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INDRP ARBITRATION PROCEEDING SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL

In the matter of INDRP Case no: 1886

M/s. RECKITT BENCKISER SARL Vs M/s. Plamen Panayotov

SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI
NEW DELHI DATE 2nd September 2024

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**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name
<reckittbenckiser.in> and in the matter of INDRP Case no: 1886**

**M/s. RECKITT BENCKISER SARL
39 Boulevard Joseph II
L-1840 Luxembourg
LUXEMBOURG**

.....Complainant

Vs.

**Plamen Panayotov
12 Zhelezni Vrata fl.1
9000, Varna
BULGARIA
Email I.D.:- donpaccioni@gmx.com**

..... Respondent

ORDER

History:

The undersigned has been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant in this administrative proceedings is M/s. is M/s. RECKITT BENCKISER SARL 39 Boulevard Joseph II. L-1840, Luxembourg, LUXEMBOURG represented through its authorized representative seeking to invoke of arbitration proceedings, against the Registrant / Respondent as Plamen Panayotov, 12 Zhelezni Vrata fl.19000, Varna, BULGARIA Email I.D.:- donpaccioni@gmx.com in respect of registration of domain name <reckittbenckiser.in>.



The Complainant has filed the above arbitral complaint for Registrant / Respondent registering domain name <*reckittbenckiser.in*> and seeking a claim of relief of transferring the said domain name to the Complainant herein, thereby seeking a claim of relief for transferring the domain name to the Complainant herein.

As per the WHOIS record containing the address and the domain details of the Registrant / Respondent, the Complainant has filed the complaint before the office of the undersigned by incorporating the office address Registrant / Respondent in this administrative proceeding in respect of domain name <*reckittbenckiser.in*>.

That in the above said arbitral reference, the sole arbitrator had issued the directions to the complainant and the Registrant / Respondent to comply notice of 8th of August July 2024 to file reply, detail statement, if any, **within 15 (fifteen) days from issue the date of this Notice**, the reply detail statement, if any should reach by **23rd August of 2024**. The complainant had served the notice to the respondent / registrant to their email address as listed in WHOIS records. As such the issued notice is duly served to the respondent / registrant.

Keeping in view of non filing of reply on the part of present Respondent and Registrant of domain name **23rd August of 2024**, the sole arbitrator is of considered view that the present respondent / registrant have been duly served through email address as per mentioned in WHOIS record by the complainant herein and despite of receipt of this email notice, the respondent / registrant had failed to submit its reply or Statement to the sole arbitrator office within prescribed time allocated by the sole arbitrator herein. Therefore, the sole arbitrator issued another order notice on 30th August 2024, reserving this domain dispute complaint <*reckittbenckiser.in*> for final orders on merits.

1. The Parties:

The Complainant in this arbitration proceeding M/s. RECKITT BENCKISER SARL 39 Boulevard Joseph II. L-1840, Luxembourg, LUXEMBOURG represented through its authorized representative seeking invoking of arbitration proceedings, against the



Respondent Plamen Panayotov, 12 Zhelezni Vrata fl.19000, Varna, BULGARIA Email I.D.:- donpaccioni@gmx.com in respect of registration of domain name <*reckittbenckiser.in*> seeking a claim of relief of transferring the said domain name to the Complainant herein.

2. The Domain Name and Registrar:

2.1 The disputed domain name <*reckittbenckiser.in*> is registered by the IN. registry registrar M/s. GoDaddy.com, LLC,.

3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to their solution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), the NIXI formally notified the appointment to the Respondent as well as the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under. IN Domain Name Dispute Resolution Policy and the Rules framed there under.

The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.

