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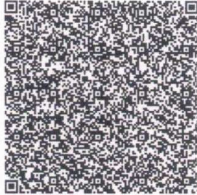
₹101

e-Stamp

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Certificate Issued Date : 22-Apr-2023 07:52 PM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL-SELF59133121488190V
Purchased by : SHEETAL VOHRA
Description of Document : Article 4 Affidavit
Property Description : ARBITRAL AWARD UNDER INDRP RULES
Consideration Price (Rs.) : 101
(One Hundred And One only)
First Party : DR SHEETAL VOHRA
Second Party : DR SHEETAL VOHRA
Stamp Duty Paid By : DR SHEETAL VOHRA
Stamp Duty Amount(Rs.) : 101
(One Hundred And One only)

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP CASE NO: 1672
ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW) ADVOCATE,
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION POLICY
(INDRP)**

IN THE MATTER OF:

MakeMyTrip (India) Private Limited,
19th floor, Tower A, B & C,
Phase – III, Gurgaon 122 002, India
Email: mohit@simandsan.com

...Complainant

Versus

Adesh Kumar,
C Bharat City
Ghaziabad
Uttar Pradesh, India
Email: adeshyadhuvanshi3@gmail.com

...Respondent

ARBITRATION AWARD

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I. THE PARTIES:

1. COMPLAINANT:

The Complainant in this administrative proceeding is MakeMyTrip (India) Private Limited, a company registered under the Companies Act, 1956, which has filed the present complaint under rules framed under the INDRP.

The Complainant's authorized representative in this administrative proceeding is:

Sim and San, Attorneys At Law
A-12, Gulmohar Park, New Delhi - 110049, India.
+91 9716746496; +49 15143672080
Email: mohit@simandsan.com; akshay@simandsan.com

The Power of Attorney was filed with the complaint and marked as **Annexure-1**.

2. RESPONDENT

The Respondent/ Registrant in this administrative proceeding is Adesh Kumar. The details about the Respondent as provided by NIXI are as follows:

Name: Adesh Kumar
Address: C, Bharat City, Gaziabad, Uttar Pradesh, India
Telephone: (+91) 8533002246
Email: adeshyadhuvanshi3@gmail.com

Adesh Kumar

A copy of the printout of the Whois records dated 04th March 2023 as available with the Respondent/Registrant was annexed with the Complaint and marked as **Annexure - 2**. NIXI at the time of forwarding the Complaint to all parties provided Whois details of the Respondent.

The Respondent did not engage any counsel / advocate in the present administrative proceeding and neither did the Respondent file any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

II. THE DOMAIN NAME AND REGISTRAR:

The Disputed Domain Name is: makemytrips.co.in

The Disputed Domain Name is registered with IN Registry.

The Registrar with which the domain name <makemytrips.co.in> is registered is Hosting Concepts B.V. d/b/a Openprovider. The Registrar features in the list of accredited registrars on the IN Registry database hosted at <https://www.registry.in/accredited-registrars> The address of the Registrar as per its website hosted at <https://www.openprovider.com/legal/terms-conditions> is as under:

Openprovider

Attn: Robert Aguilar

Kipstraat 3C, 5C,

3011 RR Rotterdam,

Netherlands

Email: support@openprovider.com

III. PROCEDURAL HISTORY:

March 4, 2023	Date of Complaint
March 13, 2023	Sole Arbitrator appointed to adjudicate the dispute

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March 13, 2023	Arbital proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
March 15, 2023	In accordance with Rule 3 of INDRP Rules, hard copy of the Complaint and Annexures were sent by Complainant to the Respondent
March 28, 2023	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on March 13, 2023.

Hence this award is proceeded with on basis of the available pleadings and documents only.

CASE OF THE COMPLAINANT

The Complainant provided a table of its trademark registrations for MAKEMYTRIP (and several other MAKEMYTRIP formative marks including, but not limited to MAKEMY, MYTRIP, MMT), in India as follows:

Trade Mark	Registration no.	Date of filing	Class	Status
MAKEMYTRIP	2149947	25 May 2011	39	Registered
MAKEMYTRIP	2149948	25 May 2011	43	Registered
MAKEMYTRIP	2991097	23 June 2015	35	Registered
MAKEMYTRIP	2991098	23 June 2015	09	Registered
	1447892	29 October 2008	39	Registered

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Copies of the trademark certificates and online statuses of the aforementioned trademark registrations were filed along with the complaint and marked as **Annexure- 3 (Colly)**.

IV. FACTUAL AND LEGAL GROUNDS:

About the Complainant:

1. It was submitted that the Complainant, MakeMyTrip (India) Private Limited, is a company registered under the Companies Act, 1956, with its registered office at Building No. 5, 19th Floor, Tower A, DLF Cyber City, DLF Phase II, Gurugram 122002.
2. It was submitted that the Complainant, incorporated in the year 2000, and started its business initially with airline ticket bookings alone, is today one of the largest travel companies in India with its presence all across India and in several other countries around the world including in the United States of America, the United Arab Emirates and Mauritius, European Union, Australia, and the United Kingdom, amongst others. It was submitted that the Complainant was originally incorporated on 13 April 2000, with the trade name 'Travel by Web Private Limited' and subsequently, vide a fresh Certificate of Incorporation, dated 02 August 2000, the Complainant changed its trade name to 'Makemytrip.com Pvt. Ltd'. It was submitted that the Complainant also, on this date, coined the MMT Letter Mark, an acronym for MakeMyTrip. Thereafter, on 28 June 2002, the Complainant effected another change that remains its current and present name, i.e., MakeMyTrip (India) Pvt. Ltd.
3. It was submitted that being primarily a performance-driven entity, the Complainant has achieved market leadership solely based on its obsession with quality and excellence. It was submitted that the reputation commanded by the Complainant is amply demonstrated by the fact that it has been associated with numerous prestigious projects from noted celebrities, corporate giants, and other

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industry leaders. It was submitted that the Complainant is a pioneer of the Indian online travel industry, the Complainant has carved out a niche for itself within the travel industry over nearly the last 2 decades as one of the most popular one-stop travel websites. It was submitted that the Owing to the widespread access to the internet and the sustained boom of e-commerce over the past decade, the Complainant is the preferred choice of millions of customers not only in India but across the globe, looking to book their travel and tour online. It was submitted that the Complainant stands apart from other travel platforms by combining a diverse range of cost-effective packages of flights, hotels and tour bookings with cutting-edge technology and dedicated customer support.

4. It was submitted that the over the years, the Complainant has expanded its range of products and services beyond online travel bookings. It was submitted that presently, the Complainant, through its primary website, www.makemytrip.com and other technology-enhanced platforms including application-based mobile platforms, etc., offers an extensive range of travel services and products, both in India and abroad. It was submitted that the said services of the Complainant include booking of air tickets, rail tickets, bus tickets, hotel reservations, car hire, domestic and international holiday packages and ancillary travel requirements such as facilitating access to travel insurance, visa assistance, forex exchange, experiences, etc. A few extracts from the Complainant's website as well as Internet archives dating back to 2001 were filed with the Complaint and marked as **Annexure 5 (colly)**.
5. It was submitted that the after changing its trade name to include the words MakeMyTrip on 02 August 2000, the Complainant has continuously and uninterruptedly used the MAKEMYTRIP Marks for all its business activities. It was submitted that the trademarks, MAKEMYTRIP and MMT, are coined and invented marks. It was submitted that the Complainant was the first company to conceptualize and ideate the use of three different words, to form, phonetically, visually and structurally, one word and further use the word MY as a linking/connecting element between the other two words. It was submitted that the trade mark MAKEMYTRIP is an essential feature of the Complainant's composite label or logo marks. It was submitted that due to their nature of use,

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“MAKEMY”, “MYTRIP” and “MY” are also essential and dominant features of the MAKEMYTRIP Marks. It was submitted that due to extensive use, now spanning more than twenty-two (22) years, the MAKEMYTRIP Marks are synonymous with high standards of quality in respect of services provided by the Complainant.

