



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL11325465290995W
 Certificate Issued Date : 02-Jul-2024 10:32 AM
 Account Reference : SELFPRIINT (PU)/ dl-self/ NEHRU/ DL-DLH
 Unique Doc. Reference : SUBIN-DL DL-SELF77851393491546W
 Purchased by : PRABODHA AGRAWAL
 Description of Document : Article 12 Award
 Property Description : INDRP CASE NO. 1867 - ARBITRATION AWARD
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : PRABODHA KUMAR AGRAWAL
 Second Party : NOT APPLICABLE
 Stamp Duty Paid By : PRABODHA KUMAR AGRAWAL
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

₹100 ₹100 ₹100 ₹100



₹100

SELF PRINTED CERTIFICATE TO BE VERIFIED BY THE RECIPIENT AT WWW.SHCILESTAMP.COM

IN-DL11325465290995W

Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA
9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
New Delhi – 110 001 India

Molton Brown Limited, London vs Tript Singh, New Delhi, India
INDRP Case no. 1867
Arbitrator: Mr. P.K.Agrawal

1 | Page

Statutory Alert:

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

AWARD

1. The Parties

The Complainant is Molton Brown Limited, 130 Shaftsbury Avenue, London, W1D 5EU, United Kingdom.

The Respondent is Tript Singh, 30/1 East Patel Nagar, New Delhi-110008, India.

2. The Domain Name and Registrar

The disputed domain name is <moltonbrown.in>. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D41440000001519733-IN
- b. Date of creation: Aug 08, 2016.
- c. Expiry date: Aug 08, 2024.

3. Procedural History

- (a) A Complaint dated 31.05.2024 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 6.06.2024 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 6.06.2024. The Complainant was advised

to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 6.06.2024 for reply. The Notice email was served upon the Respondent email id, it was delivered on (<mannat@me.com>), but not on <online@lsmart.in> given in WHOIS details because as per Gmail notification 'the address couldn't be found or is unable to receive email'. Since the Complainant did not comply with the directions given in Notice dated 6.6.2024 to serve the Complaint on the Respondent, a reminder was issued to him on 12.6.2024. Since the Complainant did not comply with the directions given in the Notice as well as in the Reminder Email of 12.6.2024, a Final Notice was issued on 16.6.2024 to the Complainant to comply with the directions. The Complainant replied through email dated 17.6.2024 that – *“The Complainant acknowledges safe receipt of your below email(s) and apologies for the delay in response. The original notice on 6th June was not received and has since been working to get the hard copies finalised for postal delivery. The Complainant is proceeding with the transmission of hard copies to the Arbitrator and Respondent of which it will provide proof of service and delivery in due course. The Complainant also submits soft copies of its Complaint as attached to this email. If you require any further action from the Complainant, please do not hesitate to let us know.”*

- (d) The Complainant confirmed through email dated 17.6.2024 that the complaint with annexures was communicated to the Respondent through email dated 17.6.2024 and through email dated 28.6.2024 about physical delivery of Complaint to the Respondent. In view of the aforesaid, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant, Molton Brown Limited, 130 Shaftsbury Avenue, London, W1D 5EU, United Kingdom is a provider of toiletries, fragrance and beauty products (inter alia) founded in 1971. The Complainant's business began through the creation of hair-care products in the basement of the founders' salon, using a vegetarian formula which distinguished its goods from others within the same sector. The Complainant uses its official websites, www.moltonbrown.co.uk and www.moltonbrown.com (both

registered in 1997), to provide a history of the MOLTON BROWN brand. Molton Brown Limited was acquired in 2005 by its current parent organisation, Kao Corporation, for £170 million (GBP).

The Complainant further states that the Complainant uses its online presence to advertise its goods. Products sold under the MOLTON BROWN trademark include various hand-care products, essential oils for bath and body, home fragrance and shampoo, among others. The Complainant has 50 stores across the United Kingdom and has an international presence with stores in India, Australia, Italy, Japan, Kuwait, and the United States, among others. The Complainant's goods have a further worldwide reach through stockists across Europe, Asia, and North America. Specifically, the Complainant's presence in India is significant. The Complainant's MOLTON BROWN products are now stocked in stores across India including DLF Emporio Mall in New Delhi, India's finest luxury shopping destination.

