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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD
Disputed Domain Name: <ATC-TOWER.IN>

IN THE MATTER OF

ATC IP LLC,
116 Huntington Avenue,
Boston, Massachusetts 02116
United States of America

Complainant

-----versus-----

Rakul Kumar
Rajiv Nagar, Patna
Bihar

Respondent

Aranga

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1. The Parties

The **Complainant** in this arbitration proceeding is **ATC IP LLC**, of the address 116 Huntington Avenue, Boston, Massachusetts 02116, United States of America, is a part of the American Tower Corporation group of companies ("**ATC Group**"), headquartered in Boston, Massachusetts, United States of America.

The **Respondent** in this arbitration proceeding is "**Rakul Kumar**" of the address Rajiv Nagar, Patna, Bihar.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name **<ATC-TOWER.IN>** with the .IN Registry. The Registrant in the present matter is "**Rakul Kumar**", and the Registrar is **Endurance Domains Technology LLP**.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated March 13, 2020, had sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. March 13, 2020. Thereafter the Arbitrator received soft copies of the Domain Complaint and the annexures thereto on March 19, 2020 and the hard copy of the same on March 20, 2020, and confirmed receipt of the same vide email dated March 20, 2020 and also sought NIXI's confirmation regarding service of the Domain Complaint as well as the annexures thereto upon the Respondent by post and/or email.

As no response was received from NIXI, a reminder email was sent by the Arbitrator on March 24, 2020, in response to which NIXI replied vide email dated March 25, 2020, inter alia informing that their offices are closed till March 31, 2020, on account of the outbreak of COVID-19 and that they would be able to provide confirmation of service only after their office resumes operation. The Arbitrator thereafter acknowledged the same via email on the same date and informed that the arbitration proceedings shall only commence once confirmation of service to the Respondent is received. In response thereto, NIXI replied on March 26, 2020, inter alia confirming that the Respondent has been duly served with copies of the complaint and documents via email and confirmation of physical service can only be provided after NIXI's offices re-open.



Therefore, the Arbitrator sent an email to NIXI on March 27, 2020, inter alia informing about the complete lockdown of India till at least April 15, 2020 (owing to the COVID-19 outbreak) and seeking confirmation regarding whether the commencement of proceedings may be postponed until such time, or till such time as the situation with respect to the global pandemic crisis improves enough to fairly expect the Respondent to be able to supply a suitable defence. NIXI then replied vide email dated March 28, 2020, inter alia agreeing with the Arbitrator's concerns, which was thereafter acknowledged by the Arbitrator vide email dated March 30, 2020.

However, as the national lockdown was subsequently further extended to May 03, 2020, the Arbitrator sent an email dated April 15, 2020 to NIXI to inform about the postponement of commencement of proceedings to May 04, 2020.

Thereafter, the Arbitrator, vide email dated May 05, 2020, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email. The Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email dated May 05, 2020, within which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from May 05, 2020.

On May 19, 2020, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on May 19, 2020, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated May 27, 2020, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background

The Complainant has submitted that it is a part of the American Tower Corporation group of companies ("**ATC Group**"), a multinational group of companies which commenced operations in 1995. ATC Group claims to be a leading provider of telecom infrastructure, mobile tower installation and related services. Complainant has submitted that ATC Group has a presence in 5 continents, 17 countries and a global portfolio of more than 1,71,000 telecom and infrastructure and installation sites, including in India.

Complainant has submitted that ATC Group's operations in India are managed by **ATC Telecom Infrastructure Pvt. Ltd. ("ATC India")**, which commenced operations in 2007, and has submitted the incorporation certificate of **ATC India** as **Annexure B**. Complainant has



submitted that ATC India has provided its services to Indian telecom providers such as Airtel, Vodafone, Reliance Jio, etc., and that it has over 85,000 installation sites in India. Complainant has further submitted that ATC Group has been bestowed with numerous awards and recognitions and has attached specimen copies of some of them as **Annexure C (Colly)**.

Complainant has submitted that it is popularly referred to as "ATC" or "ATC Group", wherein ATC is the acronym of its name American Tower Corporation, and that the acronym ATC was adopted in 1995. Complainant has further submitted that the expression "ATC" either alone or in the form of "ATC Tower" or "ATC India" has no reference to the Complainant's nature of services and the said designations and/or any other combinations of prefixes/suffixes with ATC are inherently distinctive trade marks.