6. It was submitted the domain <makemytrip.com> was registered way back on 8 May 2000 and stands in the name of the founder of the Complainant Company, namely, Mr Deep Kalra. It was submitted that the Complainant has been hosting an interactive website on the said domain name, since as early as 2001. It was submitted that it's reflecting its global reach, the Complainant is also the owner of numerous domain names consisting of the MAKEMYTRIP trade mark, including, for instance, <makemytrip.ae>, <makemytrip.in>, <makemytrip.net>, <makemytrip.co.in>, <make-my-trip.net.in>, <makemytrip.in>, <makemytripdeals.com>, <makemytriphotels.com>, <makemytripmails.com>, <makemytrip.sg>, <makemytrip.jp>, <makemytrip.com.sg>, <makemytrip.ph>, <emailsmakemytrip.com>, <mails-makemytrip.com>, <makemytripreviews.com>, <makemytripbus.com>, <makemytripflights.com> and <makemytrip.co.in>.
7. It was submitted that since its launch in 2012, MakeMyTrip App has become one of the fastest-growing and most popular mobile applications in the world for travel and tourism, with over 50million downloads in Google Apps Store. It was submitted that the MakeMyTrip has acquired a considerable reputation and goodwill worldwide, including in India where the Respondent is based. Furthermore, it was submitted that the Condé Nast Traveler India awarded the Complainant's App as the Favorite travel app of 2017.
8. It was submitted that the Complainant's MAKEMYTRIP Marks have come to symbolize not only prominence and elegance but the abundant scope of the Complainant's services too. It was submitted that the services provided by the Complainant under the MAKEMYTRIP Marks elucidate its vision, which is oriented firmly towards customer satisfaction and excellence. It was submitted

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that the enormous success enjoyed by the Complainant under its MAKEMYTRIP Marks is apparent from the tremendous revenues generated. It was submitted that the sales turnover attributable to the Complainant's MAKEMYTRIP Marks in India alone runs into several crores of Rupees. It was submitted that the value of gross bookings undertaken by the Complainant in the financial year 2019-20 amounts to approximately Rs. 3133.97 Crores. A copy of the Complainant's Company Secretary's Certificate certifying the Complainant's annual turnover was filed with the Complaint and marked as **Annexure-6**.

9. It was submitted that the Complainant, with a view to promoting its MAKEMYTRIP Marks, has made and continues to make a substantial investment in advertising and promotional activities worldwide, including in India. It was submitted that the same includes promotional activities through not only conventional print and electronic media, but even digital media over the Internet. Illustratively, the value of advertisement and business promotion undertaken by the Complainant in the financial year 2019-20 amounts to approximately Rs. 1025.10 Crores. A copy of the Complainant's Company Secretary's Certificate certifying the Complainant's advertising and business promotion expenses was filed with the Complaint and marked as **Annexure- 7**.

10. It was submitted that the Complainant has undertaken massive advertising and promotional endeavors over the past several years and has also actively sponsored various national and international events, wherein the MAKEMYTRIP Marks have been prominently featured. It was submitted that the instance, the Complainant's MAKEMYTRIP Marks have featured in the Bollywood movies- Yeh Jawani Hai Deewani, Dostana, Half Girlfriend, and Mubarakan. It was submitted that the apart from the abovementioned initiatives, the Complainant has also engaged internationally well-known celebrities, such as Ranveer Singh, Alia Bhatt, and Diana Penty, amongst others, to endorse its business activities under the MAKEMYTRIP Marks. It was submitted that the spectacular success of the Complainant's business and services under the MAKEMYTRIP Marks, the same has been the subject matter of widespread unsolicited media comment and publicity in leading Indian and International publications including newspapers and magazines.

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11. It was submitted that the Complainant has been and currently is, a part of several renowned national as well as international trade associations. It was submitted that a few of the trade associations with which the Complainant is associated are entailed herein:

- a. that the International Air Transport Association (IATA) – The IATA is an international trade association that represents global airlines.
- b. that the Indian Association of Tour Operators (IATO) - The IATO is the national apex body of the tourism industry, with its members representing the various segments of the tourism industry.
- c. It was submitted that the Travel Agents Federation of India (TAFI)- The TAFI is a body to promote the orderly growth and development of the tourism industry.
- d. It was submitted that the Travel Agents Association of India (TAAI)- The TAAI is a professional coordinating body of different segments of the travel and tourism industry.
- e. It was submitted that the Ministry of Tourism, Govt. Of India – Recognized and certified the Complainant as a travel agent.

12. It was submitted that the Complainant has in the past also entered into strategic tie-ups and has pioneered several travel projects as well. It was submitted that the offer better tour and travel packages and economical options to its customers, the Complainant has entered into collaboration agreements with numerous travel companies, hotels, airlines etc., including but not limited to British Airways, Turkish Airlines, Gulf Air, Singapore Airlines, Lufthansa, Etihad Airways, HSBC, Accor, Hilton, Expedia, Amex, IBM, SBICPSL, HDFC Tourism Boards of Korea, New Zealand, Singapore, Australia and Malaysia. These business alliances have helped the Complainant to further augment its already successful business.

13. It was submitted that the in consideration of the Complainant's unmatched performance with its business tie-ups, its partners have conferred various accolades to the Complainant. Details of a few such accolades are listed below:

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- i. Singapore Airlines - Top Agent Award (2010-2011);
- ii. Malaysia Airlines – Top Agent Award (2010,2009, 2007);
- iii. Cathay Pacific – Outstanding Performance (2009, 2007);
- iv. Air Canada – Outstanding Performance (2008);
- v. Singapore Airlines – Top Passenger Agent (2007-08);
- vi. Air Mauritius – Top North India Sales Award (2007-08);
- vii. British Airways – Outstanding Revenue Contribution (2007-08);
- viii. Lufthansa – Outstanding Performance (2006-07);
- ix. Air Mauritius – All India Top Ten Agent (2006-07);
- x. Kingfisher Airlines – Outstanding Performance – (2006-07);
- xi. Indian Airlines – Achieving Highest Domestic Passenger Sales – (2006-07);
- xii. Air India – Outstanding Contribution to Passenger Sales – (2005-06);
- xiii. Jet Airways – Award of Excellence – 2005-06; and
- xiv. Gulf Air – Continuous Support.

14. It was submitted that the Complainant, to provide the best services to its ever-expanding clientele and to fulfill the ever-expanding demand of the international hospitality industry, has also acquired and invested in well-known brands to provide the full spectrum of services to its clients all across the globe, and, in turn, to grow its own business. Details of a few such acquisitions and investments are listed below:

- i. January 2017: Merger with Ibibo Group, one of the biggest online travel organizations in India.
- ii. July 2015: Invested \$5 Million in Bona Vita Technologies,
- iii. July 2015: Acquired a 28% stake in HolidayIQ.com, a travel information portal powered by user-generated content.
- iv. April 2015: Acquired My gola, a start-up firm dealing with travel guidance services.
- v. June 2015: Invested \$3 Million in Inspirock, a California-based start-up dealing with user-generated itineraries across 6,000 destinations.

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- vi. February 2014: Acquired Amsterdam-based online hotel reservation website easytobook.com for \$5 Million.
- vii. November 2012: Acquired Hotel Travel Group for \$25 Million.
- viii. November 2012: Acquired a majority stake in the Thailand-based hotel aggregator ITC Group.
- ix. November 2011: Acquired majority stake in Delhi based My Guest House Accommodation (MGH) for \$1 Million.
- x. August 2011: Acquired majority stake in Gurgaon-based Le Travenues Technology Private Limited, which runs travel metasearch engine, ixigo.com.
- xi. May 2011: Acquired majority stake in Singapore-based Luxury Tours & Travel Pte Ltd for \$3 million.
- xii. In 2022, Acquired a majority stake in Bookmyforex Pvt Limited

15. It was submitted that the Complainant has also made substantial investments to develop a strong presence online by being active on different social media forums. For instance, the MakeMyTripFacebook page (<https://www.facebook.com/makemytrip/>) currently has more than 2.6million "likes" and "followers" while the Twitter page (https://twitter.com/makemytrip?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor) has more than 1.17 lakh "followers". It was submitted that the Complainant also has an official channel on YouTube (<https://www.youtube.com/channel/UCkCnjffgbcFwiY5StOdsSMA>) where it posts, inter alia, past and present television commercials for its MAKEMYTRIP Marks. It was submitted that the Complainant's YouTube channel has over 66 thousand "subscribers" and more than 64 Crore views.

