



**DEEPALI GUPTA**  
**SOLE ARBITRATOR**  
Appointed by the .IN Registry - National Internet Exchange of India  
INDRP Case No: 1822

**In the matter of:**

**SUPERCELL OY.**

Jätkäsaarenlaituri 1, 00180 Helsinki,  
Finland.

Through its authorised Representative:

Mr. Aarohan Bansal

Advocate, ZeusIP Advocates LLP

C-4, Jangpura Extension,

New Delhi-110014

Ph: +91-11-41370000; Fax: +91-11-41824334

Email: [mn@zeusip.com](mailto:mn@zeusip.com); [info@zeusip.com](mailto:info@zeusip.com) .....Complainant

**Versus**

**Mr. Harshwardhan Gupta**

**Heterize Infotech Private Limited,**

14-N, Scheme no. 103, Kesar bagh Road

Indore - 452001, Madhya Pradesh, India

Ph: +919981230553

Email: [guptaharshm@gmail.com](mailto:guptaharshm@gmail.com)

(Registrant) .....Respondent

Disputed Domain Name : <[CLASHARENA.IN](http://CLASHARENA.IN)>

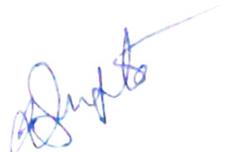
**ARBITRATION AWARD**

**DATED MAY 02, 2024.**

**1) The Parties:**

The Complainant in the present arbitration proceedings is SUPERCELL OY.

Jätkäsaarenlaituri 1, 00180 Helsinki, Finland.



The Complainant is represented by its Authorized Representative Mr. Aarohan Bansal, Advocate, ZeusIP Advocates LLP, C-4, Jangpura Extension, New Delhi-110014

The Respondent in the present case is Mr. Harshwardhan Gupta, Heterize Infotech Private Limited, 14-N, Scheme no. 103, Kesar bagh Road, Indore - 452001, Madhya Pradesh, India E.mail-: [guptaharshm@gmail.com](mailto:guptaharshm@gmail.com) as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI). The Respondent is represented by its Authorized Representative BHAVESH TIWARI, Advocate, TIWARI LAW CHAMBERS Address: Chamber No. 01, High Court of M.P., Indore, M.P. 452001. E.mail-[advbhaveshtiwari@gmail.com](mailto:advbhaveshtiwari@gmail.com)

## 2) **The Domain Name, Registrar and Registrant:**

The disputed domain name is <[CLASHARENA.IN](http://CLASHARENA.IN)>

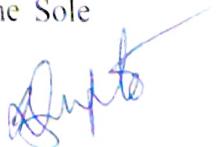
The Registrar is **GoDaddy.com, LLC**

The Registrant is Name- Mr. Harshwardhan Gupta, Heterize Infotech Private Limited, 14-N, Scheme no. 103, Kesar bagh Road, Indore - 452001, Madhya Pradesh, India E.mail-: [guptaharshm@gmail.com](mailto:guptaharshm@gmail.com) Ph: +919981230553

## 3) **Procedural History:**

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 pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole



Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 5<sup>th</sup> March, 2024.
- Thereafter Notice was issued to the Respondent on 5<sup>th</sup> March 2024, at his e.mail address '[guptaharshm@gmail.com](mailto:guptaharshm@gmail.com)', communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <CLASHARENA.IN> in its favour. The Respondent was called upon to submit their response within fifteen (15) days of the receipt of the Arbitrators email.
- The Arbitrator received the reply filed by the Respondent vide email dated 29<sup>th</sup> March 2024. The Complainant filed their rejoinder to the said reply vide email dated April 8<sup>th</sup> 2024. The Complaint is being decided based on the materials and evidence submitted by the Complainant and Respondent and contentions put forth by them.

#### 4) FACTUAL BACKGROUND:

The Complainant, Supercell Oy., is a mobile game development company existing and incorporated in 2010 under the laws of Finland. It is well known and one of the fastest growing game development companies of the world. Since the release of its first game in 2011, the Complainant has developed several mobile games which are available for both the Android and iOS devices. Some of the popular games introduced by the Complainant include Hay Day, CLASH OF CLANS, Boom Beach, CLASH ROYALE and Brawl Stars. Complainant has gained rapid growth and massive popularity. The Complainant Company has offices in several cities around the world, employing more than 480 people from more than 40 nationalities working in 4 different offices. Complainant is the exclusive owner of the **CLASH Trademarks**, that are registered not only in India



under the Trade Marks Act, 1999 but also globally in hundreds of countries and are used and registered in word and composite form and are well-known and/or famous worldwide. The Complainant has the statutory rights in respect of its **CLASH trademarks** in major jurisdictions and countries around the world.