Since the Complainant's inception, the MOLTON BROWN mark has become well-known for its toiletries and associated products. To date, the Complainant holds several registered trademarks for the term MOLTON BROWN, some of which are exhibited below:

Trademark	Country	Registration No.	Registration Dt.	Classes
MOLTON BROWN	India	926203	22nd May 2000	3
MOLTON BROWN	United States	1118008	15th March 1979	3
MOLTON BROWN	Australia	327450	1st February 1979	42
MOLTON BROWN	United Kingdom	UK00002323004	27th July 2003	3, 35, 44
MOLTON BROWN	European Union	000023366	15th January 1999	3, 26,42 5.6

Respondent's Identity and Activities

The identity and activities of the Respondent are not known. The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy (INDRP) are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant argues that:

- (a) As established in the Factual Grounds, the Complainant holds many trademarks for the distinctive MOLTON BROWN mark. These cover numerous jurisdictions, including India. The Complainant also relies on the goodwill and recognition that has been attained under the MOLTON BROWN name, which, through years of use, has become a distinctive identifier of its offerings, including in India.
- (b) The Complainant submits that it satisfies the identity/confusing similarity requirement of the first INDRP element. The Disputed Domain Name incorporates the Complainant's MOLTON BROWN mark in its entirety, without addition or adornment. As established in other '.in' arbitrator decisions, the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identity/confusing similarity. For example, in Zippo Manufacturing Company Inc. v. Zhaxia, Case No. INDRP/840, the arbitrator noted that: "... 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 confusing similarity for purposes of the Policy". The Complainant notes that the DNS does not allow for the existence of spaces between terms in a domain name: the characters must form one continuous string.
- (c) The Complainant further submits that the '.in' ccTLD extension should be disregarded under this first element test, as it is merely a technical requirement. This principle has been continually applied in prior INDRP decisions (see, for example, Novartis AG v. Hemaswaroop Dindukurthi Limited, Case No. INDRP/1699: "it is permissible for the Panel to ignore the country code Top-Level Domain ("ccTLD") ".in"").

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <moltonbrown.in>.

The Complainant submits that:

- (a) The Complainant firstly maintains its legal right to the Disputed Domain Name based on its statutory protection of the MOLTON BROWN mark by

way of trademark registrations in multiple jurisdictions, including India. The Complainant also relies on the recognition it has acquired through its use of the MOLTON BROWN mark prior to the Disputed Domain Name's registration in 2016. To the best of the Complainant's knowledge, the Respondent does not own any recognised rights in MOLTON BROWN, neither by way of trademark registration nor any other protected right.

(b) The Complainant submits that it has had a prior relationship with the Respondent by way of Distributor Agreement which was relinquished in 2019. In this agreement, the Complainant prohibited the Respondent from "registering or procuring the registration of any mark the same as or confusingly similar to any Trade Mark as a trade mark for any goods or services or as a domain name, in each case anywhere in the world, except the domain name www.moltonbrownindia.com purchased by the Distributor for marketing the product online in the Territory (the "Domain")..." Therefore, the Complainant submits that the Respondent has never been authorised or licensed by the Complainant to use its MOLTON BROWN trademark in a domain name other than the one specified above. This constitutes clear and explicit evidence of the fact that no rights were granted to the Respondent by the Complainant for the Disputed Domain Name.

(c) To rebut any possible legitimate interest held by the Respondent in this matter, the Complainant outlines objections to each of the provisions laid out under Paragraph 6 of the INDRP:

i) 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-

(d) The Complainant submits that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a bona fide offering of goods or services. To the best of the Complainant's knowledge, the Disputed Domain Name has been used to resolve to a parked website hosted by GoDaddy.com, LLC that directs Internet users to 'Pay-Per-Click' (PPC) advertisement links redirecting to competing offerings of the Complainant. Such use is not a bona fide offering of services, since the Disputed Domain Name utilises the MOLTON BROWN mark to capitalise on the reputation and goodwill of the Complainant's mark. Such direction may also create confusion among Internet users seeking the Complainant's online offerings given the Disputed Domain Name's identical nature to the Complainant's MOLTON BROWN mark. In *United States Polo Association v. Sugarcane Internet Nigeria Limited*, Case No. INDRP/1785, the Arbitrator concluded: "...the Respondent's use of the disputed domain name for a pay-per-click parking page does not constitute use of the

disputed domain name in connection with a bona fide offering of goods or services.”.