16. It was submitted that the fame of the Complainant's trade mark is also evidenced by the number of cyber squatters who have sought to unfairly and illegally exploit the very significant consumer recognition and goodwill attached to its trademarks. It was submitted that the Prior domain name dispute panels have recognized the strength and renown of the Complainant's MAKEMYTRIP Marks, and have ordered infringing respondents to transfer or revoke the disputed domain names to the Complainant, in the following decisions:

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- i. MakeMyTrip (India) Pvt. Ltd. v. Vinay Singh, (INDRP/303)(makemytripindia.in);
- ii. MakeMyTrip (India) Pvt. Ltd. v. QA Aviations Ltd., (INDRP/214)(makemytrip.net.in);
- iii. MakeMyTrip (India) Pvt. Ltd. v. Ms. Kavita Ganjoo, Satisar Travels, (INDRP/1392) (lockmytrip.in);
- iv. MakeMyTrip (India) Pvt. Ltd. v. Make My Wallet, (INDRP/1443)(makemywallet.co.in);
- v. MakeMyTrip (India) Pvt. Ltd. v. Make My Wallet, (INDRP/1442)(makemywallet.in);
- vi. MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org, (Case No.D2012-0691) (makemy-trip.com);
- vii. MakeMyTrip (India) Private Limited v. Ram Chilukuri (Case No. DCO2022-0069)(makemytrip.co);
- viii. MakeMyTrip (India) Private Limited v. Xianjin Hong (Case No. D2022-3648(makesmytrip.com);
- ix. MakeMyTrip (India) Private Limited v. domain admin / Great Echo Ltd. (ClaimNumber: FA1402001543309) (makemytrip.us); and
- x. MakeMyTrip (India) Private Limited v. Felipe Lopez (Case No. D2022-3555) (makemytrips.com).

17. It was submitted that in addition to its strong presence online, the Complainant has secured ownership of numerous trade mark registrations in the term MAKEMYTRIP in many jurisdictions throughout the world, including in India where the Respondent is based, in connection with instant travel and tourism services, as detailed above.

18. It was submitted that the Complainant's valuable reputation offline and online is not only crucial to maintaining the value and distinctiveness of its brand, but also vital to the success, integrity and protection of its business and consumers. It was submitted that the Complainant devotes significant resources to protect its trade mark rights and goodwill in forums such as this administrative proceeding.

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About the Respondent:

19. It was submitted that the Complainant was recently alerted to the fact that a misspelling/plural (MAKEMYTRIPS) of its website <makemytrip.com> and its trademark MakeMyTrip had been registered under the.IN ccTLD by the Respondent.
20. It was submitted that the Disputed Domain Name was registered on 01 October 2022 (see Annex-1 for the Whois record). It was submitted that the Disputed Domain Name resolves to an active website offering travel services which are identical to the Complainant's services. It was submitted that the Respondent is offering travel services in India through the website hosted on the Disputed Domain Name. Screen captures of the website associated with the Disputed Domain Name are was filed with the Complaint and marked as **Annexure-8**.
21. It was submitted that the blatantly abusive registration and use of the Disputed Domain Name, the Complainant is constrained to file the present Complaint to request the transfer of the Disputed Domain Name under the Policy to protect its legitimate business interests and the rights of its user community.

The Complainant relied upon the following grounds in support of the Complaint:

A. The domain name <makemytrips.co.in> is identical to the trademark MakeMyTrip in which the Complainant has rights:

- i. It was submitted that the Complainant is the registered proprietor of the MAKEMYTRIP Marks in India as well as several countries worldwide. It was submitted that is well-established that trademark registrations constitute prima facie evidence of the validity of trademark rights. It was submitted that in Inter-Continental Hotels Cooperation v. Abdul Hameed (NIXI Case No. INDRP/278, February 10, 2012, it was held that trademark registration constitutes prima facie evidence of the validity of trademark rights.

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- ii. It was submitted that the assessment of identity or confusing similarity of a domain name with a trademark, it is generally accepted that this assessment involves a reasoned but relatively straightforward comparison between the trademark and the domain name. It was submitted that in cases where a domain name incorporates a trademark in full, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the latter will normally be considered confusingly similar to that mark (The Complainant drew attention to section 1.7 of WIPOO overview 3.0).

- iii. It was submitted that the Disputed Domain Name <makemytrips.co.in> is identical to the Complainant's MakeMyTrip Mark. It was submitted that the present complaint is being filed on account of the unauthorized and illegal registration by the Respondent of the Disputed Domain Name containing a misspelling/plural of the Complainant's trademark MakeMyTrip in its entirety. It was submitted that the Disputed Domain Name, <makemytrips.co.in>, differs from Complainant's domain name <makemytrip.com> by only one letter – Respondent has changed the spelling of "MakeMyTrip" by one letter (adding the letter "s"). It was submitted that the trademark MakeMyTrip is recognizable in the Disputed Domain Name. Furthermore, in *MakeMyTrip (India) Private Limited v. Felipe Lopez* (Case No. D2022-3555) concerning <makemytrips.com> (identical squatting gTLD), the panel held *'the Disputed Domain Name consists of the MAKEMYTRIP Mark in its entirety, although misspelt adding one letter – the letter "s" in "trip", and then followed by the generic Top-Level Domain ("gTLD") ".com". Such a minor modification to a trademark is commonly referred to as "typo squatting" (and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser). The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the MAKEMYTRIP Mark.'*

- iv. It was submitted that the Disputed Domain Name is a clear instance of "typo squatting" and section 1.9 of the WIPO Overview 3.0 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant

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mark for purposes of the first element.” It was submitted that the Disputed Domain Name is confusingly similar to Complainant’s MakeMyTrip Mark.

- v. It was submitted that the suffix, such as. CO.IN, is generally accepted as irrelevant when assessing whether Disputed Domain Name is identical or confusingly similar to a trade mark as it is a functional element.
- vi. It was submitted that the disputed domain name <makemytrips.co.in> is identical to the Complainant’s MakeMyTrip Mark. It was submitted that the Complainant has established that the requirements of the INDRP Policy Paragraph 4(a) are fulfilled.

B. The Respondent has no rights or legitimate interests in respect of the domain name <makemytrips.co.in>:

- i. It was submitted that the Respondent has no rights or legitimate interests in the Disputed Domain Name. It was submitted that the Disputed Domain Name resolves to an active webpage offering identical services (travel services). It was submitted that this indicates that the Respondent neither holds any rights in the trademark MakeMyTrip nor is popularly known to be associated with it.
- ii. It was submitted that the Respondent is not a licensee of the Complainant, nor has it been otherwise authorized or allowed by the Complainant to make any use of its MakeMyTrip Mark, in a domain name or otherwise. It was submitted that the MakeMyTrip Mark is significantly unique and used by the Complainant as a trademark for a vast array of its business activities and consequently, it cannot be contended that the Respondent has with *bona fide* intent adopted the identical domain name. It was submitted that in *Cavinkare Pvt. Ltd. v. LaPorte Holdings, Inc and Horshiy, Inc.*, (WIPO Case No. D2004-1072), the panel held that *‘it stretches credulity to breaking point to believe that it was a mere coincidence that the Respondents adopted a name similar to Complainant’s unique and distinctive name, and if it is not co-incidence, the inference inevitably arises that the Respondents have misappropriated the*

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Complainant's name which conduct cannot create rights or legitimate interest'.

- iii. Further, it was submitted that the Respondent is unable to invoke any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Domain Name, as addressed below.
- iv. It was submitted that the Complainant has not authorized the Respondent to use the Complainant's, MakeMyTrip Mark. It was submitted that the Respondent cannot assert that they have been using the Domain Name, before any notice of the present dispute, in connection with a *bona fide* offering of goods or services in paragraph 6(a) of the Policy. It was submitted that there has been no use of, and/or demonstrable preparations to use, the MakeMyTrip Marks or the Disputed Domain Name by the Respondent in connection with a *bona fide* offering of goods or services before being aware of the Complainant's dispute. It was submitted that the Respondent has registered the Dispute Domain Name only to divert customers of the Complainant to the Respondent, admittedly offering competing services. It was submitted that the Respondent has used the Disputed Domain Name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's products and services.
- v. It was submitted that the Disputed Domain Name currently hosts a travel blog. It was submitted that the Such use of the Domain Name cannot constitute a *bona fide* offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's MakeMyTrip Mark to offer identical services. It was submitted that in *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, (WIPO Case No. D2000-0847), panel stated that: "...use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is contrary to the intent of the Policy." In *Ritzio Purchase Limited v. Legato LLC / V. Zaharchenko / Jimmy McColin / Chernovsky Vladimir Sergeevich / Domain*

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Admin, PrivacyProtect.org, (WIPO Case No. D2015-1182), panel held that: "panel is of the view that the use of a name or trademark so as to resonate another does not constitute a bona fide offering of goods or services under the Policy. Indeed, such activity is usually seen as an indicator that rights or legitimate interests do not exist."

