



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

Page # 1

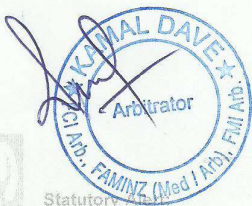
₹100

### e-Stamp

Certificate No.	: IN-DL74088320628990U
Certificate Issued Date	: 16-Aug-2022 03:10 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1729651859095663U
Purchased by	: KAMAL DAVE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KAMAL DAVE
Second Party	: Not Applicable
Stamp Duty Paid By	: KAMAL DAVE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



In the matter of the Arbitration Act 1996 as Amended by  
Arbitration & Conciliation (Amendment) Act, 2015;  
and  
INDRP Rules of Procedure;  
and  
.IN Domain Name Dispute Resolution Policy (INDRP)  
and



- Page # 1 -

Statutory  
1. 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.  
2. The onus of checking the legitimacy is on the users of the certificate.  
3. In case of any discrepancy please inform the Competent Authority.



In the matter of an arbitration between

MakeMyTrip (India) Private Limited,  
19th floor, Tower A, B & C  
Epitome Building No. 5 DLF Cyber City,  
Phase – III ,Gurgaon 122 002, India.

...Complainant

AND

3M Advertisers And Publishers Limited,  
SCO 813 , Second Floor,  
NAC, Manimajra,  
Chandigarh, 160101, India

...Respondent

in respect of Disputed Domain Name(s):

<www.makesmytrip.in>

**INDRP Case No: 1659**

**FINAL AWARD**

**1. THE PARTIES AND THEIR REPRESENTATIVES**

**A. Claimant :**

MakeMyTrip (India) Private Limited,  
19th floor, Tower A, B & C  
Epitome Building No. 5 DLF Cyber City,





Phase – III ,Gurgaon 122 002, India.

Telephone: +91 9716746496

Email: mohit@simandsan.com

akshay@simandsan.com

Authorized Representative

Sim And San, Attorneys At Law

Address: A-12, Gulmohar Park, New Delhi - 110049, India.

Telephone: +91 9716746496; +49 15143672080

Email: mohit@simandsan.com ; akshay@simandsan.com

B. Respondent

3M Advertisers And Publishers Limited,

SCO 813 , Second Floor,

NAC, Manimajra,

Chandigarh, 160101, India

2. THE DOMAIN NAMES AND REGISTRAR

A. The accredited registrar of the disputed Impugned Domain is Endurance Digital Domain Technology LLP.. The details of the Registrar, are as follows:

DMCA Compliance,

Unit No.401, 4th floor, IT Bldg 3,

Nesco IT Park, Nesco Complex, Western Express Highway,

Goregaon (East), Mumbai-400063. Maharashtra.

Telephone: 040 67607600

Email: abuse@publicdomainregistry.com

3. THE ARBITRAL TRIBUNAL – APPOINTMENT

A. As per the records, on 01st February 2023 NIXI sent intimation to the Arbitrator & the parties including the Respondent regarding the





appointment of arbitrator to decide the dispute in respect of domain <www.makesmytrip.in>.

- B. As per the records, I, the undersigned (i.e. Kamal Dave) was appointed as arbitrator by NIXI, in accordance with INDRP Rules of Procedure and .IN domain name dispute resolution policy (INDRP), vide appointment order after I submitted declaration of impartiality and independence at all times with NIXI.
  - C. The .IN Domain Name Dispute Resolution Policy (INDRP) & Rules of Procedure of INDRP mandates appointment of arbitrator by NIXI, Accordingly clause 5 (b) of INDRP Rules of Procedure provides for it, which reads, *"The .IN Registry shall appoint, an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator"*.
  - D. There is no document/ correspondence on record to show that the Respondent replied to the intimation of arbitration dispute regarding the domain <www.makesmytrip.in>.
4. PROCEDURAL HISTORY :
- A. After my appointment as arbitrator by NIXI & intimation to me on 01<sup>st</sup> February 2023; On 03<sup>rd</sup> February 2023, the arbitral tribunal communicated the parties through email at their respective registered email addresses, whereby it was directed through Procedural Order No 1 that the mode of communication shall be electronic only except as otherwise specifically stated/ directed. Further the tribunal directed the parties (viz. complainant & respondent) through the procedural order no 1 to file their respective pleadings- viz. to file the scanned copy of complaint on oath through an affidavit 06<sup>th</sup> February 2023; And to file physical copy of complaint on oath through an affidavit along-with documents through





