLETRUTHFOODS.IN> by Respondent, despite not having any legitimate or fair reason to do so, prevents Complainant from reflecting its trademark in the subject domain name. In Motorola, Inc. Vs New Gate Internet, Inc. (WIPO Case D2000-0079), it was held that use of the trademarks not only creates a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also results in dilution of the marks.
- 9.7 The Complainant submits that for the reasons stated in the foregoing paragraphs, it is not possible to conceive of any plausible use of the domain name <THEWHOLETRUTHFOODS.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known trade mark THE WHOLE TRUTH and prior registered domain <THEWHOLETRUTHFOODS.COM>. Therefore, it is submitted by the complainant that Respondent has no rights or legitimate interests in respect of the impugned domain name and therefore, the conditions under the INDRP Paragraph 4 (b) stand suitably established.



Respondent

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

9.9 Panel Observations

9.9.1 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.

9.9.2 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 'THE WHOLE TRUTH'. 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 'THE WHOLE TRUTH' mark in respect of its goods and products.

9.9.3 It is observed by this panel that the Respondent has failed to rebut the allegations of the complainant that Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name **THE WHOLE TRUTH** and/or its phonetic equivalents/variations, and Respondent does not have any affiliation or connection with Complainant or with Complainant's goods under the name/mark **THE WHOLE TRUTH**.

9.9.4 It is observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the Respondent cannot assert that it has made

or that it is currently making any legitimate non-commercial or fair use of the domain name, in accordance with Paragraph 6 of the .IN Policy and the same is also corroborated by the fact that no website is currently operational from the said domain and instead a parked page featuring several pay-per-click (PPC) links advertising various related services, are currently featuring on the impugned domain.

9.9.5 It is observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the Respondent is also ineligible to sustain their rights under the ambit of Paragraph 6 (b) of the INDRP, given the fact that the Respondent has held the impugned domain for 09 months, despite having no legitimate use thereof and in no way Respondent have any claim under Paragraph 6 of the INDRP.

9.9.6 It is observed by this panel that the Respondent has failed to rebut the contention of the Complainant that **THE WHOLE TRUTH** is a unique combination of terms coined by the Complainant, having no dictionary meaning, and the Respondent does not prima facie have any reason, to use the Complainant's well-known trade name/trading style and registered trademark "**THE WHOLE TRUTH**". The same constitutes prima facie proof in favour of the Complainant under Paragraph 4 (b) that the Respondent does not have any rights or legitimate interests in the domain name.

9.9.7 It is also observed by this panel that given the fact that the Mark THE WHOLE TRUTH predates the



Respondent's registration of the impugned domain name and the burden is on Respondent to establish its rights or legitimate interests in the infringing domain name. However, the respondent has failed to establish it.

9.9.8 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.

9.9.9 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."

9.9.10 This panel observe that the respondent also failed to fulfill 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 "THEWHOLETRUTHFOODS.IN".

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

Complainant

10.1 The Respondent submits that in consideration of Complainant's reputation in India, where Complainant has extensive business operations (as demonstrated in the preceding paragraphs) as well as its reputation worldwide and the ubiquitous presence of Complainant's mark THE WHOLE TRUTH on the Internet, Respondent must have been aware of Complainant's trademarks long prior to registering the domain name. In fact, considering that the disputed domain name <THEWHOLETRUTHFOODS.IN> as registered by Respondent incorporates Complainant's trade name/trademark THE WHOLE TRUTH in toto and is identical to the prior registered domain <THEWHOLETRUTHFOODS.COM>. The Complainant has placed reliance on a prior decision of this Panel in



M/s Merck KGaA v Zeng Wei JNDRP/323 wherein it was stated that :

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark ... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

10.2 The Complainant submits that the Respondent had no reason to adopt an identical name with respect to the disputed domain name except to create a deliberate and false impression in the minds of consumers and internet users that Respondent is somehow associated with or endorsed by Complainant, with the sole intention to ride on the massive goodwill and reputation associated with Complainant and to unjustly enrich from the same.

10.3 The Complainant further submits that the fact that the mark THE WHOLE TRUTH is a unique combination of words coined by the Complainant, further aggravates the Respondent's bad faith. In as much as, the Respondent is using the identical name with respect to the impugned domain name <THEWHOLETRUTHFOODS.IN>. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <THEWHOLETRUTHFOODS.IN> which incorporates the Complainant's mark THE WHOLE TRUTH as well as their domain name <THEWHOLETRUTHFOODS.COM> in toto. The fact that the Respondent is currently using the domain name in relation to a parked page displaying advertisements/ links, that too for similar

products, gives the unwavering impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold any legitimate interest in the domain name. Reliance is placed on this panel's decision in Flipkart Online Services Private Limited v. Azeem Ahmed Khan wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith.