- vi. It was submitted that the In MakeMyTrip (India) Private Limited v. Xianjin Hong (Case No. D2022-3648) concerning <makesmytrip.com> (identical squatting gTLD), the panel held *"the nature of the Domain Name, comprising Complainant's trademark in its entirety in combination with the letter "s", carries a risk of implied affiliation... Similarly, the addition of the "s" can also be viewed as a typo, noting the adjacent location of the "e" and "s" on a standard QWERTY keyboard, reflecting an intent on part of Respondent to profit from unsuspecting Internet users unaware of said typo and believing the Domain Name to be Complainant's domain name or, at least as state above, associated with Complainant's MAKE MY TRIP trademark. It was submitted that the Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests regarding the Domain Name."*
- vii. It was submitted that the Panel in ACCOR v. Acortel s.l., (WIPO Case No. D2003-0711), has held that *"an offering of goods and services by the Respondent which comprises: (1) the use by it of a name similar to that of the Complainant's trademarks and (2) which is in relation to identical services and (3) is in a country where the Complainant has an established and extensive business conducted under the trademarks does not constitute a bona fide offering."* It was submitted that the use of an identical mark MakeMyTrips by the Respondent in relation to identical services in India does not constitute a *bonafide* offering.
- viii. It was submitted that the Respondent has no legitimate reason to use the Disputed Domain Name except to divert Internet users who make the typing error of adding an "s". It was submitted that the panel in *e-Duction, Inc. v. Zuccarini*, (WIPO Case No. D2000-1369) held that *"a use that merely operates*

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to redirect mistaken typists to other sites is not enough to create a legitimate use without a greater connection between the domain name and the redirected site."

- ix. It was submitted that the Respondent is not commonly known by the term "MakeMyTrip", in accordance with paragraph 6(b) of the Policy, particularly given the notoriety surrounding the Complainant's MakeMyTrip Mark internationally and its exclusive association with the Complainant. It was submitted that the Respondent intends to register the Complainant's MakeMyTrip Mark deliberately and pre-emptively as a domain name and thereafter, intentionally attempt to attract, confuse, and profit from Internet users seeking the Complainant's products and services who unintentionally and inadvertently make the typing error of adding an "s" to the term "Trip" in "MakeMyTrip". It was submitted that the Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has registered the same with the *mala fide* of making illegitimate and illegal commercial gains.
- x. It was submitted that while assessing claims by Respondents that they have been commonly known by an at-issue domain name, the Panel in *Banco Espirito Santo S.A. v. Bancovic* (WIPO CaseNo. D2004-0890) held that "[i]t is not sufficient for the Respondent to merely assert that he or she has been commonly known by the domain name to show a legitimate interest. The Respondent must produce evidence in order to show that he or she has been 'commonly known' by the domain name." It was submitted that the present case, there is nothing in the evidence before the Panel that suggests the Respondent might otherwise have rights or legitimate interests in the Disputed Domain Name. It was submitted that there is no indication in the record that the Respondent has ever been commonly known as MakeMyTrip and holds no association with the trademark and the Disputed Domain Name. It was submitted that the MakeMyTrip trademark is not a generic or descriptive trademark and hence, there arises no justification on part of the Respondent to purchase and/or use this MakeMyTrip Mark.

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- xii. It was submitted that the Given the global fame of the MakeMyTrip Mark, the fact that the MakeMyTrip Mark has been incorporated in its entirety in the Disputed Domain Name shows that the Disputed Domain Name has been registered with the Complainant's MakeMyTrip Mark in mind, to attract, confuse and profit from Internet users seeking the Complainant's products and services. It was submitted that the Complainant, therefore, asserts that the Respondent has no rights or legitimate interest in the Disputed Domain Name, in accordance with paragraph 6(b) of the Policy.
- xiii. It was submitted that neither the Respondent assert that it has made or is currently making a legitimate non-commercial or fair use of the Domain Name, pursuant to paragraph 6(c). It was submitted that the Disputed Domain Name currently is pointing to a website that offers identical travel-related services as the Complainant. It was submitted that the public is likely to be confused into thinking that the Disputed Domain Name has a connection with the Complainant and that there is a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website to which the Disputed Domain Name is pointed. It was submitted that such use is not legitimate non-commercial or fair use of the Disputed Domain Name, as it uses the goodwill of the Complainant's MakeMyTrip Mark to generate revenue and mislead online users to the Disputed Domain Name.
- xiii. It was submitted fact that the Disputed Domain Name falsely suggests affiliation with the Complainant will generally exclude any possible fair use as per paragraph 2.5 of the WIPO Overview 3.0 ("*Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation*"). It was submitted that the distinctiveness, notoriety, and premium quality of the Complainant's services under the MakeMyTrip Mark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the website and taking unfair advantage of the Complainant's rights.

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- xiv. It was submitted that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests and therefore, the burden of proof shifts to the Respondent, requiring it to provide evidence or plausible assertions demonstrating rights or legitimate interests in the domain name. It was submitted that In *Nobelstiftelsen (The Nobel Foundation) v. Ousainou Jeng* (WIPO Case No. D2011-1385), the Panel held that “*Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among panellists that a complainant has to make only a prima facie case to fulfil the requirements of paragraph 4(a)(ii) of the Policy. As a result, the burden of coming forward with evidence of the respondent’s rights or legitimate interests in the disputed domain name will then shift to the respondent.*” Further, in *Audatex (Schweiz) GmbH v. PlantHolding GmbH* (WIPO Case No. DNL2016-0007), the Panel held that “*If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied the second element of article 2.1 of the Regulations.*”
- xv. It was submitted that the Complainant’s exclusive rights in its MakeMyTrip Mark, which predate the earlier date (01 October 2022) on which the Respondent registered the Disputed Domain Name, and the recognition, reputation, and goodwill which the Complainant likely developed in its MakeMyTrip Mark, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to those of the Complainant — at least for the services provided by the Complainant under any of these marks — without interfering with the exclusive trademark rights of the Complainant.
- xvi. It was submitted that the Respondent’s acts do not constitute a *bona fide* offering of goods or services. It was submitted that the Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has registered the same with the *mala fide* intent of making illegitimate

Shutai vohra

and illegal gains. It was submitted that the Complainant has established the requirements of the INDRP Policy Paragraph 4(b).

C. The domain name <makemytrips.co.in> has been registered or is being used in bad faith.

- i. The Complainant asserted that, in the present case, there is no plausible reason for the registration and use of the Disputed Domain Name, other than with the ulterior motive of causing a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the website to which the Disputed Domain Name is pointed and with the ulterior motive of using it to gain revenue, thus showcasing the Respondent's bad faith.
- ii. It was submitted that the Paragraph 7 of the Policy lists four factors which, in particular but without limitation, may be evidence of the registration and use of a domain name in bad faith for the purposes of paragraph 4(c) of the Policy. It was submitted that paragraphs 7(b), 7(c), and 7(d) of the Policy are of particular relevance in the present case.
- iii. It was submitted that the Complainant's MakeMyTrip Mark is a highly distinctive coined mark which is well known throughout the world. It was submitted that it has been continuously and extensively used since 2000 in connection with travel-related goods and services and has rapidly acquired considerable goodwill and renown worldwide. It was submitted that the Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights.
- iv. It was submitted that the Section 3.2.2. of WIPO Overview 3.0 reads that "*In circumstances where the complainant's mark is widely known (including in its sector) or is highly specific and the Respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), the panels have found that the respondent should have known, that its registration*

Cheta Vohra

would be identical or confusingly similar to a complainant's mark." It was submitted that the Complainant's renowned and goodwill worldwide and particularly its popularity and trademark rights well established in India, it would be inconceivable for the Respondent to argue that he did not have knowledge of the Complainant's MakeMyTrip Mark at the time of registration in 2022 and thus, the registration of the Disputed Domain Name amounts to registration in bad faith.