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



- 3.3 The present Arbitral Proceedings have commenced on 8th of August 2024 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as directing the complainant to serve the copies of the domain complaint along with documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the record and the same was served by the complainant to the Respondent / Registrant
- 3.4 Further as per the issued Notice, the Respondent / Registrant was directed to file its reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 23rd of August 2024, failing which the Complaint shall be decided on the basis of the merits.
- 3.5 The respondent / registrant have failed to submit its reply / response, or detail statement in the above arbitral reference. .
- 3.6 That the Arbitrator had further directed both the parties to file written arguments in this case, the Complainant had complied the directions of the sole arbitrator by filing written arguments within stipulated time but the Respondent / Registrant did not file written arguments in this complaint matter.

4. Factual Background:

- 4.1 The Complainant in this administrative proceedings is M/s. RECKITT BENCKISER SARL 39 Boulevard Joseph II. L-1840, Luxembourg, LUXEMBOURG by invoking this administrative domain arbitration proceeding through its authorized signatory, in respect of domain name <*reckittbenckiser.in*> against the Registrant / Respondent M/s Plamen Panayotov, 12 Zhelezni Vrata fl.19000, Varna, BULGARIA Email I.D.:- donpaccioni@gmx.com in respect of registration of domain name <*reckittbenckiser.in*>.

5 Parties Contentions:

- 5.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief transfer of the domain name against the Registrant / respondent for registering domain name <*reckittbenckiser.in*> illegally.



5.2 The Respondent had failed to submit its reply response / statement to the sole arbitrator panel.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <*reckittbenckiser.in*> is stated as under:

I. To decide the matter there are Grounds for proceedings to be adjudged

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory / common law rights.

B. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. That the disputed domain name has been registered or is/are being used in bad faith.

The Complainant has submitted its complaint that are described as under:

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.

The Complainant's Claim of Statutory Rights:

5.4 The complainant submits that the Complainant belongs to the Reckitt Group of companies (hereinafter, “Reckitt”), which is a global leader in consumer health, hygiene, home, and nutrition products.

Reckitt manufactures and markets health, personal care and household products, including over-the-counter pharmaceuticals such as analgesics, antiseptics, flu remedies and gastrointestinal medications and products for hair removal, denture cleaning, intimate wellness and pest control.



- 5.5 The history of Reckitt began in 1819 when Isaac and Thomas Reckitt built the Maud Foster Mill in Boston in Lincolnshire. In 1840, Reckitt & Sons was established and, in 1870, Isaac's sons Francis and James Reckitt became sole partners of the company. In 1938, Reckitt & Colman was formed, bringing together two established British brands and forming one household products conglomerate. Reckitt & Colman merged with the industrial chemicals business Benckiser in 1999 to become Reckitt Benckiser Group Plc. In March 2021, the company rebranded as Reckitt.
- 5.6 Reckitt has more than 40,000 employees, operations in more than 60 countries – including offices in Sofia, Bulgaria, where Respondent is based - and sales in most countries across the globe. Its key brands include DUREX, DETTOL, LYSOL, GAVISCON, NUROFEN, MUCINEX, MEGARED, MOVE FREE, STREPSILS, CLEARASIL, OPTREX, FINISH, HARPIC, AIRWICK, VANISH and WOOLITE
- 5.7 Reckitt has a long history in India, one of its top three markets, where it has been operational since 1934. India is currently Reckitt's principal developing market and Reckitt is manufacturing some of its most recognisable branded products in India, including Dettol, Durex, and Mortein. Reckitt has two offices and three R&D facilities in Haryana, Gurgaon, Baddi, and Mysore with more than 3,000 people directly employed and over 69,000 jobs across India supported. In 2021, Reckitt contributed INR78.8 billion (£775 million) to India's gross domestic production. Through partnership with the Government of India and non-governmental organisations, Reckitt has helped tackled societal challenges in India with programmes improving people and children's behaviours around health and hygiene (the Dettol Banega Swasth India Campaign and Dettol School Hygiene Education Programme).
- 5.8 Respondent registered the Domain Name - without authorization of Complainant and of any of the Reckitt companies – on August 05, 2022, well after Complainant's filing and registration of the trademarks cited above. The Domain Name has been redirected by Respondent to a web page featuring several sponsored links, also related to Complainant's sector and redirecting users to third parties' commercial websites where third-party products and services were offered for sale.



