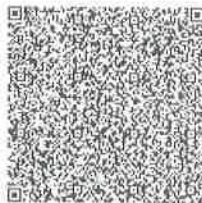


Government of National Capital Territory of Delhi

Certificate No.	IN-DL60362966780088W
Certificate Issued Date	18-Mar-2024 06:57 PM
Account Reference	IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference	SUBIN-DL91450380640136570465W
Purchased by	SUDHIR KUMAR SENGAR
Description of Document	Article 12 Award
Property Description	Not Applicable
Consideration Price (Rs.)	0 (Zero)
First Party	SUDHIR KUMAR SENGAR
Second Party	Not Applicable
Stamp Duty Paid By	SUDHIR KUMAR SENGAR
Stamp Duty Amount(Rs.)	100 (One Hundred only)



Please write or type below this line

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

STARBUCKS CORPORATION

 V_S

TOMTO CREATIVE PRIVATE LIMITED

ARBITRATION AWARD Disputed Domain Name: < STAR-BUCK.IN>

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding Corporation of India Limited. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.


of Stock Holding

1. The Parties

The Complainant in these administrative proceedings is Starbucks Corporation, 2401 Utah Avenue South, Seattle, Washington, United States of America W2 6ET (VEL). The Complainant is represented by Arpit kalra, S.S.Rana & Co Advocates, 317 Lawyers Chambers, High Court Of Delhi , New Delhi-110003(Email: info@srana.com, Phone: 91-11-40123000). The Respondent is Tomto Creative Private Limited, Pragya Nand Tiwari, 87/A DLF Moti Nagar, Delhi-1100151(Email:shivaaaaa099@gmail.com, phone: 918470854409)

2. Domain Name and Registrar

- (i) The disputed domain name is <star-buck.in>.
- (ii) The Registrar with whom the domain name is registered is Wild West Domain LLC, 2150 E, Warner Road Tempe, AZ 85284. (email:abuse@wildwestdomains.com)

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure("the Rules") which were approved on June 28,2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

On February 23, 2024, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on February 23, 2024 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on February 27, 2024 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit any response to the arbitration notice issued through email dated 27.02.2024 within the stipulated



time. The Respondent was given another 5 (Five) days time, through email dated 06.03.2024, to submit his response to the arbitration notice. On feb 28,2024,the Complainant submitted the proof of delivery of complaint through to the Respondent. Further the Complainant submitted through email dated 01.03.2024 that the Respondent could not be served hard copy of complainant through courier as courier tracking remarks "no such consignee at the given address". The Complainant's submission, of proof of delivery of complaint to the Respondent through email, is accepted. The Respondent failed to submit any response to the arbitration notice issued through email dated 27.02.2024 and subsequent directions dated 06.03.2024. The Respondent was given final opportunity through email dated 12.03.2024 and directed to submit his response within five days from the communication dated 12.03.2024. However the Respondent failed to submit any response to the arbitration notice and subsequent directions. The Respondent in fact has not submitted any response to the arbitration notice till date.

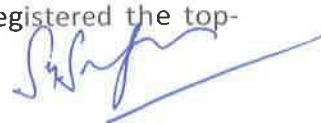
4. Grounds for Administrative Proceedings

1. The disputed domain name is virtually identical to Complainant's trade mark 'STARBUCKS' name in which Complainant has rights.
2. The Respondent has no rights or legitimate interests in the disputed domain name.
3. The domain name was registered or is being used in bad faith.