10.4 The Complainant has submitted that in light of the aforesaid immense reputation of the Complainant's mark THE WHOLE TRUTH as well as its ubiquitous presence on the Internet, Respondent was, or should have been, aware of Complainant's trademarks long prior to registering the domain name. The Complainant has submitted that Respondent had constructive notice of Complainant's mark THE WHOLE TRUTH and relied on the case of Caesars World, Inc. Vs Forum LLC (WTPO Case No.D2005-0517), HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka, (WIPO Case No. D2015-0640). Reliance is also placed on Instagram, LLC v. Contact Privacy Inc. I Sercan Ilder (WIPO Case No. D20/9-0419) wherein it was held that "passive holding can be sufficient to find bad faith use". The Complainant further submits that In another decision in Johnson & Johnson Vs Daniel Wistbacka (WIPO Case No. D2017-0709) while discussing the elements constituting bad faith with respect to passive holding of respondent's domain name as noted in the landmark case of Telstra Corporation Limited Vs Nuclear Marshmallows (WIPO Case No. D2000- 0003), it was held that –

"... In particular it seems that the fifth element (i.e., impossibility to conceive of any plausible active use) is actually a conclusion which was made on the base of the preceding four elements and that this fifth element plays a decisive role in determining whether any particular passive holding can be regarded as a "bad faith" use of a domain name in dispute."

10.5 In the present case like in the above cited case, the Panel cannot conceive of any plausible use of the disputed domain name that would be legitimate, absent an authorization from the Complainant. As the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that an active website connected to the disputed domain name is operated or endorsed by the Complainant, when such is not the case. The Panel accordingly reaches the conclusion that the passive holding of the disputed domain name amounts to use in bad faith in the given the circumstances of the case.

10.6 The Complainant submits that the facts and contentions enumerated above establish that Respondent's domain name registration for <THEWHOLETRUTHFOODS.IN> is clearly contrary to the provisions of paragraph 4(c) of the INDRP.

Respondent

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

10.8 Panel Observation



10.8.1 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 on 27 January 2023, by which time the Complainant has been using the mark THE WHOLE TRUTH for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark THE WHOLE TRUTH and is also using the mark THE WHOLE TRUTH on the internet, in other domain name "THEWHOLETRUTHFOODS.COM, 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 THE WHOLE TRUTH.

10.8.2 This panel has agreed with the contentions of the complainant that the Respondent in consideration of Complainant's reputation in India, where Complainant has extensive business operations as well as its reputation worldwide, and the ubiquitous presence of Complainant's mark **THE WHOLE TRUTH** on the Internet, Respondent must have been aware of Complainant's trademarks long prior to registering the domain name. This panel therefore observe that the Respondent had constructive notice of the Complainant's trademark THE WHOLE TRUTH its 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 THEWHOLETRUTHFOODS.IN.

10.8.3 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."

10.8.4 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 www.thewholetruthfoods.in its favor in bad faith.

10.9 Remedies Requested

10.9.1 The Complainant has prayed to this Administrative Panel for cancellation of the Respondent's domain name <THEWHOLETRUTHFOODS.IN> and/or transfer the same to the Complainant with directions for awarding of costs of the proceedings in favor of the Complainant and against the Respondent.

11. Decision

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

11.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "THE WHOLE TRUTH "is a well-established name in India and other countries for its wellness solutions and health food manufacturing business. The complainant has established that the THE WHOLE TRUTH, is popularly known exclusively concerning the Complainant. The Complainant has also established that the trademark



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

11.2 The Respondent despite repeated opportunities given 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.

11.3 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 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/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.

11.4 Taking into account the nature of the disputed domain name and in particular, the ".in" extension alongside the Complainant's mark and also considering the complaint's submissions about the earlier registered domain name "THEWHOLETRUTHFOODS.COM" which 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.

11.5 The Respondent has 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.

11.6 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 miserably failed to do that. The Respondent's registration and use of the domain name [www.thewholetruthfoods.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.

A handwritten signature in black ink, appearing to be 'Anurag', is located in the bottom right corner of the page.

RELIEF

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

New Delhi, India
Dated :21December,2023


AJAY GUPTA
Sole Arbitrator