Moreover, the Domain Name is being offered for sale and, by clicking on the orange banner on the top of the page, users are redirected to an online form to contact the owner by submitting a minimum offer of 200 USD for the Domain Name

- 5.9 Complainant instructed a web agency to contact Respondent to ascertain its real intentions as to the Domain Name. The web agency sent a message on April 18, 2024 – via the above-mentioned online contact form - requesting to Respondent which were its projects related to the Domain Name and its possible availability to consider transferring it (see Annex 5.1). On April 19, 2024, the web agency received a response from such Kalin Karakehayov, writing from zaekyt@gmail.com, who requested 3.500 USD for the transfer of the Domain Name, as per message hereinafter:
- 5.10 On May 3, 2024, Complainant’s representative sent a cease-and-desist letter to Respondent’s attention via the online contact form, as well as requesting the former registrar to forward its communication to the Registrant. On the same day, a reply was received by Kalin Karakehayov, who requested an offer for the Domain Name, as follows:

“If you have an offer, we can forward it to the domain owner. Otherwise you can use the dispute mechanisms.”

Upon receipt of the subsequent messages sent on May 03, and June 13, 2024, Kalin Karakehayov reiterated his request to make an offer for the Domain Name, as follows: “If you have an offer of 500 USD or more, we can forward it to the domain owner. Otherwise you can use the dispute mechanisms.”

- 5.11 The Domain Name <*reckittbenckiser.in*> is identical to Complainant’s trademark RECKITT BENCKISER which has been registered by Complainant in several Countries, including India,

- 5.12 Indeed, the Domain Name reproduces the trademark RECKITT BENCKISER with the sole addition of the ccTLD “.in”, which are not distinguishing features. See, amongst others, PUMA SE v. Christian Schmidt [INDRP/956], involving the domain name <puma.in>



5.13 The Complainant refers to the case *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP Case No. 665], wherein it was held that the registration of a domain name wholly incorporating a Complainant's registered trademark may be sufficient to establish identity or confusing similarity, and that "if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark". See also *Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol* [WIPO Case No. D20010489], where the panel held that "domain names that incorporate well-known trademarks can be readily confused with those marks".

5.14 The Domain Name reproduces the trademark RECKITT BENCKISER with the sole addition of the ccTLD ".in", which are not distinguishing features. See, amongst others, *PUMA SE v. Christian Schmidt* [INDRP/956], involving the domain name <puma.in>: "the disputed domain name incorporates the mark PUMA in entirety. Save for the .IN generic country code top level domain, it is identical to the Complainant's PUMA mark. The ccTLD is not to be considered for purposes of determining similarity between domain name and trademark". See also *FMTM Distribution Ltd. v. Bel Arbor* [INDRP/681], involving the domain name <franckmuller.in>.

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

5.16 The Registrant of the disputed domain name is RECKITT BENCKISER. The Complainant asserts that the Registrant uses the Complainant's name in order to increase the likelihood of confusion with the Complainant.

Indeed, the Registrant's email address donpaccioni@gmx.com is not affiliated with the Complainant and the address used by the Respondent (Plamen Panayotov, 12 Zhelezni Vrata fl.19000, Varna, BULGARIA) does not correspond to the Complainant or its subsidiaries.



Thus, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

5.17 The Respondent / Registrant had failed to submit its reply/ statement to the complainant

B. The respondent has no right or legitimate interest in respect of the domain name:

5.18 Complainant has a legitimate interest in the well-known trademark RECKITT BENCKISER as it registered said trademark in many jurisdictions, including India. As indicated above, the history of Reckitt began in 1819, when Isaac and Thomas Reckitt built the Maud Foster Mill in Boston in Lincolnshire. In 1840, Reckitt & Sons was established and, in 1870, Isaac's sons Francis and James Reckitt became sole partners of the company. In 1938, Reckitt & Colman was formed, which then merged with Benckiser to become Reckitt Benckiser Plc in 1999, and the company rebranded as Reckitt in March 2021.