5. Background of the Complainants

The Complainant submitted that the Complainant, STARBUCKS CORPORATION is lifestyle corporation brand organised and existing under the laws of the State of Washington, which has attracted a significant global following of customers under the name Starbucks and its variations for their products, services and values. The Complainant further submitted that in 1971, the Complainant opened its first retail store under the name Starbucks, offering a variety of coffee, tea and spices in Pike Place Market, Seattle, Washington, United States. The Complainant further submitted that the Complainant maintains the world's largest number of cafes, which serve a variety of food and beverages, and offer premium merchandise and other goods and services under the name/mark Starbucks. The Complainant submitted copies of relevant pages from the Complainant's website providing information about the Complainant's and its various goods and services. The Complainant further submitted that the Complainant incorporated the

company in 1985 and opened its first location in 1987 outside of Seattle in Vancouver, British Columbia, Canada, and a second location in Chicago, Illinois, United States. The Complainant further submitted that at present, the Complainant has more than 38,000 retail store locations in 86 countries and territories around the world and every week, millions of customers visit the Complainant's stores around the world and are served by more than 400,000 individuals who proudly wear the green apron in Starbucks branded stores, or otherwise work for the Complainant. The Complainant further submitted that the Complainant is widely regarded as one of the most popular and instantly recognizable names in history, as it has worldwide recognition. The Complainant further submitted that the Complainant has used its trademarks history, as it has worldwide recognition and the Complainant has used its trade marks STARBUCKS and STARBUCKS COFFEE and variations thereof in various classes (hereinafter, the "STARBUCKS MARKS"), in connection with offering one of the world's finest fresh-roasted whole bean coffees, and other food and beverage products, among a wide range of goods and services. The Complainant further submitted that the Complainant has been committed to offering high-quality coffee while also supporting the social, environmental and economic interests of the communities in which they do business. The Complainant further submitted that the Complainant have used the STARBUCKS MARKS since 1971 for their goods, services, and business and because of the Complainant's sole and exclusive long-term use of the STARBUCKS MARKS, the marks have become highly distinctive and world famous, and consumers associate them uniquely with the Complainant. The Complainant further submitted that the Complainant's STARBUCKS MARKS are registered in at least 186 countries around the world, including India. The Complainant further submitted that it is pertinent to mention that the Complainant has applied for and obtained registration for the word mark STARBUCKS vide U.S. Registration No.1444549 dating as far back as June 3, 1985 and claiming use since March 29, 1971. The Complainant further submitted that the Complainant's STARBUCKS MARKS are registered in various classes in India and the aforesaid trademark registrations as mentioned are valid and subsisting as on this date. The Complainant further submitted that because of the India trade mark registrations, the Complainant has the exclusive statutory right to use the STARBUCKS MARKS, in India in respect of the goods and services for which they are registered. The Complainant further submitted that the Complainant registered the top-



level domain name www.starbucks.com on October 25, 1993 and has a dedicated website on the Internet that is accessible to consumers throughout the world. The Complainant further submitted that it is pertinent to mention that the India-specific domain STARBUCKS.IN was registered on February 16, 2005 and resolves to the website www.starbucks.in. The Complainant further submitted that with the expansion of its international business, the Complainant registered top level country-specific domain names including in India in which STARBUCKS is the prominent part thereof and some of the said domain names either have independent websites or are redirected to the Complainant's parent website www.starbucks.com. The Complainant further submitted that the Complainant's worldwide sales figures in respect of the various products sold and the services provided under the STARBUCKS MARKS run into billions of United States Dollars. The Complainant further submitted that the Complainant also spend a substantial amount on advertisement and sales promotion of their products and services bearing the STARBUCKS MARKS. The Complainant further submitted that the Complainant has accrued much reputation and valuable goodwill due to use, sales, marketing and premium quality of the goods sold t under the STARBUCKS MARKS. The Complainant further submitted that the Complainant's prominence in the global markets including the Indian market, as well as its reputation for quality, has grown through the years. The Complainant further submitted that being one of the leading companies in the food and beverage industry in the United States and worldwide, the Complainant has garnered attention from national and international print and electronic media. The Complainant further submitted that the STARBUCKS MARKS have been featured in popular national and international trade magazines, newspapers (and their corresponding websites) that have worldwide circulation, including India. The Complainant further submitted that each year stories that mention STARBUCKS generate billions of media impressions. The Complainant further submitted that beginning with the launch of STARBUCKS stores in India in 20 12 through the Complainant's joint venture with TATA Consumer Products Limited, they have always been a focus of Indian media as well and additionally, the Complainant and its STARBUCKS MARKS have been featured in articles in many Indian news outlets from at least as early as 1999. The Complainant further submitted that the Complainant has consistently received top-level brand rankings from various brand-evaluation agencies over the past twenty-two (22) years and some of these agencies include:

(a) Interbrand, a leading international branding consultancy company that has ranked the Complainant among the "Top 100 Brands" in the world (2000-2023); (b) Millward Brown Optimor, now known as Kantar Millward Brown ("KMB"), a leading market research and brand evaluation and management company that publishes an annual assessment of the 100 most valuable and powerful brands in the world entitled *BrandZ - Top 100 Brand Rankings* has consistently ranked the Complainant among the "100 Most Valuable Brands" (2006-2023); (c) Campaign Asia-Pacific, a leading media company that has ranked the Complainant as having an extraordinarily high brand perception among Asian consumers (2004-2020); and (d) Forbes brand rankings of the World's Most Valuable Brands (MVB*). Forbes measures the World's Most Valuable Brands by looking at the financial numbers. The Complainant further submitted that the most valuable brands are the ones that generate massive earnings in industries where branding plays a major role. The Complainant further submitted that Forbes consistently ranks the Complainant among the 100 most valuable brands (2013-2023). The Complainant further submitted that the Complainant has received many awards and recognition for its business ethics and social causes. The Complainant further submitted that the Complainant's products with the STARBUCKS trade name, the STARBUCKS MARKS, and/or STARBUCKS retail store locations have been featured in famous Hollywood and Bollywood motion pictures and likewise, popular television shows feature STARBUCKS branded products and/or its retail stores quite often. The Complainant further submitted that it is pertinent to mention that many famous and well-known Indian as well as international celebrities have been photographed with STARBUCKS branded products or outside STARBUCKS outlets where the Complainant's logos are prominently displayed. The Complainant further submitted that such photographs regularly appear in the print and electronic media, including their websites. STARBUCKS and its STARBUCKS MARKS have spread far and wide and have reached the shores of India. The Complainant further submitted that in addition to the Complainant's worldwide STARBUCKS COFFEE stores, it also sells STARBUCKS branded products through third-party food service locations, such as hotels, universities, hospitals, offices, cruise lines, airports and grocery stores, as well as catering to various airlines. The Complainant further submitted that because of the Complainant's world-class products and services, various airlines have especially chosen its STARBUCKS coffees to be served on their flights, including India's Vistara airline which has been

serving Starbucks® India Estates Blend coffee on its flights throughout India since 2016. The Complainant further submitted that in addition to its worldwide Starbucks Coffee stores, the Applicant's Company also sells its Starbucks branded products through third party food service locations, hotels, universities, hospitals, offices, cruise lines, airports, and grocery stores as well as catering to various airlines. The Complainant further submitted that additionally, Starbucks coffee is served on Delta Air Lines flights, including Delta Air Lines flights to New Delhi, Mumbai and Bengaluru, India. The Complainant further submitted that in addition to the availability of coffee on airline flights, Starbucks has over 300 stores located in airports in almost 50 countries throughout North America, Europe, Latin America, the Caribbean, the Middle East, Asia Pacific, and South Asia. The Complainant further submitted that in India, there are twenty- seven (27) Starbucks Store located in India's various airports. The Complainant further submitted that the goodwill and reputation of the name STARBUCKS and its STARBUCKS MARKS have spread far and wide even in those countries where the Complainant does not have a business presence. The Complainant further submitted that many of the passengers being served STARBUCKS coffee are people traveling to and from India. The Complainant further submitted that the Complainant's STARBUCKS MARKS have been used in several countries throughout the world for many years and the STARBUCKS MARKS, are only associated with its goods and services. The Complainant further submitted that it is pertinent to point out that the reputation of a trade mark in today's world is not limited either by geographical or political boundaries and as communications, people and reputations easily travel around the world, these boundaries are crossed as if they do not exist. The Complainant further submitted that the availability of increased information technology through satellite television and the Internet allows information to be decimated quickly throughout the world, resulting in the fact that it's STARBUCKS MARKS, have acquired a positive worldwide and trans-border reputation. The Complainant further submitted that the Complainant's active commercial websites on the Internet, i.e., www.starbucks.com and www.starbucks.in, showcase upcoming STARBUCKS events and offers for food and beverages that are available under its STARBUCKS MARKS. The Complainant further submitted that the Complainant's websites are available in many different languages so that visitors from different parts of the globe feel comfortable using STARBUCKS websites that are in familiar languages. The Complainant further submitted that the websites are accessible across the globe and the reputation of the