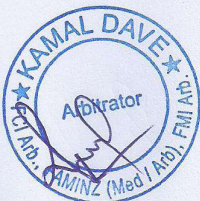
courier on or before 13<sup>th</sup> February 2023; the tribunal directed the complainant to file the original & physical copy of delivery report of the email (electronic mail), courier along-with the affidavit of service duly sworn-in before a NOTARY to this effect, on or before 13<sup>th</sup> February 2023; Further the tribunal directed respondent to file their reply on affidavit duly sworn-in before a NOTARY after receipt of complaint along-with aforementioned documents on or before 27<sup>th</sup> February 2023 and serve the copy thereof to the complainant and the other respondent; And it was optional for the complainant to file any rejoinder on or before 03<sup>rd</sup> March 2023 and serve the copy thereof to the respondent; And it was optional for the respondent to file their reply in response to the rejoinder on or before 07<sup>th</sup> March 2023 and serve the copy thereof to the complainant; And it was further optional for the parties to file their evidence by way of affidavit in support of their claim/ reply which shall be duly sworn-in before a NOTARY to that effect; and thereafter submit the electronic/ scan image and physical copy same before myself on or before 07<sup>th</sup> March 2023 and shall serve the copy thereof to the other party ; And the parties were at liberty to file their written arguments before myself along-with evidence by way of affidavit i.e. on or before 07<sup>th</sup> March 2023 and serve the copy thereof to the other party.

- B. The complainant through AR has sent scanned copy of documents with email dated 05<sup>th</sup> February 2023. All aforementioned documents have been taken on record.
- C. The AR of the complainant, pursuant to directions the Complainant submitted Affidavit in support of the complaint duly sworn-in and attested by Notary and sent compliance email.





- D. The complainant through AR has filed documents regarding service of copy of complaint along-with documents/ annexures, affidavit, through electronically as well as courier. However, the documents sent through courier returned as not served but the service got affected through electronic mode. Thus the service on respondent is deemed to be complete.
- E. The respondent has neither replied to the intimation by NIXI sent on 01<sup>st</sup> February 2023; Nor to the notice sent on 03<sup>rd</sup> February 2023 along-with procedural order 1. The complainant through AR has taken steps to serve the respondent through email as well as courier but the respondent has not replied to notice nor even filed their reply. Therefore I am satisfied that the complainant the complainant has taken adequate steps for serving the respondent and thereby complied with the directions. The respondent has been duly served as mandated by clause 2 of INDRP Rules of Procedure and service on respondent is completed as per the clause.
- F. The respondent has chosen to abstain and not participate in the arbitration proceedings. Hence as per clause 12 of INDRP Rules of Procedure, which mandates that where parties are in default i.e. who willfully abstains from the proceedings may be proceeded *ex-parte*. Accordingly, the tribunal concluded that proceedings against the respondent to continue *ex-parte*.
- G. The complainant cannot take benefit from the non-presence of the other party and his claim must stand on merits.
5. PLEADINGS :
- A. The complainant has filed its complaint on oath contending under the heading grounds of the case :





- i. The complainant contended under the head, "(A) **The domain name <makesmytrip.in> is identical to the trademark MakeMyTrip in which the Complainant has rights;**" (Policy, Paragraph 4(a); Rules, Paragraphs 4(b)(vi)(1)) (1))

1. The Disputed Domain Name <makesmytrip.in> is identical to the Complainant's MakeMyTrip Mark. 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 of the Complainant's trademark "MakeMyTrip" in its entirety. The Disputed Domain Name, <makesmytrip.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"). Also, the trademark MakeMyTrip is clearly recognizable in the Disputed Domain Name. Furthermore, in MakeMyTrip (India) Private Limited v. Xianjin Hong (Case No. D2022-3648) concerning <makesmytrip.com> (identical squatting gTLD), the panel held 'the addition of the letter "s" does not prevent a finding of confusing similarity, as the MAKE MY TRIP trademark remains clearly recognizable within the Domain Name.'