- (e) In addition, the Complainant acknowledges that the Disputed Domain Name was previously used to host a site that purported to sell the Complainant’s products using its MOLTON BROWN mark and logo between approximately 2019-2021. The Complainant submits that it did not authorise such use, nor was the Respondent licensed to do so, despite the previous distribution relationship mentioned earlier. Therefore, such use was by no means bona fide as it brandished the Complainant’s MOLTON BROWN mark and purported to offer the Complainant’s products. It is clear from the composition of the Disputed Domain Name that the Respondent capitalised on the goodwill of the MOLTON BROWN mark to attract Internet users to its own site for the purposes of deriving commercial gain. Such conduct cannot constitute a bona fide offering of good or services within the meaning of paragraph 6(a).
- (f) Consequently, the Respondent cannot come within this defence under the INDRP.
- ii) **the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights-**
- (g) It is a commonly held principle in domain disputes that a respondent’s mere registration of a domain name is insufficient to establish rights or legitimate interests (see, for example, Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244). As mentioned, the Respondent does not have any protected rights in the MOLTON BROWN term, nor any similar term within the Disputed Domain Name. Despite the Complainant’s past relationship with the Respondent, there would be no reasonable claim to be commonly known by the Disputed Domain Name. This principle has been affirmed in previous INDRP decisions (see, for example, Mozilla Foundation v. Lina/Doublefist Limited, Case No. INDRP/934: ‘... it is a settled position that if the Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that the respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest.’).
- iii) **the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue-**
- (h) The Respondent’s past and present uses of the Disputed Domain Name are by no means legitimate, non-commercial or fair. As mentioned, the Complainant had a previous distribution relationship with the Respondent

that granted the sole registration and use of and prohibited any other use of the Complainant's MOLTON BROWN mark in domain names (an agreement that was relinquished in 2019). In order to assess claims of normative (fair) use by resellers and distributors, the Complainant requests the arbitrator applies the 'Oki Data Test', as implemented in the UDRP (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000- 0003 and Societe Des Produits Nestle v. Raj Singh, Case No. INDRP/1452. In the present case, the test does not apply where any prior agreement, express or otherwise, between the parties explicitly prohibited the registration or use of domain names incorporating the Complainant's trademark. On the contrary, the Respondent, without authorisation and in direct contravention of the Distributor Agreement, registered the Disputed Domain Name and operated a website therefrom for commercial gain. The current presence of PPC links that redirect to competing offerings further establishes a lack of rights and legitimate interests. Both uses are an attempt of the Respondent to capitalise on the goodwill of the Complainant's MOLTON BROWN mark by creating confusion for Internet users accessing the Respondent's site in the belief they are engaging with the Complainant's offerings, given its identical composition.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- (a) The Complainant reiterates that it holds prior rights which protect the MOLTON BROWN trademark. The Complainant's earliest MOLTON BROWN trademark, registered in India, precedes the registration of the Disputed Domain Name by 16 years. The Complainant also highlights the goodwill and reputation of the MOLTON BROWN mark internationally, including in India.
- (b) The Complainant further submits that anyone who has access to the Internet can clearly find the Complainant's protected MOLTON BROWN trademark registrations on publicly accessible trademark databases (e.g., WIPO's Global Brand Database), and would have been able to find the above-referenced Indian registrations through a search conducted prior to 8th August 2016, when the Disputed Domain Name was registered. It is also clear that top Google search results for MOLTON BROWN, clearly pertain to the Complainant's offerings.

- (c) As maintained, the Respondent registered the Disputed Domain Name in direct contravention of the terms set out in the Distributor Agreement with the Complainant at the time. Therefore, the Respondent cannot reasonably claim to be unaware of the Complainant at the period of registration as it had an agreement in place that prohibited any use of domain names comprising MOLTON BROWN other than <moltonbrownindia.com>. In light of the above, it is undeniable that the Respondent targeted the Complainant when registering the Disputed Domain Name in bad faith.
- (d) The Respondent has also chosen to ignore a 'Cease and Desist' letter sent by the Complainant's representatives on the 31st January 2024. This letter put the Respondent on notice of the Complainant's trademark and rights to the Disputed Domain Name and sought to resolve the matter amicably. The Complainant submits that the Respondent's disregard of the Complainant's trademark rights is further evidence of bad faith. Panellists in various domain name disputes have stated that such behaviour infers bad faith intentions by the Respondent, such as under the UDRP in the case of Facebook, Inc. and Instagram, LLC v. C W / c w, c w, WIPO Case No. D2018-1159. In addition, under the INDRP, not responding to a 'cease and desist' letter is a factor indicative of bad faith (see Novartis AG v. Aravind R, Case No. INDRP/941: "examples of what may be cumulative circumstance found to be indicative of bad faith include [...] no response to the cease and desist letter").
- (e) Finally, the Respondent has chosen to register the Disputed Domain Name which encompasses the Complainant's MOLTON BROWN mark in full, without addition or adornment. Previous UDRP decisions have recognised the Complainant's renown such as in, for example, Molton Brown Limited v. Registration Private, Domains By Proxy, LLC / Milen Radumilo WIPO Case No. DCO2022-0059. In addition, the arbitrator in similarly applied ADR case for (Molton Brown Limited v. A.B. WIPO Case No. DSE2023-0021) concluded: "[t]he Petitioner's MOLTON BROWN trademark, possesses a quite high level of originality. Thus, it is very unlikely that the Domain Holder has registered the disputed domain name without having the Petitioner's trademark as a role model (cf. res ipsa loquitur)". Therefore, the Respondent's mere registration of the Complainant's well-known mark in isolation with the ccTLD '.in' (for India, where the Complainant operates) is intrinsically bad faith as it will create confusion among Internet users seeking the Complainant's online offerings in India.
- (f) The Complainant submits that the Respondent has previously used the Disputed Domain Name to offer the Complainant's products and brandish its MOLTON BROWN trademark. Ultimately, the Respondent has taken advantage of its previous relationship with the Complainant in an attempt to derive commercial gain despite explicitly being prohibited to register