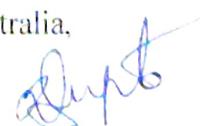
The Complainant is active and has gained massive popularity on various social media websites such as YouTube, Facebook, X (Twitter), and Instagram under the **CLASH Trademarks** through which it reaches out to its customers worldwide, including in India. The Complainant also owns and communicates on Internet through various domain names having the 'CLASH' mark.

## 5) Parties contentions:

### A. Complainant

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

The Complainant submits that the Complainant is the exclusive owner of the **CLASH Trademarks**, many of which are considered well-known and/or famous worldwide including in India. The **CLASH Trademarks** have been registered globally and in continuous use since at least as early as 2012. Complainant submitted that being conscious and vigilant of its Intellectual Property Rights, and in order to acquire statutory rights (in addition to preexisting common law rights) Complainant has obtained registrations in respect of its **CLASH trademarks** in major jurisdictions and countries around the world including but not limited to Algeria, Argentina, Australia,



Bolivia, Brazil, Canada, Chile, China, Colombia, Ecuador, Egypt, European Union, Finland, Hong Kong, **India**, Indonesia, Iran, Israel, Japan, Kazakhstan, Republic of Korea, Macau, Malaysia, Mexico, New Zealand, Norway, Paraguay, Peru, Philippines, Russian Federation, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Vietnam, Yemen. The Complainant relies on **Ex.-D and Ex.-E** being the Copy of some of these registrations in numerous jurisdictions and in India. Complainant has been using the **CLASH Trademarks** since at least as early as 2012 that are registered as follows:

S.No.	TRADE MARK	REGISTRATION NO.	CLASSES
1.		IRDI-5098742	9, 16, 28, 41
2.		IRDI-3507855	9, 28, 41
3.	<b>CLASH ROYALE</b>	IRDI-3401154	09, 28, 41
4.	CLASH OF CLANS	IRDI-3085967	6, 9, 16, 18, 20, 21, 25, 26, 28
5.		IRDI- 3085874	6, 9, 16, 18, 20, 21, 25, 26, 28
6.	CLASH ROYALE	IRDI-3507890	6, 16, 18, 20, 21, 25, 26
7.		IRDI-3539888	6, 16, 18, 20, 21, 25, 26
8.	CLASH-A-RAMA	IRDI-3725539	9, 16, 25, 41
9.		IRDI-2660516	9, 28, 41
10.	<b>CLASH MINI</b>	IRDI-5196110	6, 9, 16, 18, 20, 21, 25, 26, 28, 41



11.	<b>CLASH QUEST</b>	IRDI-5196111	6, 9, 16, 18, 20, 21, 25, 26, 28, 41
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- a) The Complainant has submitted that the disputed Domain Name “CLASHARENA.IN” is confusingly similar to the trademark or service mark in which the Complainant has strong rights. Complainant submits that the Complainant owns exclusive trademark rights in the wordmark ‘CLASH’ and the **CLASH Trademarks** in India and throughout the world. That the Complainant is the registered owner of the domain names [www.supercell.com](http://www.supercell.com), [www.clashofclans.com](http://www.clashofclans.com), <https://clashroyale.com/> and [www.clash.com](http://www.clash.com). It is submitted that these websites clearly reflect the use of the **CLASH Trademarks** by the Complainant. That the Complainant’s websites under the **CLASH Trademarks** are easily available in the public domain and can be accessed in any corner of the world including India. The above-mentioned websites mark the goodwill and reputation of the **CLASH Trademark** and are also immensely popular among consumers, members of the trade and the public at large. That the Respondent’s Domain Name completely encompasses the trademark ‘CLASH’ in which the Complainant has strong, prior rights.
- b) It has further been submitted by the Complainant that anyone who sees the disputed domain name is bound to mistake it as owned or operated by Complainant particularly as Complainant is the owner of several popular and well-known **CLASH Trademarks** as well as CLASH domain names. Therefore, the trade and public will perceive the impugned domain name either as that of the Complainant, or that there is some kind of commercial relationship between the Respondent and the Complainant. Complainant submits that by using the Complainant’s trademark as a dominant part of the impugned domain name, the Respondent is exploiting the goodwill and the image of the Complainant’s famous **CLASH Trademarks**, which are bound to result in dilution and other damage for the Complainant.