Complainant has further submitted that it has numerous "ATC" formative trade marks which are either used as word marks or along with logos (collectively referred to as "ATC Trademarks"), in relation to telecom infrastructure and tower installation service. Complainant has also submitted that its registration for ATC Trademarks in India date back to 2005, and in support thereto has filed copies of some status pages from the Indian Trade Marks Registry's website as well as copies of some Indian trade mark registration certificates as **Annexure D (Colly)**. Complainant has also submitted that the ATC Trademarks has been continuously and extensively used in India since the year 2005, and has provided specimen business documents/contracts showing the use of the ATC Trademarks as **Annexure E (Colly)**.

Complainant has submitted that it is the owner of several ATC formative domain names in India and abroad, including the domain name <ATCTOWER.IN>, which was registered on January 03, 2013, on which it has been operating a website since January 2013. In this regard, the Complainant has submitted screenshots from its website at the said domain name as **Annexure F**. Complainant has also submitted that it owns over 350 domain name registrations worldwide, including around 200 domain names wherein "ATC" and/or "ATC Tower" is used, and has also provided a list of such domain names, which includes <ATCTOWER.CO.IN>, <ATCTOWER.NET.IN> and <ATCTOWER.ORG.IN>. In this regard, the Complainant has annexed WHOIS extracts for some of its domain names as **Annexure G (Colly)**.

Complainant has submitted that due to continuous and extensive use of the ATC Trademarks for over two decades, the said marks have acquired immense goodwill and reputation with respect to telecom infrastructure and tower installation services. Complainant has further submitted that the ATC Trademarks are exclusively associated with the Complainant and that adoption of the same by any third party is a violation of their statutory and common law rights.

Complainant has submitted that it has also taken legal action in the past to protect its trademarks, and in this regard has relied on the case of **ATC IP LLC & Anr. v. Owner of Domain Name <www.atcindiatower.in> & Ors. [C.S.(Comm.) 246 of 2019]**, wherein the Hon'ble High Court of Delhi ordered NIXI to block the domain names <www.atcindiatower.in> and <www.atctower.in.net>. The Complainant has also annexed a copy of the High Court's Order dated May 10, 2019, as **Annexure H**. Complainant has also submitted that it receives numerous complaints from prospective customers and the public at large, who have reportedly been duped or defrauded by third party websites offering to provide

services in the name of ATC Group, and that the Complainant had filed a First Investigation Report (FIR) also which led to arrests by the Delhi Police. In this regard, the Complainant has annexed a copy of the FIR and the status report of the Delhi Police filed pursuant to the Delhi High Court's Order dated May 10, 2019, as **Annexure I**.

5. Complainant's Contentions

Complainant has submitted that the Respondent had not made public any particulars of its registration of the disputed domain name and the same was only made available to them by NIXI.

Complainant has submitted that it first became aware of the Respondent when two persons (Mr. Naveen and Mr. Hemant) visited their offices in New Delhi and informed that they had made a payment of INR 14,300 via filing an online application form available on the website hosted at the disputed domain name. Pursuant thereto, ATC India informed the said persons that the website has no connection with the ATC Group and the Respondent's activities are illegal and unauthorized. Complainant has further submitted that post receipt of the said complaint, they investigated the website hosted at the dispute domain name and discovered that the Respondent had copied the ATC Trademarks and copyrighted works as available on the Complainant's own website ATCTOWER.IN, including the design and layout, to deceive prospective customers. In this regard, the Complainant has provided comparative depictions from the Respondent's website and their own website. Based on the above submissions, Complainant has stated that the Respondent's intention is to mislead and defraud potential customers of the ATC Group into believing that the Respondent's website is related to the Complainant and that the Respondent has malafide intentions as the Respondent does not offer any services whatsoever in the telecom industry.

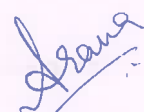
6. Legal Grounds Submitted by the Complainant

The Complainant has submitted the following legal grounds in support of its complaint:

A. The Disputed Domain Name's Similarity to the Complainant's Rights [.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(1)]

The Complainant has inter alia contended that the Respondent registered the disputed domain name almost 15 years after ATC Group adopted and commenced using the ATC Trademarks in India and 6 years after the Complainant's website <ATCTOWER.IN> went online. Complainant contends that it is the prior user and exclusive rights holder of the ATC Trademarks, including but not limited to ATC and ATC TOWER.

Complainant has further contended that the disputed domain name is nearly identical to that of the Complainant (ATCTOWER.IN) with the only difference being the addition of a hyphen "-



" between the words ATC and TOWER, and that the Respondent through its domain name claims to offer services which are identical to those of the Complainant. In this regard, the Complainant has relied on the judgment in **Morgan Stanley v. Ding Riguo (INDRP/370)**, which has been submitted as **Annexure L**, to submit that addition of a mere hyphen does nothing to distinguish a domain name.