and operate such domains (excluding - since rescinded) and continued to do so even after the relationship was dissolved. According to historical screenshots, the Respondent continued to use its website offering the Complainant's MOLTON BROWN mark and products even after the relationship between the parties dissolved in 2019. This exacerbates the finding of bad faith use as the Respondent actively chose to pass off as the Complainant at a period in which it was not authorised to operate any Molton Brown websites. In addition, the Respondent was never granted authorisation to register or use the Disputed Domain Name before or during the agreement period, or thereafter. Such use shows the Respondent's intention to create the impression that its landing website was associated with the Complainant in order to confuse and mislead Internet users seeking or expecting to reach the Complainant's MOLTON BROWN offerings. The use of a domain name that is identical to the Complainant's MOLTON BROWN mark to host a site that passes off as the Complainant, using its logo and offer its products is inherently bad faith behaviour.

- (g) The Respondent's use of the Disputed Domain Name to display PPC links that redirect Internet users to competing offerings of the Complainant's MOLTON BROWN offerings, constitutes further evidence of bad faith use within the meaning of Paragraph 7(c) of the INDRP Policy. This is because the Respondent is using the Disputed Domain Name to unfairly divert good faith Internet users, seeking the Complainant's MOLTON BROWN offerings, to sites and services which compete with such. The nature of PPC links enables the Respondent to commercially capitalise through such redirections, and thus through its unauthorised and unfair use of the MOLTON BROWN mark. Findings of bad faith use have been made in prior cases where the Respondent has, as in the present matter, deployed PPC advertisements under a mark deceptively similar to the complaining party's brand (see, for example, *Belmond Interfin Limited v. Chenggong Li*, INDRP/1169).
- (h) Finally, the Complainant notes the Respondent's activation of mailexchange (MX) records to the Disputed Domain Name. The Complainant emphasises the risk that could be caused to unsuspecting customers of the Complainant on receipt of emails from the Disputed Domain Name, given its identical nature to the Complainant's MOLTON BROWN mark. Despite the previous relationship with the Respondent, the Complainant emphasises that it has not authorised the Respondent to send emails on its behalf using the Disputed Domain Name. The Complainant submits this is further evidence of bad faith.
- (i) In view of the foregoing contentions, the Complainant submits that the Respondent has clearly registered and used the Disputed Domain Name in

order to target and commercially capitalise on the renown attached to the Complainant's distinctive and protected MOLTON BROWN mark. This amounts to evidence of the Respondent's bad faith registration and use for INDRP Policy purposes.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <moltonbrown.in> was registered by the Respondent on Aug 8, 2016.

The Complainant is an owner of the registered trademark MOLTON BROWN for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <moltonbrown.in>. Thus, the disputed domain

name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has 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 MOLTON BROWN products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <moltonbrown.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) 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; or
- (ii) 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
- (iii) 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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP

Policy.

There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not MOLTON BROWN as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark MOLTON BROWN or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Respondent has taken advantage of its previous relationship with the Complainant in an attempt to derive commercial gain despite explicitly being prohibited to register and operate such domains and continued to do so even after the relationship was dissolved. The Respondent continued to use its website offering the Complainant's MOLTON BROWN mark and products even after the relationship between the parties dissolved in 2019.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <moltonbrown.in> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's

documented out of pocket costs directly related to the domain name; or

- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name

<moltonbrown.in> be transferred to the Complainant.
No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator
Dated: 3rd July, 2024