2. The Disputed Domain Name is a clear instance of "typosquatting" 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, the Disputed Domain Name is confusingly similar to Complainant's MakeMyTrip Mark.





3. It is generally accepted that the suffix, such as .IN, is irrelevant when assessing whether a Disputed Domain Name is identical or confusingly similar to a trade mark as it is a functional element.

4. It follows that the disputed domain name <makesmytrip.in> is identical to the Complainant's MakeMyTrip Mark. Thus, the Complainant has established that the requirements of the INDRP Policy Paragraph 4(a) are fulfilled.

- ii. The complainant contended under the head, "(B) **The Respondent has no rights or legitimate interests in respect of the domain name <makesmytrip.in>; (Policy, Paragraph 4(b); Rules, Paragraph 4(b)(vi)(2))**

1. The Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Disputed Domain Name resolved to an active webpage offering identical services in the past. This clearly indicates that the Respondent neither holds any rights in the trademark MakeMyTrip nor is popularly known to be associated with it.

2. No prior association with the Complainant. : 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. 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 co-incidence 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'.

3. No bona fide offering of goods or services – Paragraph 6(a) of the Policy : It is undisputed that the Complainant has not authorized the Respondent to use the Complainant's MakeMyTrip Mark. The Respondent cannot assert that they have been using the Domain Name, prior to any notice of the present dispute, in connection with a bona fide offering of goods or services in accordance with paragraph 6(a) of the Policy. 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. The Respondent has registered the Disputed Domain Name only to divert customers of the Complainant to the Respondent, admittedly offering competing services in the past. 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.

4. 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. 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 obviously 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 to impersonate 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."*

5. *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 stated 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 in respect of the Domain Name."*

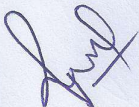




6. Respondent has no legitimate reason to use the Disputed Domain Name except to divert Internet users who make the typing error of adding an additional "s" to "Make" in "MakeMyTrip". Moreover, the panel in *e-Duction, Inc. v. Zuccarini*, (WIPO Case No. D2000-1369) held that "a use that merely operates 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." Respondent is not 'commonly known' with the Domain Name – Paragraph 6(b) of the Policy

7. 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. The intent of the Respondent is to register the Complainant's MakeMyTrip Mark deliberately and preemptively 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 "Make" in "MakeMyTrip". The Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has evidently registered the same with the mala fide of making illegitimate and illegal commercial gains.

8. 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 "it is not sufficient for the Respondent to merely assert that he or she has been commonly known by the domain name in





order 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." In 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. 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. 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.

9. 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. 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.

10. Respondent cannot assert Non-Commercial or Fair Use – Paragraph 6(c) of the Policy : Neither can 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). The Disputed Domain Name currently is inactive but has pointed to a website that offers identical travel related services as the Complainant in the past. 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 source, sponsorship, affiliation, or endorsement of the website to which the Disputed Domain Name is pointed. Such use is not a 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.

11. In addition, the 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") Given 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 likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the website and taking unfair advantage of the Complainant's rights.

iii. The complainant contended under the head, "(C) **The domain name <makesmytrip.in> has been registered or is being used in bad faith.** (Policy, paragraph 4(c); Rules, paragraph 4(b)(vi)(3))

1. 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 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





through redirections and through selling the Domain Name, thus showcasing the Respondent's bad faith.

2. 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 is submitted that paragraphs 7(b), 7(c), and 7(d) of the Policy are of particular relevance in the present case. Knew or should have known Complainant's well-known MakeMyTrip Mark.

3. The Complainant's MakeMyTrip Mark is a highly distinctive coined mark which is well known throughout the world. 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. The Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights.

4. 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." Given the Complainant's renown 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 2011 and thus, the registration of the Disputed Domain Name amounts to registration in bad faith.

5. 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.