5.19 Respondent is not a licensee, an authorized agent of Complainant, or in any other way authorized to use Complainant's trademark RECKITT BENCKISER. As stated in, inter alia, *Pharmacia & Upjohn Company v. Moreonline*, [WIPO Case No. D2000-0134], "the mere registration, or earlier registration, does not establish rights or legitimate interests in the Domain Name." See also along these lines *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP Case No. 665] (supra): "merely registering the domain name is not sufficient to establish right or legitimate interests."

5.20 The Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services before any notice of the dispute, rather the respondent is a squatter of domain names as the respondent had tried to sale the impugned domain on price to the complainant herein.



5.21 The disputed Domain Name was in fact intentionally created by Respondent for commercial gain to misleadingly divert users looking for the Complainant to the website at the disputed Domain Name, consisting of a pay-per-click page featuring several sponsored links, also related to one of the Complainant's market niches – the cleaning sector – and redirecting to third parties' commercial websites offering cleaning products and services. Moreover, the Domain Name is also offered for sale on the website to which the Domain Name resolves.

5.22 The above circumstances lead to the conclusion that Respondent is not using, nor demonstrated any preparation to use, the disputed Domain Name or a name corresponding to the disputed Domain Name in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use. *To the contrary, as also stated in the Panel decision Paris Hilton v. Deepak Kumar, WIPO Case No. D2010–1364, if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or a legitimate interest in the domain name"*.

5.23 Respondent's choice of the Domain Name is a clear attempt to unfairly capitalize on or otherwise take advantage of the Complainant's trademarks and resulting goodwill. This was also confirmed in *Fiskars Corporation v. Lina / Doublefist Limited [INDRP/1067]* where, in a similar case, it was held that *"The respondent's use of the disputed domain name is merely intended to divert costumers to respondent's website, which provides multiple pay-per-click links. Hence, it cannot be considered a bona fide offering of goods and services nor a legitimate non-commercial or fair use. The complainant has made out a prima facie case that the respondent has no rights or legitimate interests in the disputed domain name and as such the burden of proof shifts to the Respondent"*. Amongst the decisions addressing similar situations where respondent used a domain name corresponding to a trademark to attract users to its website for its own commercial gain, and, at the same time, advertised also the sales of products of competitors,

see, inter alia, Luigi Lavazza S.p.A. v. Flying Stingrays Ltd, WIPO Case No. D2012-1391 and also Lancôme Parfums et Beaute & Compagnie v. D Nigam, Privacy Protection Services / Pluto Domains Services Private Limited,



WIPO Case No. D2009-0728 (“Respondent is operating a website at the disputed domain name that simply links to websites selling Complainant's products and to other companies selling cosmetics in direct competition with Complainant. In this Panel's view, Respondent is clearly attempting to confuse Internet users by use of Complainant's widely-known trademark in the domain name to lure Internet users to the website, and thereby benefit commercially from “click-through” advertising fees. Such use does not constitute a bona fide, legitimate use of the domain name”).

5.24 Furthermore, Respondent’s intention to sell <*reckittbenckiser.in*>, identical to Complainant’s trademark, for more than its out-of-pocket costs (see Annexes 5 and 6.3) further demonstrates that it has no rights or legitimate interests in the Domain Name. See, along these lines, i.a., Wal-Mart Stores, Inc. v. Stork, WIPO D2000-0628, finding that the respondent was not “making any legitimate non-commercial or fair use of the domain name without intent for commercial gain misleadingly to divert customers or to tarnish the mark at issue” and that the “Respondent’s conduct in purporting to sell the domain name on the Internet suggests otherwise”.