- v. It was submitted that the in any event, given the overwhelming renown and explosive popularity of the Complainant's MakeMyTrip Mark worldwide, and the nature of the Disputed Domain Name, which is identical to the Complainant's MakeMyTrip Mark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.
- vi. It was submitted that the Complainant's MakeMyTrip Mark is highly distinctive and well-known throughout the world. It was submitted that mark has been continuously and extensively used since 2000 in connection with travel-related services and has rapidly acquired considerable goodwill and renown worldwide. It was submitted that the Respondent chose the Disputed Domain Name as a misspelling/plural of MakeMyTrip, a well-known trademark. However, it was submitted that the Respondent has neither the authorization to use the Disputed Domain Name incorporating the MakeMyTrip trademark, nor is affiliated somehow with the Complainant anywhere. It was submitted that in any event, given the overwhelming renown and explosive popularity of the Complainant's MakeMyTripMark worldwide, and the nature of the Disputed Domain Name, which is a misspelling/plural of the Complainant's MakeMyTrip Mark and the Complainant's domain name <makemytrip.com>, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. Furthermore, it was submitted that the given its inherently distinctive

Shubra Waha

MakeMyTrip Mark, the Complainant submits that the Respondent could simply not have chosen the Disputed Domain Name, which is confusingly similar to the Complainant's MakeMyTrip Mark, for any reason other than to take unfair advantage of the Complainant's goodwill and reputation.

- vii. It was submitted that to sum up, the indicia show how the Respondent was most likely aware of the Complainant's MakeMyTrip Mark at the time of the registration of the Disputed Domain Name. It was submitted that the Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights. It was submitted that the Prior panels deciding under the Policy have held that actual and constructive knowledge of a Complainant's rights at the time of registration of a domain name constitutes strong evidence of bad faith. It was submitted that in *eBay Inc. v. Sunho Hong*, (WIPO Case No. D2000-1633), the panel held that: "*actual or constructive knowledge of the Complainant's rights in the trade marks is a factor supporting bad faith.*" and in *E. & J. Gallo Winery v. OakInvestment Group*, (WIPO Case No. D2000-1213), panel held that: "*finding bad faith where the respondent 'knew or should have known' of the complainant's trade mark.*"
- viii. It was submitted that the Respondent is engaged in typo squatting, by attempting to take advantage when an Internet user seeking to access the Complainant's website at <www.makemytrip.com> inadvertently types the incorrect address <www.makemytrips.co.in>. It was submitted that the Respondent's activity to engage in typo squatting by registering <makemytrips.co.in> in hopes of catching inattentive Internet users attempting to reach the website at www.makemytrip.com is evidence that the Respondent registered and is using the disputed domain name in bad faith. See *Nat'l Ass'n of Prof'l Baseball Leagues v. Zuccarini*, (WIPO Case No. D2002-1011) (*concluding that typo squatting is inherently parasitic and evidence of bad faith registration and use of a domain name*).
- ix. It was submitted that the Complainant asserts that the Respondent registered/acquired the Disputed Domain Name on 01 October 2022 to take

Shubal Vohra

advantage of the users who inadvertently add the letter “s” for commercial gain and creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website, and thus bad faith is implicit in the registration of the Disputed Domain Name. It was submitted that the consumers looking for travelling opportunities and visiting the website of the Respondent will be misled and confused by thinking that the Respondent’s website in fact belongs to or is affiliated with the Complainant. It was submitted that Section 3.1.4 of WIPO Overview 3.0 reads: “*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.*” It was submitted that the Disputed Domain Name consists of a misspelling of the well-known trade mark MakeMyTrip and therefore, the registration itself can create a presumption of bad faith.

- x. It was submitted that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant, in accordance with paragraph 7(d) of the Policy. It was submitted that the Respondent offers identical services to the Complainant and is admittedly engaged in services that compete. It was submitted that the Respondent has caused actual disruption in its business by preemptively registering the Dispute Domain Name and causing a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website by the Complainant and taking unfair advantage of the Complainant’s rights. It was submitted that the in *Tribeca Film Center, Inc. v. Lorenzo Brusasco-Mackenzie (WIPO Case No. D2000- 1772)*, the panel held that “...a respondent can “disrupt the business of a competitor” only if it offers goods or services that can compete with or rival the goods or services offered by the trademark owner.” It was submitted that it has been proved beyond doubt that the rival parties are engaged in competing businesses and the Respondent’s acts have been done with the primary intention of causing disruption in the Complainant’s business. It was submitted that Such mala fide acts of the Respondent amount to actual disruptions in the Complainant’s business. It was submitted that the

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panel in *Viacom International Inc. v. Bladimir Boyiko* (WIPO Case No. D2008-0867), held that “as to paragraph 4(b)(iii) of the Policy, the facts also indicate that the disputed domain name was registered primarily to disrupt the Complainant's business in the sense that the sites to which the disputed domain name links offer products and services which compete with those offered by the Complainant.”

- xi. It was submitted that in *Thomson Research Associates Inc., Kroy International Inc. v. Microban Products Company* (WIPO Case No. D2007-0554), panel held that “Paragraph 4(b)(iii) of the Policy does not require evidence of actual disruption, although such evidence would more strongly demonstrate that the Respondent had a disruptive purpose. But in this case, evidence of actual disruption can be drawn from the fact that the Respondent registered virtually identical domain names to the Complainant's mark which (as evidenced by the Complainant), for a period, were linked to its own website, even though neither the Respondent nor its website have any apparent relationship with the term “ultra fresh”. Such conduct is more than just sharp practice between two competitors in the same field. Rather, it appears to be the kind of conduct to which paragraph 4(b)(iii) of the Policy is designed to prevent.” It was submitted that in light of the above, it evident that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant in bad faith and in violation of paragraph 7(d) of the Policy (the equivalent of paragraph 4(b)(iii) of the UDRP Policy).
- xii. It was submitted that In *MakeMyTrip (India) Private Limited v. Felipe Lopez* (Case No. D2022-3555) concerning (identical squatting gTLD), the panel held “the Respondent's registration of the Disputed Domain Name that contains an intentional misspelling of the MAKEMYTRIP Mark to take advantage of a typographical error is evidence of bad faith registration and use.”
- xiii. It was submitted that the Respondent acquired the Disputed Domain Name primarily to sell it to the Complainant for a sum significantly in excess of the

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Respondent's out-of-pocket costs directly related to the disputed domain name – which, according to paragraph 4(c) of the Policy, is evidence of registration and use of the disputed domain name in bad faith.

- xiv. Therefore, it was submitted that the in view of (i) the Complainant's registered and common law rights in the MakeMyTrip Mark, (ii) the extensive use of the MakeMyTrip Mark by the Complainant in respect of domain names, prior to Respondent's registration of the Disputed Domain Name, (iii) the fame, goodwill and reputation associated with the MakeMyTrip Mark, (iv) the Respondent not having any rights in the mark MakeMyTrip or ever been known commonly or in any manner whatsoever by the Disputed Domain Name, (v) the current use of the Disputed Domain Name, as set out above, suggests endorsement by the Complainant, (vi) the use of the Disputed Domain Name is of a commercial nature (so it is not legitimate noncommercial or fair use), (vii) the fact that the MakeMyTrip Mark has been incorporated in entirety and the Disputed Domain Name is in form of a misspelling/plural of the Complainant's domain name shows that the Disputed Domain Name has been registered with the Complainant's MakeMyTrip Mark in mind, and (viii) the Respondent's past conduct, it is arduous to conceive of any circumstance in which the Respondent could have registered the disputed domain name in good faith or without knowledge of Complainant's rights in the MakeMyTrip Mark.
- xv. It was submitted that given the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith, in accordance with paragraph 4(c) of the Policy.

The Complainant finally requested that the disputed domain name be transferred to the Complainant.