Complainant's STARBUCKS MARKS and its services, reached the shores of India much before STARBUCKS actual 2012 launch in India. The Complainant further submitted that the Complainant has sourced large quantities of green coffee from India since 2005. The Complainant further submitted that the Complainant's Indian Coffee vendors include Bernhard Rothfos Intercafe AG; NKG Jayanti Coffee Pvt Ltd (Coffee was purchased directly from the said company until 2008, when they became a subsidiary of Neumann Kaffee Gruppe, the parent company of Bernhard Rothfos Intercafe AG); Ecom Agroindustrial Corporation Limited, Switzerland who in turn sourced their coffee from their Indian subsidiary, Ecom Gill Coffee Trading Company; Ramesh Exports Limited; and TATA Coffee Limited. The Complainant further submitted that nearly a million kilograms of STARBUCKS tea have been sourced from India's Darjeeling, Nilgiri and Assam regions. The Complainant further submitted that the Complainant signed a pact with India's Tata Coffee Ltd. in January 2011, to open retail stores in India by way of an equity joint venture and the joint venture was widely reported in Indian print and electronic media at the time. The Complainant further submitted that a joint venture company Tata Starbucks Private limited (CIN:U74900MH2011PLC222589), was incorporated on September 30, 2011 and the Complainant marked its entry into the Indian market on October 19, 2012 by opening its first store in India in the historic Elphinstone Building located in Horniman Circle, Mumbai. The Complainant further submitted that from 2012 to present, the Complainant has expanded its presence in India to include at least 394 Starbucks Stores. The Complainant further submitted that the annual revenue generated from sale of products, including STARBUCKS products, by the joint venture company TATA STARBUCKS PRIVATE LIMITED in India runs into crores of Rupees which is growing at rapid pace each year and details of annual revenues since the Complainant's entry in India. The Complainant further submitted that, to promote the STARBUCKS MARKS in India, the Complainant has spent several crores of Rupees for launch events, including in-store and out-of-store advertisements. The Complainant further submitted that the Complainant through its official Internet websites, promotes and sells its goods worldwide. The Complainant further submitted that the Complainant is also present on various networking sites. The Complainant further submitted that with the advent of technology, social networking websites such as Facebook, X (formerly known as Twitter), Instagram, Pinterest, LinkedIn and YouTube have become benchmarks to estimate the popularity of any individual or