B. The Disputed domain name has been registered in bad faith:

5.25 The Complainant submits that Respondent was well aware of Complainant’s trademark rights at the time of registration and that it registered and has been using the Domain Name in bad faith, even after being notified of the infringement of Complainant’s rights via Complainant’s Cease and Desist letter, sent on May 3, 2024...

5.26 Indeed, as highlighted supra, the trademark RECKITT BENCKISER was registered before the registration of the Domain Name, has been extensively used for many years and is certainly famous worldwide. The well-known character of the trademark RECKITT BENCKISER has been indeed also recognized, inter alia, by all sundry.



in the previous cases *Reckitt Benckiser Group Plc, Reckitt & Colman (Overseas) Health Limited, and Reckitt Benckiser SARL v. Tom Barnet, WIPO Case No. D2023-1035* (<reckittinc.com>) and *WIPO Case No. D2023-0659, Reckitt Benckiser Group Plc, Reckitt & Colman (Overseas) Health Limited, Reckitt Benckiser SARL v. Mario Borg, RB, Emilio Borg, Repossessed by Go Daddy.*(<reckittbenckiser-plc.com> and <reckitt-plc.net>); *Reckitt & Colman (Overseas) Health Limited v. James Patel, [INDRP/1763]* (<reckitt.net.in>).

5.27 Therefore, Respondent could not have possibly ignored the existence of Complainant's well-known trademark when it registered the identical Domain Name <reckittbenckiser.in>. Several INDRP and UDRP decisions confirmed that the well-known character of a trademark incorporated in a disputed domain name is a relevant circumstance in the assessment of bad faith registration.

See i.a. Accor v. Jiangdeyun, [WIPO Case No. D2011-2277]; Perfetti Van Melle Benelux BV v. Jing Zi Xin [INDRP Case No. 665] ; Bulgari S.p.A. v DomainBook [INDRP Case No.1002]; Amazon Technologies Inc. v. Surya Pratap [INDRP Case No. 835].

5.28 Complainant submits that, by using the Domain Name, Respondent has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website or the products and services promoted through Respondent's website, according to Rule 7 (c) of INDRP Policy.:

5.29 - Indeed, as highlighted above, the Domain Name has been (and still is) redirected to a web page featuring several sponsored links related to cleaning products and where the Domain Name is offered for sale. Such use cannot be considered, by any means, a bona fide use, since Respondent has been (and is) clearly attempting to gain revenues through the pay-per-click system and the possible sale of the Domain Name, free riding the well-known character of the trademark RECKITT BENCKISER.

See, along these lines, *Calvin Klein Inc. v. M/s Hangzhou Gougou Internet Co. Ltd.:* "The domain name is registered without any authority, agreement or arrangement between the Complainant and the Registrant.



The webpage included several links to the third parties in respect of various products including those of the Complainant. Thus, the Registrant has been making money illegally by using the name and fame, of the Complainant."). See also, along the same lines, Perfetti Van Melle Benelux BV v. Jing Zi Xin (supra) , L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623] and Deloitte Touche Tohmatsu v. Henry Chan, WIPO Case No. D2003-0584."

5.30 The Complainant further submits that Respondent registered the Domain Name primarily for the purpose of selling it to Complainant, which is the owner of the RECKITT BENCKISER trademark, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the Domain Name, according to Paragraph 7 (a) of the INDRP Policy.

Indeed, as better detailed in the factual section, Respondent, during the contacts pursued via the web agency initially entrusted by Complainant (which mentioned Reckitt as prospect client), as well as upon receipt of the cease-and-desist letter, has requested an amount well in excess of the out-of-pocket costs - for transferring the Domain Name to the legitimate trademark owner.

5.31 Thus, given the distinctiveness of the Complainant's trademarks and reputation, it is inconceivable that the Respondent could have registered the disputed domain name <reckittbenckiser.in> without actual knowledge of Complainant's rights in the trademarks, which evidences bad faith.