Complainant has contended that it is settled law that while determining likelihood of confusion, the perspective of an unwary customer of average intelligence of imperfect or vague recollection has to be considered, and that in the present case, the disputed domain name incorporates the Complainant's trade mark ATC TOWER in toto and portrays/offers services identical to those of the Complainant. Thus, prospective customers visiting the website hosted on the disputed domain name are likely to be deceived into believing that the same is being managed by the Complainant or an entity authorised by them.

Complainant has contended that in cases where the disputed domain name incorporates a mark in its entirety, it is adequate to prove that the domain name is either identical or confusingly similar to the mark. In this regard, the Complainant has relied on the judgments in **Inter-Continental Hotels Corporation vs. Jaswinder Singh (INDRP/278)** and **Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148)** and copies of the same have been submitted as **Annexure M** and **Annexure N** respectively. Complainant has further contended that considering the goodwill and reputation attached with the ATC Trademarks and the similarity thereto with the disputed domain name, the same will inevitably confuse/mislead consumers into believing that the domain name is associated with the Complainant. Complainant has also contended that the website hosted at the disputed domain name is intended to mislead consumers or potential consumers into believing that there is an association with the Complainant, and Respondent is therefore illegally directing traffic to itself.

In view of the above, Complainant has inter alia contended that the disputed domain name is confusingly similar to the ATC Trademarks and is also nearly identical to the domain name <ATCTOWER.IN> of the Complainant, and the same is causing actual confusion in the minds of the general public. Complainant has also contended that it has made out a prima facie case of passing off of its ATC Trademarks against the Respondent.

B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name
[.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(2)]

Complainant has contended that under the Policy, the burden of establishing that the Respondent has no rights or legitimate interest in respect of the disputed domain name lies with the Complainant. However, the Complainant has relied on the cases of **Altria Group Inc. v. Steven Company (WIPO Case No. D2010-1762)** and **Zingametall BVBA v. Alexey Navalny (INDRP/639)**, to state that it is sufficient for the Complainant to make a prima facie case showing that the Respondent has no legitimate interest in the Domain Name in order to



shift the burden of proof to the Respondent. Complainant has annexed copies of the judgments in the said cases as **Annexures O** and **P** respectively.

Complainant has contended that the term ATC is an acronym and thus whether used alone or in conjunction with a suffix such as "ATC TOWER" bears no reference to the services in relation to which it is used and hence the trade marks ATC and ATC TOWER are inherently distinctive. Further, the public associates the said marks exclusively with the Complainant. Complainant has contended that the Respondent has no plausible reason to register the disputed domain name and neither does the Respondent appear to be providing telecom related services, as is portrayed on the website hosted on the disputed domain name.

Complainant has also contended that the adoption of the disputed domain name by the Respondent is a deliberate attempt to piggyback on the goodwill and reputation of the Complainant and or/ATC Group in relation to the ATC Trademarks and illegally direct traffic to the disputed domain name. Complainant has further submitted that the Respondent's sole intention is to mislead ATC's prospective customers and to reap illegal monetary benefits from the same, by creating an illusion of association with the Complainant. IN view of this, the Complaint contends that the said activities of the Respondent cannot be termed as legitimate use.

Complainant has contended that the ATC Group has no relation with the Respondent and neither has it licensed or authorised the Respondent to use the ATC Trademarks. Further, the fact that the disputed domain name is nearly identical to the Complainant's own domain name and that the website hosted on the disputed domain name is similar to the design, get-up and layout of the Complainant's website illustrates the illegitimate use of the disputed domain name by the Respondent.

Complainant has further cited the case of **Red Bull GmbH (WIPO Case No. D2000-0766)** and **Swatch Group AG and Swatch AG v. Christopher Biedermann / Marcin Rulnicki (WIPO Case No. D2017-0388)** to contend that the Respondent has no rights or legitimate interests in the disputed domain name. Further, Complainant has submitted copies of the said judgments as **Annexures Q** and **R** respectively.

Complainant has contended that in view of the above, the Respondent cannot be said to be having any rights or legitimate interest in the use of the ATC Trademarks and hence the Respondent has no rights or legitimate interests in the disputed domain name.

C. The Registrant's Domain Name has been registered or is being used in bad faith

[.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(3)]

Complainant has inter alia contended that the Respondent is bound to have known of the Complainant and its domain names under the ATC and ATC TOWER prior to registering the disputed domain name.

Complainant further contends that considering that recent registration of the disputed domain name, it is evident that the Respondent knowingly registered a nearly identical domain name and claimed to offer identical services.