- c) It is further submitted by the Complainant that perusal of the impugned domain name shows that the Respondent's domain name is a complete reproduction the Complainant's well-known and earlier registered **CLASH Trademarks**. The adoption and/or use of the impugned mark by the Respondent as its domain name or in any other manner amounts to the blatant infringement of the Complainant's statutory rights in its well-known, registered and earlier **CLASH Trademarks**. That the impugned domain name is visually, structurally, phonetically identical to the Complainant's well-known, registered and earlier CLASH Trademarks and Domain Names.
- d) It has been submitted by the Complainant that Respondent has no rights or legitimate interests in the impugned domain name. That the Complainant is a prior user and registered proprietor of the well-known and highly distinctive **CLASH Trademarks**. The Respondent has registered the disputed domain name "[www.clasharena.in](http://www.clasharena.in)" in order to ride upon the goodwill and reputation of the Complainant's **CLASH Trademarks**. The disputed domain name is misleading the consumers to believe that the goods and services are being provided by the Complainant. The Complainant has not authorized or given permission to the Respondent to use the Complainant's trademark in the disputed domain name and the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant relies on the decision in *Cavinkare Pvt Ltd vs. LaPorte Holdings, Inc. and Horshiy, Inc.* (WIPO Case No. D2004-1072), in which the Panel held that "*It stretches credulity to breaking point to believe that it was a mere coincidence that the Respondents adopted a name, one half of which is "cavin", as in the Complainant's name, and the other half of which is "care", also in the Complainant's name, although spelt with a "K". If it is not co-incidence, the inference inevitably arises that the Respondents have misappropriated the Complainant's name and knowingly so. There is no evidence to rebut that inference. Such conduct cannot create rights or legitimate interests.*" The Complainant relies on **EXHIBITJ**.



- e) Complainant submits that the sole purpose for registration of the disputed domain by the Respondent is to illegitimately profit from its association with the Complainant Mark 'CLASH'. The Respondent is disrupting the Complainant's business by relying on consumer confusion (consumers mistaking the disputed domain for the Complainant) to earn revenue through the Respondent's illegitimate business hosted on the disputed domain. It is submitted that there is no non-commercial or fair use as the Respondent is offering products and services of the Complainant under the disputed domain name that is not authorized or licensed by the Complainant which is misleading consumers to believe that the products and services are being offered by the Complainant and its company. This negates the possibility that the disputed domain is used for non-commercial or fair purposes. In addition, the Respondent has not obtained authorization of any kind whatsoever to use the Complainant's mark in the disputed domain name. In view of the facts stated above, it is submitted that the Complainant has established that the Respondent has no rights or legitimate interest in the disputed domain name.
- f) Complainant further submits that the disputed Domain Name has been used in Bad Faith by the Registrant/ Respondent. The Respondent has registered the impugned domain name in bad faith to make unlawful gains through the disputed domain name. The Complainant is the prior adopter, user and registrant of the **CLASH Trademarks** and the said **CLASH trademarks** are therefore, associated with the Complainant and Complainant only. The Respondent has clearly registered the said impugned domain name in order to ride upon the goodwill and reputation of the Complainant in its **CLASH Trademarks**. It is pertinent to mention here that the Respondent's website on the impugned domain name is offering Complainant's games (Clash Royale Game) as tournament with cash prizes. Respondent does not have any legitimate business interest and has clearly adopted the impugned domain name from preventing the Complainant from rightfully using the same. In the above circumstances, it is clearly evident that the Respondent



has adopted the impugned domain name, being totally aware of the Complainant's well-known, registered and earlier **CLASH Trademarks**.