The decision rendered in the prior case INDRP/115 related to <armaniexchange.in>, finding that "The Respondent's bad faith is further exemplified by them asking for compensation to transfer the domain name". Along these lines, see also Fiskars Corporation v. Lina / Doublefist Limited [INDRP/1067] (supra) where a request of 2.500 Euro for the transfer of the disputed domain name was considered in excess of the expenses incurred by the respondent and thus proving without any reasonable doubt its bad faith.

Similarly, in Piaggio & C. S.p.A. v. Xu Xiantao [INDRP /1134], it was held: "The Respondent's intention to sell the domain name is evident from the email conversation produced by Complainant is abundantly clear



that the Respondent has purposely demanded an amount far from than its out-of-pocket costs for registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith and use". See also FMTM Distribution Ltd. v. Bel Arbor [INDRP/681] (supra)

5.32 The Complainant is owner of the well-known trademark RECKITT BENCKISER, with multiple trademark registrations in India and worldwide, and is running its business in several countries. Accordingly, it is apparent that Respondent deliberately registered the Domain Name with the intention of preventing Complainant from reflecting its trademark RECKITT BENCKISER in the corresponding .in domain name.

Contention of the Complainant:

5.33 Firstly, the Complainant submits that the Respondent's lack of any legitimate, good faith use suggests the Respondent's strong bad faith. The disputed domain name is used by the Respondent after complete knowledge of the Complainant's extremely popular mark the respondent, Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's reputation and goodwill which insures and continue to insure its legitimate right to Complainant only.

5.34 The Complainant has a long and well-established reputation in the Complainant's mark. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant.

5.35 The registration of the disputed domain name bearing the registered as a trade/service mark of the complainant is nothing but an opportunistic bad faith registration on the part of the Respondent.



A. Contention of the Respondent:

5.36 The Respondent / Registrant had failed to file its detailed reply /statement rebutting the claim of the Complaint. Rather the respondent has submitted wrong details to the registrar of domain, thereby concealed the status of the respondent and the address from the Registrar.

6. Discussion and Findings:

6.1 It is evident from the pleadings stated above that the Registrant/Respondent chose to register and but did not use the disputed domain name <*reckittbenckiser.in*>, as the Respondent must have got report that the domain name has potentiality of exploitation, while registering the domain name <*reckittbenckiser.in*> despite of registering the domain name the Registrant / Respondent did not initiate positive steps to strengthen or acquire IP rights of the domain name rather the Registrant / Respondent sat on the domain registration and did not use.

6.3 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

[b] The issues involved in the dispute:

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**



(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the Respondent's domain name has been registered or is being used in bad faith.

6.9 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules there under."

6.10 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

6.11 The Complainant mark "RECKITT BENCKISER" has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations: By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that : the statements that the respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."



6.12 The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <*reckittbenckiser.in*> is identity theft, identical with or deceptively similar to the mark.

Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

6.13 The second element that the Complainant needs to prove and as is required by paragraph 4 (ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

6.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.

6.15 The Respondent has failed to submit the reply within stipulated time granted in the arbitral proceedings.

The Registrant / Respondent has failed to submit the reply within stipulated time thus failed to show and submit its legitimate interests in domain name.

Thus, it is very much clear from the submissions made by the Registrant / Respondent that the Respondent has no legitimate interest in respect of the disputed domain name <*reckittbenckiser.in*> from submissions, the Registrant / Respondent non submission of reply clearly indicates that they register the domain without legitimate cause, it clearly proves that the respondent has just parked the domain name with no legitimate interest to use it. For these reasons, the Arbitrator opines that the Respondent / Registrant have legitimate no rights or legitimate interests in the disputed domain name.



The disputed domain name has been registered or is being used in bad faith.

- 6.16 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.
- 6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

- 6.18 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Registrant / Respondent had no previous connection nor known business entity with the disputed domain name <**reckittbenckiser.in**> rather respondent has been trying to trade fpr the domain name It has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.