entity and, a prominent presence, along with a massive following thereon, indicates the Complainant's brand recognition and reputation, and evidences its popularity among people of all backgrounds and ages throughout the world. The Complainant further submitted that the Complainant's products under the STARBUCKS MARKS are available for purchase on food delivery platforms such as Zomato and Swiggy, and are thus, easily accessible to the members of the general public and trade. The Complainant further submitted that the Complainant also successfully took action against infringers/registrants before NIXI, under the Indian Domain Name Dispute Resolution Policy (INDRP) with respect to the top-level Indian domain names having STARBUCKS as the prominent part thereof. The Complainant further submitted that the Complainant has also taken successful actions for recovering other top-level domain names that have used STARBUCKS as the prominent part thereof. The Complainant further submitted that the name/mark STARBUCKS is not only the trade mark and trade name of the Complainant, but it is its trading style as well as its House Mark. The Complainant further submitted that by virtue of the prior adoption, long standing and uninterrupted use, extensive publicity and the Complainant's proprietary rights in its trade mark and name STARBUCKS and variations thereof, both under common law and statutory protection, the said trade mark has acquired a high degree of distinctiveness and are identified by the market and general trade and public as exclusively belonging to the Complainant and its goods/services and have acquired a significant reputation amongst the trade and public. The Complainant further submitted that as a result of the above-described extensive use and promotion, the Complainant's STARBUCKS MARKS and variations thereof have become distinctive and well known and have enjoyed distinctiveness, goodwill and reputation long prior to the date on which the Respondent registered the disputed domain name.

The Respondent

The Respondent is The Respondent is Tomto Creative Private Limited, Pragya Nand Tiwari, 87/A DLF Moti Nagar, Delhi-1100151 (Email: shivaaaaa099@gmail.com, phone: 918470854409). The Respondent has registered the domain name <STAR-BUCK.IN> on May 2, 2023.



6. Legal Grounds

A. The domain name <star-buck.in> is virtually identical to trade mark STARBUCKS in which the Complainant has rights.

(Paragraph 4(a) of the .IN Policy)

Complainant's Contentions

The Complainant contended that the Complainant is the registered proprietor of the trademark STARBUCKS 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 since at least as early as 1971, i.e., almost 52 years prior to the date on which the Respondent registered the domain <STAR-BUCK.IN>. The Complainant further contended that by virtue of long-standing use and registration, the adjudicating panels under the INDRP and Courts in India and abroad have already deemed STARBUCKS to be a well-known mark, as per the relevant provisions of the Trade Marks Act, 1999. The Complainant further contended that the impugned domain name < STAR-BUCK.IN> is identical/similar to the Complainant's registered trademark STARBUCKS as well as its various existing domains containing the name/mark STARBUCKS. The Complainant further contended that the disputed domain name < STAR-BUCK.IN >, owing to its identity with the Complainant's trademarks and domain names, is likely to mislead, confuse and deceive the Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name. The Complainant further contended that it is a well-settled principle and has been held by 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. The Complainant has relied on some notable decisions *Kenneth Cole Productions v. Viswas Infomedia* INDRP/093, *Inter-Continental Hotels Corporation v. Jaswinder Singh* (JNDRP/278) and *Starbucks Corporation v. Mohanraj* (JNDRP/118). The Complainant further submitted that country code top level domains (ccTLD), such as ".in" or ".net.in" are an essential part of a domain name. The Complainant further submitted that prior panels have noted in past that a mere addition of hyphen does not serve to distinguish the domain names from the Complainants' mark in any meaningful way and therefore, a mere addition of a hyphen to separate the words STAR and BUCK in the impugned domain cannot sufficiently

distinguish the Respondent's domain name < STAR-BUCK.IN > from the Complainant's registered trademark STARBUCKS or its various existing domain names comprising prominently of the name/mark STARBUCKS. The Complainant has also relied on Dell Inc. v. Mani, Soniya INDRP/753, Patagonia Inc. v Doublefist Ltd. (JNDRP/1185), Factory Mutual Insurance Company v. Rhianna Leathenvood WIPO Case No. D 2009, Creative Nail Design, Inc. and Colomer USA, Inc v. Creative Nails, clo E Designers Ltd. (WJPO Case No. D2006-0873) and Avanti Feeds Limited v. Pradeep Chaturvedi (INDRP/1388). The Complainant further submitted that it has been held by prior panels deciding under the INDRP in favour of the Complainant that incorporating a trademark in entirety (particularly an internationally well-known mark) is sufficient to establish that the domain is identical or confusingly similar to the Complainant's registered mark. The Complainant has relied on Starbucks Corporation v. Aditya Khanna INDRP/614. The Complainant has also relied 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 < americaneagle.com> by the Respondent, it was held that, "The disputed domain name is very much similar to the name and trademark of the Complainant. The Complainant further submitted that 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/or AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant". The Complainant further submitted that in the present dispute as well, the Complainant has acquired rights in the name/mark STARBUCKS by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain <STAR-BUCK.IN> which is identical/similar to the Complainant's registered trademark STARBUCKS. The Complainant along with the present complaint has also submitted copies of its trade mark registrations for the STARBUCKS MARKS, in various jurisdictions of the world, including in India. The Complainant contended that it is a well-settled principle, through various decisions under the UDRP and the INDRP, that submitting proof of trade mark registrations is considered prima facie