- g) That use of the disputed domain name "www.clasharena.in" by the Respondent, would certainly result in confusion and deception of the trade, consumers and public, who would assume that the disputed domain name has been hosted or maintained by the Complainant. The Complainant's well-known, registered and earlier **CLASH Trademarks** have been widely used and advertised in India and all over the world by the Complainant and are associated exclusively with the Complainant alone.
- h) The Complainant submitted that Respondent has thus registered the disputed domain name "www.clasharena.in" dishonestly and with malafide intentions to ride upon the goodwill, reputation and popularity of the Complainant's well-known, registered and earlier **CLASH Trademarks**, including, specifically, the trademark and trade name '**CLASH**'. In view of the above, one can reasonably conclude that the Respondent has acted in bad faith.
- i) In view of the aforesaid facts, the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

## **B. RESPONDENT**

- a) The Respondent has contended as follows:
- b) That, the Respondent MR. HARSHWARDHAN GUPTA is the owner of the HETERIZE INFOTECH PVT. LTD., which was incorporated in the year 2021. It is Proprietor Company and is a leading gaming Platform Provider and Tournaments Organizers, which makes it utterly distinct from the Complainant Company and its nature.
- c) Respondent has further contended that, it is involved in developing Advertisements and Marketing of scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical,



weighing, measuring, signaling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; THAT, these Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity etc. THAT, the company caters to a diverse range of industries, materials science, and more. Their multidisciplinary approach allows them to address challenges across various scientific domains. The company's multidisciplinary expertise allows it to navigate the intricacies of various industries, providing invaluable insights and solutions that drive progress,

- d) The Respondent has contended that the present Complaint is not maintainable and ought to be dismissed as Section 7 of the Arbitration and Conciliation Act, 1996 has been violated in as much as there is no Arbitration Agreement or any Arbitration Clause existing or ever existed between the Parties to this matter and that the Complainants have attempted to by-pass the Due Process and therefore fails to adhere to the provisions of the Arbitration and Conciliation Act, 1996, henceforth making the present Arbitral Proceeding futile and non- enforceable.
- e) Further, the Respondent has denied that the Complainant has the exclusive right to use the term "CLASH". In support of this contention, Respondent relies on **Exhibit-R/1**, a screen shot of Play Store where it can be seen that many other companies are operating and launching their games with the inclusion of word "Clash".
- f) Respondent submits that the usage by the Respondents of the term "Clash Arena" does not fall within the ambit of any of the class of the Trademark registered by the Complainant. The Respondent relies on **EXHIBIT - R/3**. It is submitted by Respondent that the Respondents are not acting as a competitor to the Complainant as they both are not even on the same platform. That the Complainant is a "Game Developer", whereas the Respondents are not into the business of Game Development, rather the Respondent is merely a platform where people compete with each other



while playing the existing games in their own devices. Hence both the parties are not into competitive domains of each other.

- g) The respondent submits that no offending or wrongful adoption has been done by the Respondents, that there is no possibility of confusion and deception with regards to the names and identities of the Parties as they are both far away from each other's competitive and conflicting zone. That the parties Trademarks are not identical. That the Domain of the Respondents is very different from that of the Complainant. The overall business model of both the parties are also very different with regards to the platform, users, interactions, USPs, etc.; The usage of the term "Clash Arena" by the Respondents is that necessity to explain the nature of their business and the services they are offering Arena/Arca/Platform for Clash/battle/ tournament. That the Respondents have independent and bonafide interest in the term 'CLASH ARENA'
- h) The Respondent contended that it is not involved in Commercial Activity through the domain, as no money is charged from the people who are playing games over the platform; That the domain name was registered for lawful purpose and does not violate the right of third party, that the Trademark of the parties are totally distinct and different, and so is the field and stream in which the Parties are indulged, there is no confusion among the public as both are dealing under different goods and services. Respondent submits that its mark is a distinctive device mark featuring a unique logo that *prima facie* differs significantly from all the marks of the Complainant in terms of style, font, design, pattern, colors and color combination. The visual representations of both trademarks are entirely dissimilar, eliminating any chance of confusion and reducing the likelihood of any confusion among the general public.
- i) The Respondent thus contends that therefor, there is no basis for confusion in the minds of consumers, given that the Respondents exclusively operate within India, while the Complainant conducts

business in multiple countries. This geographical distinction serves to further minimize any likelihood of confusion among the consumers. THAT, both the marks are visually distinct and there is no similarity between Respondents' mark "Clash Arena" and the Complainant's mark "Clash of Clans", "Clash Royale", "Clash-A-Rama" etc. Therefore the Respondent's mark is completely different from the Complainant's mark.