V. PARTIES CONTENTIONS:

Shurta vohra

A. COMPLAINANT

- i. The Disputed Domain Name <makemytrips.co.in> is identical and/or confusingly similar to the well-known MakeMyTrip trademarks of the Complainant as well as the Complainant's registered domain names.
- ii. The Respondent's Disputed Domain <makemytrips.co.in> will lead to confusion amongst consumers.
- iii. The Disputed Domain Name <makemytrips.co.in> will give to the consumers the impression that the Respondent is associated with the Complainant in some form or the other.
- iv. The Respondent has no legitimate interest in the Disputed Domain < makemytrips.co.in>;
- v. The adoption / use of the Complainant's well-known registered mark MakeMyTrip as part of the Disputed Domain Name or in any manner whatsoever results in the infringement and passing off of the rights of the Complainant in its MakeMyTrip trademarks.
- vi. The Respondent is taking advantage of innocent customers by hosting the impugned website on the Disputed Domain Name makemytrips.co.in who may be unwary about the authenticity of the Respondent
- vii. The Respondent has incorporated the well-known mark MakeMyTrip of the Complainant in the Disputed Domain Name < makemytrips.co.in> only with the aim of making illegal gains from the goodwill and reputation of the Complainant.
- viii. The MakeMyTrip trademark is a well-known mark and is associated with the Complainant alone and none else.

Sheetal Sharma

- ix. The use of MakeMyTrip trademark in the Disputed Domain Name is without due cause and has been done to gain benefit from the goodwill of the same.
- x. The Disputed Domain Name <makemytrips.co.in> has been registered in bad faith with dishonest intention only to mislead the innocent public.
- xi. The adoption of the Disputed Domain Name is not for non-commercial purposes and does not fall within the ambit of 'fair use'

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:

The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

- 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 has no rights or legitimate interests in respect of the domain name; and
- iii. The Registrant's domain name has been registered or is being used in bad faith.

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also gone through the documents filed by the Complainant with the Complaint. Further, I have gone through case laws relied upon by the Complainant. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually identical to the trademark of the

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Complainant and the Disputed Domain name contains the MakeMyTrip trademark of the Complainant in its entirety. I am of the considered view that the Respondent has no rights over disputed domain name makemytrips.co.in. I hold that the Complainant is prior adopter, prior user and registered proprietor of the well-known MakeMyTrip trademarks and the domain names with the word MakeMyTrip, and has absolute and sole rights. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name makemytrips.co.in and hence the same needs to be transferred to the Complainant. I hold that the company name / trade name / trade mark / domain name MakeMyTrip is exclusively and solely associated and recognized with the Complainant alone. I hold that due to such exclusive association of the MakeMyTrip word and the variations thereof with the Complainant, and also considering the prior registered domain name of the Complainant containing the MakeMyTrip marks, the Complainant alone has the right to utilize the MakeMyTrip trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the MakeMyTrip mark and the same is associated only with the Complainant.

A. The domain name <makemytrips.co.in> is identical to the trademark MakeMyTrip in which the Complainant has rights:

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name makemytrips.co.in is identical and / or confusingly similar to the MAKEMYTRIP trademarks in which the Complainant has unquestionable rights for the following reasons:

- i. I find that the Complainant is the registered proprietor of the MAKEMYTRIP Marks in India as well as several countries worldwide including United States of America, the United Arab Emirates and Mauritius, European Union, Australia and the United Kingdom, amongst others. It is well-established that trademark registrations constitute prima facie evidence of the validity of trademark rights. I find that in *Inter-Continental Hotels Cooperation v. Abdul Hameed (NIXI Case No. INDRP/278, February 10, 2012)*, it was held that trademark registration constitutes prima facie evidence of the validity of trademark rights.

Chetan Vora

- ii. I find that the assessment of identity or confusing similarity of a domain name with a trademark, it is generally accepted that this assessment involves a reasoned but relatively straightforward comparison between the trademark and the domain name. I find that in cases where a domain name incorporates a trademark in full, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the latter will normally be considered confusingly similar to that mark (see section 1.7 of WIPO Overview 3.0).
- iii. I find that the Disputed Domain Name <makemytrips.co.in> is identical to the Complainant's MakeMyTrip Mark. I find that the present complaint is being filed on account of the unauthorized and illegal registration by the Respondent of the Disputed Domain Name containing a misspelling/plural of the Complainant's trademark MakeMyTrip in its entirety. I find that the Disputed Domain Name, <makemytrips.co.in>, differs from Complainant's domain name <makemytrip.com> by only one letter – Respondent has changed the spelling of "MakeMyTrip" by one letter (adding the letter "s"). I find that the trademark MakeMyTrip is recognizable in the Disputed Domain Name. Furthermore, in *MakeMyTrip (India) Private Limited v. Felipe Lopez* (Case No. D2022-3555) concerning <makemytrips.com> (identical squatting gTLD), the panel held *'the Disputed Domain Name consists of the MAKEMYTRIP Mark in its entirety, although misspelt adding one letter – the letter "s" in "trip", and then followed by the generic Top-Level Domain ("gTLD") ".com". Such a minor modification to a trademark is commonly referred to as "typo squatting" (and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser). The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the MAKEMYTRIP Mark.'*
- iv. I find that the Disputed Domain Name is a clear instance of "typo squatting" and section 1.9 of the WIPO Overview 3.0 states: *"A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."* Therefore, I find that the Disputed Domain Name is confusingly similar to Complainant's MakeMyTrip Mark.

Chitra Vohra

- v. I find that the suffix, such as .CO or .IN, is generally accepted as irrelevant when assessing whether Disputed Domain Name is identical or confusingly similar to a trade mark as it is a functional element.
- vi. I find that the disputed domain name <makemytrips.co.in> is identical to the Complainant's MakeMyTrip Mark. Thus, I find that the Complainant has established that the requirements of the INDRP Policy Paragraph 4(a) are fulfilled.

B. The Respondent has no rights or legitimate interests in respect of the domain name <makemytrips.co.in>:

- i. I find that the Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. I find that the Disputed Domain Name resolves to an active webpage offering identical services (travel services). I find that this indicates that the Respondent neither holds any rights in the trademark MakeMyTrip nor is popularly known to be associated with it.
- ii. I find that the Respondent is not a licensee of the Complainant, nor has it been otherwise authorized or allowed by the Complainant to make any use of its MakeMyTrip Mark, in a domain name or otherwise. I find that the MakeMyTrip Mark is significantly unique and used by the Complainant as a trademark for a vast array of its business activities and consequently, it cannot be contended that the Respondent has with *bona fide* intent adopted the identical domain name. In *Cavinkare Pvt. Ltd. v. LaPorte Holdings, Inc and Horshiy, Inc.*, (WIPO Case No. D2004-1072), the panel held that '*it stretches credulity to breaking point to believe that it was a mere coincidence that the Respondents adopted a name similar to Complainant's unique and distinctive name, and if it is not co-incidence, the inference inevitably arises that the Respondents have misappropriated the Complainant's name which conduct cannot create rights or legitimate interest*'.
- iii. I find that the Respondent is unable to invoke any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Domain Name, as addressed below.

Chetan Vohra

- iv. I find that the Complainant has not authorized the Respondent to use the Complainant's, MakeMyTrip Mark. I find that the Respondent cannot assert that he has been using the Domain Name, before any notice of the present dispute, in connection with a *bona fide* offering of goods or services in paragraph 6(a) of the Policy. I find that there has been no use of, and/or demonstrable preparations to use, the MakeMyTrip Marks or the Disputed Domain Name by the Respondent in connection with a bona fide offering of goods or services before being aware of the Complainant's dispute. I find that the Respondent has registered the Disputed Domain Name only to divert customers of the Complainant to the Respondent, admittedly offering competing services. I find that the Respondent has used the Disputed Domain Name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's products and services.
- v. Annexure-8 clearly shows that at the time of filing of the Complaint, the Disputed Domain Name hosted a travel blog. I find that such use of the Domain Name cannot constitute a *bona fide* offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's MakeMyTrip Mark to offer identical services. I find that in *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, (WIPO Case No. D2000-0847), panel stated that: *"...use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is contrary to the intent of the Policy."* In *Ritzio Purchase Limited v. Legato LLC / V. Zaharchenko / Jimmy McColin / Chernovsky Vladimir Sergeevich / Domain Admin, PrivacyProtect.org*, (WIPO Case No. D2015-1182), panel held that: *"panel is of the view that the use of a name or trademark so as resonate another does not constitute a bona fide offering of goods or services under the Policy. Indeed, such activity is usually seen as an indicator that rights or legitimate interests do not exist."*
- vi. I find that in *MakeMyTrip (India) Private Limited v. Xianjin Hong* (Case No. D2022-3648) concerning <makesmytrip.com> (identical squatting gTLD), the panel held *"the nature of the Domain Name, comprising Complainant's trademark in its*

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entirety in combination with the letter "s", carries a risk of implied affiliation ...Similarly, the addition of the "s" can also be viewed as a typo, noting the adjacent location of the "e" and "s" on a standard QWERTY keyboard, reflecting an intent on part of Respondent to profit from unsuspecting Internet users unaware of said typo and believing the Domain Name to be Complainant's domain name or, at least as state above, associated with Complainant's MAKE MY TRIP trademark. The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests regarding the Domain Name."