evidence of enforceable rights in a mark. The Complainant has relied on *TransferWise Ltd. v. Li, Chenggong*, INDRP/1122, *Perfetti VanMelle Benelux BV v. Lopuhin Ivan, IPHOS TER*, WIPO Case No. D2010-0858. *Backstreet Productions, Inc. v. John Zuccarini*, WIPO Case No. D200J -0654.

Respondent's Contentions

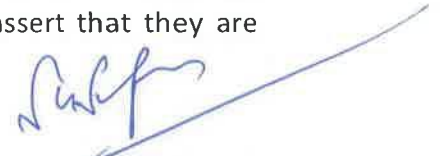
The Respondent has failed to submit any response to the arbitration notice issued by this panel.

The Respondent's has no rights or legitimate interest in the domain name

(Paragraph 4 (b) and Paragraph 6 of the .IN Policy)

Complainant's Contentions

The Complainant contended that the facts stated hereinabove, the Respondent has no right or legitimate interest in the domain name <STAR-BUCK.IN>. The Complainant submitted that the Complainant has not authorized the Respondent at any point of time to register the impugned domain name and further, the Respondent cannot assert that it is using the domain name in connection with a *bona fide offering of goods and services* in accordance with Paragraph 6(a) of the .IN Policy, as it is not operating any website from the impugned domain and is instead using the domain in connection with a parked page hosting commercial/sponsored links. The Complainant contended that such links cannot constitute a bona fide offering of goods and services. The Complainant has relied on Case No. INDRP/481 *L'areal v. Yerec International Limited*. The Complainant further contended that the Respondent is not commonly known by the name STAR-BUCK within the meaning of Paragraph 6(b) of the Policy since as per the relevant WHOIS records, Respondent in the present matter is known by the name Tomto Creative Private Limited. The Complainant further contended that there does not appear to be any indication that the Respondent was known by the name STAR-BUCK prior to the date on which Respondent registered the impugned domain name and accordingly, Respondent cannot be said to be making a legitimate, noncommercial fair use of the domain name. The Complainant submitted that it appears that the Respondent has deliberately chosen to use the domain name <STAR-BUCK.IN>, which is similar/identical to the Complainant's trademark in the name/mark STARBUCKS, so as to suggest a direct connection or affiliation with Complainant's trademark STARBUCKS and to create a direct affiliation with the Complainant and its business when in fact there is none. The Complainant contended that the Respondent cannot assert that they are