- j) Respondent submits that the market-place area of the Complainant is the mobile Gaming Application available on Play Store, App Store etc. where people can download the Application and play the game. WHEREAS, the market-place area of the Respondents is the Website of Clash Arena where people can participate in any tournament, which is obviously not available on Play Store, App Store, etc.
- k) The Respondent contends that in fact, indirectly the Respondents are marketing for the Game Developers/ Complainant herein through the tournaments for free.
- l) It is further submitted that the term "Clash" is a very generic term which merely means "Face to face Confrontation", which can be virtual too. Respondent relies on **EXHIBIT-R/5**. THEREFORE, the term "Clash", being a generic word, cannot be under an exclusive ownership or control, and it cannot establish a monopoly over the word itself. THAT, the term "Clash Arena" means "Clash = Confront" "Arena = Area", which shows that the Respondents provide an Arena / Platform for people to Clash / Compete through the existing games and then win the battle / tournament. THAT, in the present matter the term "Clash Arena" is the genuinely used term and it is a compulsion for the Respondent's to use this term in order to give an impression in the mind of the people regarding the nature of services the Respondents are providing. That Respondents are the genuine and bonafide users of the term Clash Arena, and that the nature of the services provided by the Respondents cannot be expressed in a better and crisp manner, as it can be portrayed through the term "Clash Arena".

Further it is contended by Respondent that it is crucial to emphasize that there exist no valid grounds for confusion or similarity between the respective endeavors of the Parties. That, the Respondents have never shown and will never show any association of it with the Complainant. Therefore, there is no ground of conflict or confusion in the mind of the Customers linking any association of the Respondent company with the Complainant.

- m) It is further submitted by the Respondent that the Complainant does not have any Local Head Office (LHO) in the territory of India and is also not a Company recognised under the Law of the land, therefore diluting its identity of a Juristic Person and the privileges of a Separate Legal Entity.
- n) Respondent contends that it should be noted that the Complainant does not own the .in Domain of the term “Clash”, it belongs to someone else, for the purpose of a reference, the screen shot of the same is annexed herewith and marked as **EXHIBIT – R/3**.
- o) It is further contended by Respondents that the brand name “Clash Arena” was adopted by the Respondents, specifically in various classes of Trademark, and over time, they have successfully built a Goodwill and Reputation in the market, establishing a distinct identity in the minds of customers of Clash Arena.
- p) It is further contended by Respondents that it is essential to note here that the Trademark Registry determined the Trademark of the Complainant to be dissimilar to that of the Respondents. This is why the Complainant’s mark was not cited as conflicting during the registration process of the Trademark of the Respondents. THEREFORE, the term Clash Arena is genuinely associated to the Respondents. That, the Respondents are using the mark in a bonafide way and hence the present Complaint of the Complainant challenging the Bonafide and Genuine usage of Trademark by the Respondents is preventing them to carry out the trade in Bonafide



manner and hence the act of the opponent is against the **Section 35** of the Act. That, the Respondents have exclusive right for the said mark under the provisions of the Trade Marks Act, 1999 and the Respondents is entitled to restrain any person, firm and /or Company from committing an act of passing off under the provisions of **Section 27** of the Trade marks Act. Therefore, the present said mark is register-able. Therefore, it is evident from the outlined sequence of events that the Respondents have not engaged in any activities that could be construed as an infringement of the Trademark of the Complainant. Rather, Respondents have exercised their rights in accordance with the prevailing laws in India and that the Respondents are the Bonafide and Genuine users of the Trademark.

- q) The Respondent has relied upon some judgements of the Hon'ble Superior Courts to emphasize his contentions.
- r) Thus the Respondent has prayed that the Domain of the Respondents may kindly be kept intact with them only.

C. The Complainant in response to the reply of the Respondent has submitted its Rejoinder thereby denying all the contentions of the Respondents and reiterating the submissions made by the Complainant in its Complaint and praying for transfer of the disputed Domain name in its favour.

6) **DISCUSSION AND FINDINGS**

A. That the first contention raised by the Respondent qua the validity of Arbitration Proceedings under the Indian Arbitration and Conciliation Act, 1996 being invalid in absence of any direct Agreement or Arbitration Clause between the parties herein is misplaced and baseless. It is reiterated that the present 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. That by registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder. Hence it is held that the Arbitration Proceedings are valid and binding on parties.

B. Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

**Identical or confusingly Similar:**

The disputed Domain Name incorporates the Complainant's 'CLASH' mark in its entirety. It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. It is evident that the disputed domain



name "CLASHARENA.IN" incorporates in its entirety the Complainants registered trademark 'CLASH' and has the term "ARENA.IN" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

The Complainant has submitted evidence of its trademark registrations for the "CLASH" mark in India since the year 2012 as also in other Jurisdictions globally and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive global use. Further in addition to the above, reflecting its global reach, the Complainant is also the owner of numerous domain names consisting of its 'CLASH' trade mark.