*Registration in bad faith*

6. The Complainant's MakeMyTrip Mark is highly distinctive and well-known throughout the world. It has been continuously and extensively used since 2000 in connection with travel-related services and has rapidly acquired considerable goodwill and renown worldwide. The Respondent chose the Disputed Domain Name as a misspelling of MakeMyTrip, a well-known trademark. However, the Respondent has neither the authorization to use the Disputed Domain Name incorporating MakeMyTrip trade mark, nor is affiliated somehow with the Complainant anywhere. To sum up, the indicia shows how the Respondent was most likely aware of the Complainant's MakeMyTrip Mark at the time of the registration of the Disputed Domain Name. The Complainant, therefore, submits that the Respondent registered the Disputed Domain Name in full knowledge of the Complainant's rights. 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), 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. Oak Investment 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."

7. The Complainant asserts that the Respondent registered/acquired the Disputed Domain Name on 21 June 2011 with the intention 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. 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." 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.

8. Furthermore, the Respondent acquired the Disputed Domain Name primarily for the purpose of selling 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.





9. Therefore, the Complainant submits that the Respondent registered the Domain Name in bad faith.

10. Use in bad faith : The Respondent is engaged in typosquatting, 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.makesmytrip.in>. The Respondent's activity to engage in typosquatting by registering <makesmytrip.in> in hopes of catching inattentive Internet 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 typosquatting is inherently parasitic and evidence of bad faith registration and use of a domain name). It is submitted that the Respondent is using the Disputed Domain Name to intentionally attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's MakeMyTrip Mark as to the source, sponsorship, affiliation, or endorsement of the website, in accordance with paragraph 4(c) of the Policy.

11. The Domain Name currently leads to an inactive website. In MakeMyTrip (India) Private Limited v. Xianjin Hong (Case No. D2022-3648) concerning <makesmytrip.com> (identical squatting gTLD), the panel held that "the non-use of a domain name would not prevent a finding of bad faith, particularly considering the typosquatting nature of the Domain Name, Respondent's failure to provide any Response,





and the lack of any plausible good faith use to which the typosquatting Domain Name could be put."

12. 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 and a misspelling of 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, 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.

13. Therefore, 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 MAKEMYTRIPner whatsoever by the Disputed Domain Name <makesmytrip.in>, (v) the past use of the Disputed Domain Name, as set out above, suggests endorsement by the Complainant, (vi) the past 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 of the Complainant's domain name <www.makemytrip.com> show 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.*

*14. In view of 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.*

*iv. The complainant sought remedies under the head - "VII. REMEDIES REQUESTED : (Rules, Paragraph 4(b)(vii)) : In accordance with paragraph 4 (i) of the Policy, for the reasons described in Section VI above, In accordance with Paragraph 10 of the Policy, for the reasons described in Section V., above, the Complainant requests Hon'ble Arbitration Panel appointed in this domain name dispute, to issue a decision that the disputed domain name <makesmytrip.in> be transferred to the Complainant.*

*B. The respondent has abstained from the arbitration proceedings and has been proceeded ex-parte as per clause 12 of INDRP Rules of Procedure.*

*6. The Issues : From the complaint following issues have been framed*

*A. Whether the domain name <makesmytrip.in> is identical to the trademark MakeMyTrip in which the Complainant has rights?*

*B. Whether the Respondent has no rights or legitimate interests in respect of the domain name <makesmytrip.in> ?*





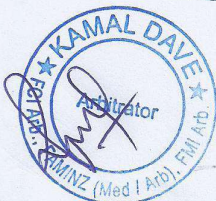
C. Whether the domain name <makesmytrip.in> has been registered or is being used in bad faith?

D. Relief – VII. *REMEDIES REQUESTED* : In accordance with paragraph 4 (i) of the Policy, for the reasons described in Section VI above, In accordance with Paragraph 10 of the Policy, for the reasons described in Section V., above, the Complainant requests Hon'ble Arbitration Panel appointed in this domain name dispute, to issue a decision that the disputed domain name <makesmytrip.in> be transferred to the Complainant.

7. Analysis of the issues on Merit

A. Whether the domain name <makesmytrip.in> is identical to the trademark MakeMyTrip in which the Complainant has rights?