currently making a legitimate, non- commercial or fair use of the domain name, in accordance with Paragraph 6(c) of the .IN Policy and in fact, the Respondent is not making any use of the domain name <STAR-BUCK.IN> at all, however, has kept it blocked from use by legitimate users by placing a parked page and hosting commercial links/sponsored links thereupon. The Complainant submitted that In view thereof, it is clear that the Respondent is not making any legitimate or fair use of the impugned domain name <STAR-BUCK.IN> so as to fall within the ambit of Paragraph 6(c) of the INDRP. The Complainant contended that , any use of the impugned domain name <STAR-BUCK.IN> in the future by the Respondent, is likely to create a false association and affiliation with the Complainant, and its well-known trade mark STARBUCKS as well as its official websites at STARBUCKS.COM and STARBUCKS.IN. The Complainant submitted that 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(c) of the .IN Policy. The Complainant contended that the Respondent herein registered the impugned domain <STAR-BUCK.IN> more than 52 years after the Complainant adopted the trade mark STARBUCKS in relation to their business. The Complainant further submitted that the Respondent is presently not making any use of the domain with a *bonafide* offering of goods and services and in fact, Respondent is not currently making any use of the domain at all. The Complainant contended that in the given circumstances of this case, the Respondent's use of the impugned domain <STAR-BUCK.IN> is not 'bona fide' within the meaning of Paragraph 6(c) of the .IN Policy since there is no apparent legitimate justification for the Respondent's registration of the impugned domain name <STAR-BUCK.IN> that is visually, phonetically, conceptually, deceptively and confusingly identical/similar to the Complainant's trademark/name STARBUCKS.

Respondent's Contentions

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

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

(Paragraph 4(c) and Paragraph 7 of the .IN Policy)

The Complainant contended that as per paragraph 7(c) of the .IN Policy, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the Respondent has registered and was previously used the domain name to attract, for commercial gain , Internet users to Respondent's website or other online

location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location. The Complainant contended that the fact that the mark STARBUCKS is a unique word and has been 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 <STAR-BUCK.IN>. The Complainant further contended that there can be no plausible reason as to how the Respondent arrived at the impugned domain name <STAR-BUCK.IN> which is similar/identical to the Complainant's mark STARBUCKS. The Complainant submitted that it is pertinent to mention that in light of the continuous and exclusive use of the mark STARBUCKS by the Complainant including as part of their trade name, goods/services over many years, it has become synonymous with the Complainant. The Complainant further submitted that, in consideration of the Complainant's longstanding reputation, and the ubiquitous presence of the Complainant's mark STARBUCKS on the Internet, the Respondent was very well aware of the Complainant's trademarks. The Complainant has relied on Case No. INDRP/323 Mis Merck KGaA v Zeng Wei wherein it was held 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." The Complainant further submitted that additionally, the fact that the Respondent is not currently making any use of the domain name <STAR-BUCK.IN> at all and has placed parked page hosting commercial links on a parked page therein, gives the 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. The Complainant has also relied on Flipkart Online Services Private Limited v. Azeem Ahmed Khan where in it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith". The Complainant has also relied on Instagram, LLC v. Contact Privacy Inc./Sercan Lider (WIPO Case No. D2019-0419) wherein it was held that "passive holding can be sufficient to find badfaith use". The Complainant has also relied on Johnson & Johnson v. 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 v. Nuclear Marshmallows (WIPO Case No. D2000- 0003), it was held that: "In particular ii 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. 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 Complainant contended that the Respondent had no reason to adopt an identical name/mark with respect to the impugned domain name except to suggest a direct connection or affiliation with the Complainant's trademark STARBUCKS and to create a direct affiliation with Complainant and its business when in fact there is none. The Complainant submitted that such conduct clearly evidences Respondent's mala fide intention to unjustly and unfairly register the domain <STAR-BUCK.IN> in contravention of the provisions of Paragraph 4(c) of the .IN Policy. The Complainant further submitted that in view of the above, Complainant has established that the mark STARBUCKS is distinctive and well known, and it is apparent that the Respondent had prior knowledge of Complainant's aforesaid mark at the time of registering the disputed domain name. The Complainant contended that owing to the fame attached to Complainant's mark STARBUCKS, which is a result of extensive use and promotion in relation to its world-renowned goods/services and the fact the same are available all over the world, including in India, it is implausible for Respondent to have registered the domain name for any reason other than to trade off the reputation and goodwill of Complainant's STARBUCKS MARKS.