- 6.19 Moreover, the respondent has admitted in its reply that the respondent is not using presently impugned domain name but has kept registration alive for lohly one year from the year 2023 to 2024, as impugned domain name <*reckittbenckiser.in*> is associated exclusively with the complainant public in India as well as all over the world. As such there will be no business or financial loss to the Registrant / Respondent, as the disputed domain name <*reckittbenckiser.in*> as per WHOIS record Dated, the domain name is going to expire on 2024-08-04 as the disputed domain name was created on 2023-08-04 and its registration was valid up to 2024-08-04 in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*reckittbenckiser.in*> is transferred back to the complainant.
- 6.20 Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith and intent .

7. DECISION

- 7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein
- 7.2 The Complainant has given sufficient evidence to prove its trademark rights on the disputed domain name thereby having prior registration of trademark in Indi and in other countries. Further, the Respondent's registration of the domain name is dishonest and malafide simply to park it.

The Respondent / Registrant have clearly registered the disputed domain name <*reckittbenckiser.in*> in order to prevent the Complainant, who is the prior registration owner and honest concurrent user of the said trademark thereby reflecting the said continuous use of the trademark in a corresponding domain name.



7.3 The Respondent / Registrant have not given any reasons rather trying to trade in impugned domain with the complainant herein for enormous cost, the respondent to gain illegal money out of sale of domain name the respondent does not have interest other than claiming the domain name <**reckittbenckiser.in**> that is rightfully owned by the Complainant much prior to the respondent and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

[Relevant WIPO decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. SanchaiAreeD2002-0358; Consorzio del FormaggioParmigianoReggiano v. La casa del Latte di Bibulic Adriano D2003-06611

7.4 It is a settled proposition that the registration of a domain name incorporating trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision.

Some notable cases reaffirming this proposition are INDRP decision in ***Trivago N.V. is. Shiv Singh (INDRP/1 171) and WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767 another case Verve ClicquotPonsardin, MaisonFortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163 and Adidas-Solomon AG v. Domain Locations Case No D 2003 04***

7.5 While the overall burden of proof rests solely with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent.

Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.



Thus it is very much clear that the Respondent / Registrant has registered the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupod.d. v. WACHEM d.o.o. D2004-01101

- 7.6 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 7.7 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304

- 7.8 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier.



A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. ”

- 7.9 It was observed that *“it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights”* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

The WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondee en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163* has been held that registration of a domain name, so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

- 7.10 The Registrant / Respondent's in this case has failed to file its reply rather reply to the complainant notice he offered to sale the domain name on on more than its price, thus it is very much clear that the registration and use of the Domain Name *<reckittbenckiser.in>* is for parking only, hence it is abusive and is not in good faith. The Registrant / Respondent have no legitimate right or interest in respect of the domain name in any manner and is squatter of domain name.

Moreover, the respondent has failed to file its reply that the respondent is not using presently impugned domain name *<reckittbenckiser.in>* and has kept registration alive for only one year from the year 2023 to 2024.

In my considered view, the respondent has simply kept and parks its domain nam *<blyarcelormittal.co.in>*. If this domain name *<reckittbenckiser.in>* is transferred back to the complainant *as* such there will be no business or financial loss to the Registrant / Respondent, as the disputed domain name *<reckittbenckiser.in>* as as per WHOIS record Dated, the domain name is going to expire on 2024-08-04



as the disputed domain name was created on 2023-08-04 and its registration was valid up to 2024-08-04 in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*reckittbenckiser.in*> is transferred back to the complainant.

6.20 Further the due to prior obtaining domain in the Respondent / Registrant in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*reckittbenckiser.in*> is transferred back to the complainant.

Further to my considered view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy thus able to prove his complaint.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <*reckittbenckiser.in*> be transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI

NEW DELHI DATE 2nd of September 2024