- vii. Furthermore, I find that the Panel in *ACCOR v. Acortel s.l.*, (WIPO Case No. D2003-0711), has held that *"an offering of goods and services by the Respondent which comprises: (1) the use by it of a name similar to that of the Complainant's trademarks and (2) which is in relation to identical services and (3) is in a country where the Complainant has an established and extensive business conducted under the trademarks does not constitute a bona fide offering."* It follows that the use of an identical mark (MakeMyTrips) by the Respondent in relation to identical services in India does not constitute a bonafide offering.
- viii. I find that the Respondent has no legitimate reason to use the Disputed Domain Name except to divert Internet users who make the typing error of adding an "s". Moreover, I find that the panel in *e-Duction, Inc. v. Zuccarini*, (WIPO Case No. D2000-1369) held that *"a use that merely operates to redirect mistaken typists to other sites is not enough to create a legitimate use without a greater connection between the domain name and the redirected site."*
- ix. I find that the Respondent is not commonly known by the term "MakeMyTrip", in accordance with paragraph 6(b) of the Policy, particularly given the notoriety surrounding the Complainant's MakeMyTrip Mark internationally and its exclusive association with the Complainant. I find that the Respondent intends to register the Complainant's MakeMyTrip Mark deliberately and pre-emptively as a domain name and thereafter, intentionally attempt to attract, confuse, and profit from Internet users seeking the Complainant's products and services who unintentionally and inadvertently make the typing error of adding an "s" to the term "Trip" in

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“MakeMyTrip”. I find that the Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has registered the same with the *mala fide* of making illegitimate and illegal commercial gains.

- x. I find that while assessing claims by Respondents that they have “been commonly known” by an at-issue domain name, the Panel in *Banco Espirito Santo S.A. v. Bancovic* (WIPO Case No. D2004-0890) held that “[i]t is not sufficient for the Respondent to merely assert that he or she has been commonly known by the domain name to show a legitimate interest. The Respondent must produce evidence in order to show that he or she has been ‘commonly known’ by the domain name.” I find that the present case, there is nothing in the evidence before the Panel that suggests the Respondent might otherwise have rights or legitimate interests in the Disputed Domain Name. I find that there is no indication in the record that the Respondent has ever been commonly known as “MakeMyTrip” and holds no association with the trademark and the Disputed Domain Name. I find that the MakeMyTrip trademark is not a generic or descriptive trademark and hence, there arises no justification on part of the Respondent to purchase and/or use this MakeMyTrip Mark.
- xi. I find that the given the global fame of the MakeMyTrip Mark, the fact that the MakeMyTrip Mark has been incorporated in its entirety in the Disputed Domain Name shows that the Disputed Domain Name has been registered with the Complainant’s MakeMyTrip Mark in mind, to attract, confuse and profit from Internet users seeking the Complainant’s products and services. I find that the Complainant, therefore, asserts that the Respondent has no rights or legitimate interest in the Disputed Domain Name, in accordance with paragraph 6(b) of the Policy.
- xii. I find that neither the Respondent assert that it has made or is currently making a legitimate non-commercial or fair use of the Domain Name, pursuant to paragraph 6(c). I find that the Disputed Domain Name currently is pointing to a website that offers identical travel-related services as the Complainant. I find that the public is likely to be confused into thinking that the Disputed Domain Name has a connection with the Complainant and that there is a likelihood of confusion as to the source,

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sponsorship, affiliation, or endorsement of the website to which the Disputed Domain Name is pointed. Such use is not legitimate non-commercial or fair use of the Disputed Domain Name, as it uses the goodwill of the Complainant's MakeMyTrip Mark to generate revenue and mislead online users to the Disputed Domain Name.

- xiii. I find that the Disputed Domain Name falsely suggests affiliation with the Complainant will generally exclude any possible fair use as per paragraph 2.5 of the WIPO Overview 3.0 ("*Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation*"). I find that the distinctiveness, notoriety, and premium quality of the Complainant's services under the MakeMyTrip Mark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the website and taking unfair advantage of the Complainant's rights.
- xiv. I find that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests and therefore, the burden of proof shifts to the Respondent, requiring it to provide evidence or plausible assertions demonstrating rights or legitimate interests in the domain name. I find that In *Nobelstiftelsen (The Nobel Foundation) v. Ousainou Jeng* (WIPO Case No. D2011-1385), the Panel held that "*Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among panellists that a complainant has to make only a prima facie case to fulfil the requirements of paragraph 4(a)(ii) of the Policy. As a result, the burden of coming forward with evidence of the respondent's rights or legitimate interests in the disputed domain name will then shift to the respondent.*" Further, in *Audatex (Schweiz) GmbH v. Plant Holding GmbH* (WIPO Case No. DNL2016-0007), the Panel held that "*If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied the second element of article 2.1 of the Regulations.*"

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- xv. I find that the Complainant's exclusive rights in its MakeMyTrip Mark, which predate the earlier date (01 October 2022) on which the Respondent registered the Disputed Domain Name, and the recognition, reputation, and goodwill which the Complainant likely developed in its MakeMyTrip Mark, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to those of the Complainant at least for the services provided by the Complainant under any of these marks without interfering with the exclusive trademark rights of the Complainant.
- xvi. I find that the Respondent's acts do not constitute a *bona fide* offering of goods or services. The Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has registered the same with the *mala fide* intent of making illegitimate and illegal gains. Thus, the Complainant has established the requirements of the INDRP Policy Paragraph 4(b).

C. The domain name <makemytrips.co.in> has been registered or is being used in bad faith.

- i. I find that the Complainant asserts that, in the present case, there is no plausible reason for the registration and use of the Disputed Domain Name, other than with the ulterior motive of causing a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the website to which the Disputed Domain Name is pointed and with the ulterior motive of using it to gain revenue, thus showcasing the Respondent's bad faith.
- ii. I find that the Paragraph 7 of the Policy lists four factors which, in particular but without limitation, may be evidence of the registration and use of a domain name in bad faith for the purposes of paragraph 4(c) of the Policy. I find that paragraphs 7(b), 7(c), and 7(d) of the Policy are of particular relevance in the present case.
- iii. I find that the Complainant's MakeMyTrip Mark is a highly distinctive coined mark which is well known throughout the world. I find that the it has been continuously and extensively used since 2000 in connection with travel-related goods and services and has rapidly acquired considerable goodwill and renown worldwide. I find that

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the Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights.

iv. I find that the Section 3.2.2. of WIPO Overview 3.0 reads that "*In circumstances where the complainant's mark is widely known (including in its sector) or is highly specific and the Respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), the panels have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark.*" I find that the Complainant's renowned and goodwill worldwide and particularly its popularity and trademark rights well established in India, it would be inconceivable for the Respondent to argue that he did not have knowledge of the Complainant's MakeMyTrip Mark at the time of registration in 2022 and thus, the registration of the Disputed Domain Name amounts to registration in bad faith.

iv. I find that the in any event, given the overwhelming renown and explosive popularity of the Complainant's MakeMyTrip Mark worldwide, and the nature of the Disputed Domain Name, which is identical to the Complainant's MakeMyTrip Mark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

v. I find that the Complainant's MakeMyTrip Mark is highly distinctive and well-known throughout the world. I find that mark has been continuously and extensively used since 2000 in connection with travel-related services and has rapidly acquired considerable goodwill and renown worldwide. I find that the Respondent chose the Disputed Domain Name as a misspelling/plural of MakeMyTrip, a well-known trademark. However, I find that the Respondent has neither the authorization to use the Disputed Domain Name incorporating the MakeMyTrip trademark, nor is affiliated somehow with the Complainant anywhere. I find that In any event, given the overwhelming renown and explosive popularity of the Complainant's MakeMyTripMark worldwide, and the nature of the Disputed Domain Name, which is a misspelling/plural of the Complainant's MakeMyTrip Mark and the

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Complainant's domain name <makemytrip.com>, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. Furthermore, I find that the given its inherently distinctive MakeMyTrip Mark, the Complainant submits that the Respondent could simply not have chosen the Dispute Domain Name, which is confusingly similar to the Complainant's MakeMyTrip Mark, for any reason other than to take unfair advantage of the Complainant's goodwill and reputation.