The Respondent contended that the Trademark Registry determined the Trademark of the Complainant to be dissimilar to that of the Respondents as the Complainant's mark was not cited as conflicting during the registration process of the Trademark of the Respondents.

It is seen that though the Respondent has stated that Respondent has registered its own trademark but nowhere it is stated which mark has been registered and when. No document has been annexed by Respondent regarding the trademark registration as contended. The Respondent has failed to adduce any evidence of having pre-existing legitimate rights in the MARK-'CLASH' or registration of any 'CLASH' trademark in its name.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.



The disputed domain name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

**Rights and Legitimate Interests:**

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name.

The disputed domain name <**clasharena.in**> was registered on August 14<sup>th</sup> 2022. The Complainant has stated that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its rights in the 'CLASH' mark. It is found that the Complainant has provided evidence of its prior adoption of the 'CLASH' mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant has



categorically submitted that it has not consented, authorized or permitted the Respondent for use of the disputed domain name.

Use of the said trademark 'CLASH' by the Respondent in its domain name is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy.

In the light of the facts and circumstances discussed, it is found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Respondent has rebutted the contention of the Complainant submitting that usage of the term "Clash Arena" by the Respondents is a necessity so as to explain the nature of their business and the services they are offering i.e. Arena/Area/ Platform for Clash/ battle/tournament. The Respondents submitted that they have independent and bonafide interest in the term "Clash Arena"; It is contended that the Respondent is known by the Domain "Clash Arena" which is very distinct from the Mark of Complainant; The Respondent is not involved in Commercial Activity through the domain, as no money is charged from the people who are playing games over the platform; and the distinctiveness of Respondent's logo makes it easily distinguishable from the Complainants Mark, reducing the likelihood of any confusion among the general public. It is thus contended that there is no basis for confusion in the minds of consumers, given that the Respondents exclusively operate within India, while the Complainant conducts business in multiple countries. This geographical distinction serves to further minimize any likelihood of confusion among the consumers. It is contended by the Respondent that the Respondents have never shown and will never show any association



of it with the Complainant. Therefore, it is contended, there is no ground of conflict or confusion in the mind of the Customers linking any association of the Respondent with the Complainant.

Perusal of the Record depicts that the Respondent has failed to show any evidence of having pre-existing legitimate rights in the MARK-‘CLASH’ or registration of any ‘CLASH’ trademark in its name.

Having reviewed the available record, it is found that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not been able to rebutt the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. The use of the Complainants ‘CLASH’ mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

Based on the available record, it is held that the second element under paragraph 4 of the Policy has been met by the Complainant.

**Bad faith**

The evidence on record clearly demonstrates the Complainant’s prior adoption and extensive use of the ‘CLASH’ mark. Complainant had clearly acquired common law rights in the term ‘CLASH’ much before the registration date of the disputed Domain Name. It is evident that neither the Respondent's name nor the Respondent's organization bears any resemblance to the disputed Domain Name. It has been established by evidence adduced on record by the Complainant that it has acquired valuable rights in the mark ‘CLASH’ not only by prior use but also by having registered trademarks for ‘CLASH’ in numerous jurisdictions globally including in India.



These facts establish the Complainants prior adoption of the 'CLASH' mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the recognition and reputation associated with the 'CLASH' mark.

That the goods/services offered by both parties are highly similar, to the extent that they are almost indistinguishable as both relate to online gaming. The Respondent under the disputed Domain name is offering gaming tournaments using the Complainant's game title CLASH ROYALE, thus potentially creating confusion and deception among consumers

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts, circumstances and the evidence indicate that the Respondent has used the 'CLASH' Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark. The claim of the Respondent that they are not making commercial gain is clearly false/ misleading, as their own website shows to the contrary.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'CLASH' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the

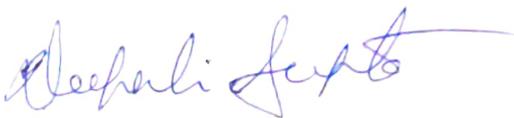


use of the trademark in the disputed domain name. Thus it can be presumed that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

#### **DECISION**

In view of the above findings, it is ordered that disputed domain name <**CLASHARENA.IN**> be transferred to the Complainant.



Deepali Gupta  
Sole Arbitrator  
Date: 2<sup>nd</sup> MAY