- i. I have perused the complaint, affidavit & documents/ Annexures placed on record. From the submissions on oath and perusal of Annexures, it is apparent that the complainant has obtained Trademark certificates from Intellectual Property Office in India & other countries worldwide. I have also perused the complaint, affidavit & documents & Annexures which mentions the services offered by the complainant company since 2000. I am thus satisfied that the complainant is the lawful owner of the trademark and is carrying out business activities under the trademark MakeMyTrip.
- ii. I have perused the submission on oath by the complainant I am satisfied respondent have adapted the trademark "MakeMyTrip" in violation of complainant's exclusive right to use the trademark "MakeMyTrip" by adding "s" to the word "make" i.e. "makesmytrip" which sounds similar to trademark "MakeMyTrip".





- iii. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
- iv. I conclude that the domain name <makesmytrip.in> is identical and confusingly similar to the trademark "MakeMyTrip" over which the Complainant has rights and thus has contravened the Paragraph 4(a) of INDRP Policy.

B. Whether the Respondent has no rights or legitimate interests in respect of the domain name <makesmytrip.in> ?

- i. I have perused the complaint, affidavit & documents/ Annexures placed on record and their submissions on oath.
- ii. I am satisfied that respondent, by using the trademark "MakeMyTrip", are violating rights or legitimate interests of the complainant who have exclusive right to use the trademark "MakeMyTrip".
- iii. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
- iv. After analyzing the submissions & details made herein-before and the documents placed on record, I conclude that the respondent has no claims, rights or legitimate interests to use the trademark "MakeMyTrip" in respect of carrying out business from the disputed domain name <www.makesmytrip.in>. I am satisfied and conclude that the respondent has acted in contravention of paragraph 4(b) of INDRP Policy.

C. Whether the domain name <makesmytrip.in> has been registered or is being used in bad faith?

- i. I have perused the complaint, affidavit & documents/ Annexures placed on record. I have also perused the submissions,





- ii. And after perusing Annexures on placed record, it is apparent that the complainant company is bonafide owner of trademark "MakeMyTrip" and is carrying out business activities, however, the respondent has remained unrepresented thus cannot be deemed to be offering any goods or services or carrying out any business activities and is apparently taking illegal benefit from the goodwill of the complainant company. I am satisfied that respondent have registered domain name using the trademark "MakeMyTrip" contravening the exclusive rights of the complainant over the trademark "MakeMyTrip" and the registration of the Impugned Domain <www.makesmytrip.in> has been done in bad faith and with dishonest intention to mislead the innocent public.
  - iii. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
  - iv. After analyzing the submissions & details made herein-before and the documents placed on record, I conclude that the the domain name <www.makesmytrip.in> is registered and being used in bad faith by the respondent. I further conclude that the respondent has acted in contravention of paragraph 4(c) of INDRP Policy.
- D. Remedies Requested – In accordance with Paragraph 10 of the Policy, for the reasons described in Section V. above, the Complainant requests Hon'ble Arbitration Panel appointed in this domain name dispute, to issue a decision that the disputed domain name <makesmytrip.in> be transferred to the Complainant.
- i. Analysis of the issue (D) Relief – Regarding the prayer for relief as prayed , I have perused the complaint, affidavit & Annexures placed on record and after analyzing them in details herein-before I have





concluded that the respondent has acted in contravention of paragraph 4 of INDRP Policy in entirety. I thus conclude the issue i.e. Relief to be settled in favour of the complainant and accordingly I allow the prayer of the complainant to transfer the ownership of domain name <www.makesmytrip.in> in favour of the complainant.

- ii. Regarding the the cost of proceedings I conclude that the parties to bear their own costs

**8. AWARD**

- A. I AWARD AND DIRECT, that the ownership of domain name <www.makesmytrip.in> be transferred in the name of the complainant.
- B. This AWARD is subject to the judgment, direction, order passed by National Company Law Tribunal (NCLT) or any other superior court since the matter in respect of Net4India Ltd who was the Registrar <www.makesmytrip.in> is subjudice before the National Company Law Tribunal (NCLT).

This is my final award made and published by me on this 31<sup>st</sup> day of March 2023, at New Delhi, the seat of arbitration.

  
Kamal Dave  
Sole Arbitrator

**KAMAL DAVE**  
Arbitrator  
FCI Arb., FAMINZ (Med / Arb), FMI Arb., BA  
LLB., PGD EDI/e-commerce, PGD IR & PM, DLL  
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