- vi. I find that to sum up, the indicia show how the Respondent was most likely aware of the Complainant's MakeMyTrip Mark at the time of the registration of the Disputed Domain Name. It is denied that the Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights. I find that the Prior panels deciding under the Policy have held that actual and constructive knowledge of a Complainant's rights at the time of registration of a domain name constitutes strong evidence of bad faith. In *eBay Inc. v. Sunho Hong*, (WIPO Case No. D2000-1633), the panel held that: "*actual or constructive knowledge of the Complainant's rights in the trade marks is a factor supporting bad faith.*" and in *E. & J. Gallo Winery v. OakInvestment Group*, (WIPO Case No. D2000-1213), panel held that: "*finding bad faith where the respondent 'knew or should have known' of the complainant's trade mark.*"
- vii. I find that the Respondent is engaged in typo squatting, by attempting to take advantage when an Internet user seeking to access the Complainant's website at <www.makemytrip.com> inadvertently types the incorrect address <www.makemytrips.co.in>. I find that the Respondent's activity to engage in typo squatting by registering <makemytrips.co.in> in hopes of catching inattentive Internet users attempting to reach the website at www.makemytrip.com is evidence that the Respondent registered and is using the disputed domain name in bad faith. See *Nat'l Ass'n of Prof'l Baseball Leagues v. Zuccarini*, (WIPO Case No. D2002-1011) (*concluding that typo squatting is inherently parasitic and evidence of bad faith registration and use of a domain name*).

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- viii. I find that the Complainant asserts that the Respondent registered/acquired the Disputed Domain Name on 01 October 2022 to take advantage of the users who inadvertently add the letter “s” for commercial gain and creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website, and thus bad faith is implicit in the registration of the Disputed Domain Name. I find that the consumers looking for travelling opportunities and visiting the website of the Respondent will be misled and confused by thinking that the Respondent’s website in fact belongs to or is affiliated with the Complainant. Section 3.1.4 of WIPO Overview 3.0 reads: “*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.*” I find that the Disputed Domain Name consists of a misspelling of the well-known trade mark MakeMyTrip and therefore, the registration itself can create a presumption of bad faith.
- ix. I find that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant, in accordance with paragraph 7(d) of the Policy. I find that the Respondent offers identical services to the Complainant and is admittedly engaged in services that compete. I find that the Respondent has caused actual disruption in its business by preemptively registering the Dispute Domain Name and causing a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website by the Complainant and taking unfair advantage of the Complainant’s rights. I find that the In Tribeca Film Center, Inc. v. Lorenzo Brusasco-Mackenzie (WIPO Case No. D2000- 1772), the panel held that “...a respondent can “disrupt the business of a competitor” only if it offers goods or services that can compete with or rival the goods or services offered by the trademark owner.” I find that it has been proved beyond doubt that the rival parties are engaged in competing businesses and the Respondent’s acts have been done with the primary intention of causing disruption in the Complainant’s business. I find that Such malafide acts of the Respondent amount to actual disruptions in the Complainant’s business. I find that the panel in *Viacom International Inc. v. Bladimir Boyiko* (WIPO Case No. D2008- 0867), held that “as

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to paragraph 4(b)(iii) of the Policy, the facts also indicate that the disputed domain name was registered primarily to disrupt the Complainant's business in the sense that the sites to which the disputed domain name links offer products and services which compete with those offered by the Complainant."

- x. I find that in *Thomson Research Associates Inc., Kroy International Inc. v. Microban Products Company* (WIPO Case No. D2007-0554), panel held that "Paragraph 4(b)(iii) of the Policy does not require evidence of actual disruption, although such evidence would more strongly demonstrate that the Respondent had a disruptive purpose. But in this case, evidence of actual disruption can be drawn from the fact that the Respondent registered virtually identical domain names to the Complainant's mark which (as evidenced by the Complainant), for a period, were linked to its own website, even though neither the Respondent nor its website have any apparent relationship with the term "ultra fresh". Such conduct is more than just sharp practice between two competitors in the same field. Rather, it appears to be the kind of conduct to which paragraph 4(b)(iii) of the Policy is designed to prevent." I find that in light of the above, it evident that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant in bad faith and in violation of paragraph 7(d) of the Policy (the equivalent of paragraph 4(b)(iii) of the UDRP Policy).
- xi. I find that In *MakeMyTrip (India) Private Limited v. Felipe Lopez* (Case No. D2022-3555) concerning (identical squatting gTLD), the panel held "the Respondent's registration of the Disputed Domain Name that contains an intentional misspelling of the MAKEMYTRIP Mark to take advantage of a typographical error is evidence of bad faith registration and use."
- xii. I find that the Respondent acquired the Disputed Domain Name primarily to sell it to the Complainant for a sum significantly in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name – which, according to paragraph 4(c) of the Policy, is evidence of registration and use of the disputed domain name in bad faith.

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- xiii. Therefore, I find that the in view of (i) the Complainant's registered and common law rights in the MakeMyTrip Mark, (ii) the extensive use of the MakeMyTrip Mark by the Complainant in respect of domain names, prior to Respondent's registration of the Disputed Domain Name, (iii) the fame, goodwill and reputation associated with the MakeMyTrip Mark, (iv) the Respondent not having any rights in the mark MakeMyTrip or ever been known commonly or in any manner whatsoever by the Disputed Domain Name, (v) the current use of the Disputed Domain Name, as set out above, suggests endorsement by the Complainant, (vi) the use of the Disputed Domain Name is of a commercial nature (so it is not legitimate noncommercial or fair use), (vii) the fact that the MakeMyTrip Mark has been incorporated in entirety and the Disputed Domain Name is in form of a misspelling/plural of the Complainant's domain name shows that the Disputed Domain Name has been registered with the Complainant's MakeMyTrip Mark in mind, and (viii) the Respondent's past conduct, it is arduous to conceive of any circumstance in which the Respondent could have registered the disputed domain name in good faith or without knowledge of Complainant's rights in the MakeMyTrip Mark.
- xiv. I find that the given the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith, in accordance with paragraph 4(c) of the Policy.

In view of all the above facts and well-known legal precedents, I find and hold as under:

- That the disputed domain name of the Respondent <makemytrips.co.in> is identical and confusingly similar to the Complainant's MakeMyTrip trademarks, domain names and company name.
- That the use of the disputed domain name <makemytrips.co.in> is likely to lead to enormous confusion *qua* its origin due to the use of the Complainant's trade mark MakeMyTrip as a whole in the disputed domain name being phonetically, visually and structurally identical to the Complainant's trade mark MakeMyTrip.
- That the disputed domain name was registered in bad faith by the Respondent.
- That the disputed domain name is strictly identical to the Complainant's

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distinctive mark, consumers would certainly mistakenly assume that a website / disputed domain name < makemytrips.co.in> is operated or endorsed by the Complainant, when such would not be the case.

- That the Respondent has deliberately attempted to create a false impression in the minds of the consumers that the Respondent is somehow associated with or endorsed by the Complainant to ride on the goodwill and reputation associated with the Complainant and to unjustly enrich from the same.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- That there is also an imminent likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name.
- That the Respondent does not have any affiliation or connection with the Complainant and/or its goods / services under the name/mark MakeMyTrip and consequently it is inconceivable that the Respondent's adoption of the name <makemytrips.co.in> which is identical to the Complainant's MakeMyTrip trademarks and domain names with MakeMyTrip can be seen as merely coincidental.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the registration of Domain name/URL of the Respondent <makemytrips.co.in> to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 3rd day of May, 2023.


Dr. Sheetal Vohra

Sole Arbitrator

Date: 03/05/2023