Respondent's Contentions

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

DISCUSSION AND FINDINGS

The Complainant, STARBUCKS CORPORATION, a US based company, is a lifestyle brand company operating ,since 1971, in many countries of the world including India where the Respondent is based. The Complainant is in business of food and beverages and offers goods and services under trademark 'STARBUCKS'. The Complainant is continuously and exclusively using the trademark 'STARBUCKS' since 1971. The Complainant has got registered the trademark 'STARBUCKS' and

its variations in many countries of the world. The Complainant has built a strong reputations over the years. The Complainant is significantly present on all the major social media platforms with large numbers of followers. The Complainant spends substantially on sales and advertisements of its brand in different social media platforms. The complainant started operating in India since 2005 through joint venture with Tata Starbucks Ltd. The Complainant has received top level ranking by various brand evaluating companies. The Complainant has also won several prestigious global awards. The Complainant's marks 'STARBUCKS' constitute invaluable property and needs to be protected against unauthorized use by third parties. The top level domain <starbucks.com> was registered by the Complainant on October 25, 1993 and India specific domain was registered on February 16, 2005 whereas the disputed domain was registered by the Respondent on May 2, 2023 many years after registrations of the trademarks/domain by the Complainant. The Complainant is owner of many domain names containing mark 'STARBUCKS' and its variations. By virtue of long standing use and registration, previous INDRP decisions and documents submitted by the Complainant, the Complainant's mark 'STARBUCKS' falls under the category of well known mark. The Respondent has registered the disputed domain <STAR-BUCK.IN> on May 2, 2023 years after registration of marks/domain by the Complainant. The disputed domain name is identical to the marks 'STARBUCKS' of the Complainant except that hyphen has been added between STAR and BUCK. The Respondent is not making any use of the domain name <STAR-BUCK.IN> and has passively held the disputed domain by placing a parked page and hosting commercial links/sponsored links thereupon. The hard copy of the complainant could not be delivered the Respondent as no such consignee was available at Respondent address given in WHOIS information sheet which creates doubt on the intent of the Respondent. The Respondent has failed to submit any response to the arbitration notice to rebut the contentions of the Complainant.

Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator

and such arbitral award shall be binding in accordance with the law.”

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant’s contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator’s decision is based upon the Complainant’s assertions, evidence and inferences as the respondent has not replied.

The domain name <STAR-BUCK.IN> is identical/similar to trading style and trade name in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks ‘STARBUCKS’ by submitting substantial documents. The marks are widely used by the Complainant group in relation to their business. The disputed domain name <STAR-BUCK.IN> contains well known mark ‘STARBUCKS’ mark of Complainant almost completely. Addition of hyphen ‘-’ between STAR and BUCK is insufficient to make it different. There can’t be coincidence that the Respondent has chosen domain name identical/similar to the marks of the Complainant. The top level domain <STARBUCKS.COM> & <STARBUCKS.IN> were registered by the Complainant years before registration of disputed domain <STAR-BUCK.IN> by the Respondent in May, 2023. The disputed domain name <STAR-BUCK.IN> is nearly identical to the mark/domain of the Complainant. The domain resolves to a parked page containing commercial or sponsored links. The intent of the Respondent appears to commercially gain from the popularity of Complainant’s mark and thereby also causing irreparable loss to the reputation of the Complainant. The Respondent has failed to submit any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

Based on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant’s mark.

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

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark ‘STARBUCKS’. The Complainants have never authorized the Respondent to use Complainant’s mark. The Respondent is not known by the mark and can’t have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate



by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate non-commercial use of disputed domain name. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered or is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been using the marks for several decades before registration of the disputed domain name in 2023 by the Respondent. The panel finds that the Respondent has used the well-known mark of the Complainant in disputed domain name giving impression that this domain is affiliated to the Complainant. The sole purpose of the Respondent is to create confusion to an ordinary internet user. The Respondent has parked the disputed domain and his motive appears to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has failed to submit any response to rebut the contentions of the Complainant.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.



Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name <STAR-BUCK.IN> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

March 19,2024


Sudhir Kumar Sengar

SOLE ARBITRATOR