Complainant has again relied on the similarity in the content hosted on the disputed domain name with the Complainant's own website and contended that there is clearly an attempt to impersonate the Complainant and to fraudulently misrepresent an association with the Complainant. In this regard, the complaint has relied on the judgment in **Digi Int'l v. DDI Sys., (FA 124506 NAF)** wherein it was observed that "*there is a legal presumption of bad faith, when the Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively*". Complainant has submitted a copy of the said decision as **Annexure S**.

Complainant has further contended that the Respondent inter alia does not appear to have any legitimate business of providing telecom infrastructure services and appears to be piggybacking on the Complainant's reputation and goodwill to dupe consumers. Complainant has stated that there have in fact been numerous customers who have been deceived and defrauded by the Respondent into making payments.

Complainant has further contended that the Respondent's malafide intent is also illustrated by the fact that no government licenses appear to have been acquired by the Respondent, which is a prerequisite to provide telecom infrastructure services in India. Further, such activities under the guise of having an association with ATC Group depicts bad faith on part of the Respondent.

Complainant has also referred to the non-availability of details about the Respondent on WHOIS records to contend that the Respondent has hidden its identity in order to ensure that the internet users are not able to find out the said details so that it can continue to mislead internet users and/or prospective consumers by impersonating or falsely misrepresenting an association with the Complainant.

In light of the above submissions, the Complainant has contended that the Respondent has registered the domain name in bad faith.

Other Legal Proceedings

The Complainant has submitted that there are no other legal proceedings that have been commenced against the Respondent in relation to the domain name **<ATC-TOWER.IN>**.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <ATC-TOWER.IN> to be transferred to them.

7. Respondent's Contentions

As already mentioned in the Factual Background of the matter, despite being duly served with a copy of the Domain Complaint as filed and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

8. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

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

i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the mark **ATC** in India, and based on the evidence placed on record, the Complainant's trade mark rights in India for an **ATC trade mark** at least dates back to the date of application of the trade mark application no. **3348939** for the mark



ATC INDIA / **ATC INDIA** and the user claim for the same (i.e. **August 26, 2016** and **June 30, 2016** respectively), which is the only ATC formative trade mark application/registration explicitly mentioned in the complaint or the annexures thereto. However, the Complainant has also submitted that it is the owner of many ATC formative domain names, including the Indian ccTLDs <ATCTOWER.IN> registered on **January 03, 2013**; <ATCTOWER.CO.IN> registered on **January 03, 2013**; <ATCTOWER.NET.IN> registered on **January 03, 2013** and <ATCTOWER.ORG.IN> registered on **January 03, 2013**, which prima facie evidences their adoption and use of the names/marks/designations ATC and ATC TOWER in India from **2013**. These rights significantly pre-date the registration of the domain name <ATC-TOWER.IN> by the Respondent. Although the Arbitrator notes that based on the evidence placed on record, it prima facie appears that the sole ATC formative trade mark possessed by

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the Complainant in India, i.e. application no. 3348939 for the mark **ATC INDIA** / **ATC INDIA**, is not yet registered (as per the evidence adduced with the Complaint).

The Complainant has submitted documents evidencing prior adoption/use of the marks **ATC** and **ATC TOWER**, including domain name registrations wherein the said marks form a prominent part thereof as well its Indian company **ATC Telecom Infrastructure Pvt. Ltd.** ("**ATC India**"), which are prior to the date of registration of the disputed domain name by the Respondent. Complainant has also submitted excerpts from its website of ATC India, which show the use of the mark **ATC**. Complainant has also submitted a copy of the High Court of Delhi's order in the Complainant's earlier case of **ATC IP LLC & Anr. v. Owner of Domain Name <www.atcindiatower.in> & Ors. [C.S.(Comm.) 246 of 2019]**, wherein the Hon'ble High Court of Delhi ordered NIXI to block the domain names <www.atcindiatower.in> and www.atctower.in.net and inter alia observed that "*the Plaintiff's own the trademark and logo 'ATC' which is also written in a distinctive color combination and is registered in various classes*".

The disputed domain name **<ATC-TOWER.IN>** incorporates the trade marks **ATC** / **ATC TOWER** in toto and it has been noted that the Respondent is prima facie using the website hosted on the domain name to portray an offering of services which are identical to those of the Complainant.

The disputed domain comprises of a hyphen "-" between the words "ATC" and "TOWER", which is not sufficient to distinguish the domain name or differentiate it from the Complainant's trade marks and domain name/website **<ATCTOWER.IN>** (and also **<ATCTOWER.CO.IN>**, **<ATCTOWER.NET.IN>** and **<ATCTOWER.ORG.IN>**). As submitted by the Complainant, the addition of a mere hyphen is insufficient to distinguish the domain name and the same had been observed in the case of **Morgan Stanley v. Ding Riguo (INDRP/370)**. The said proposition has also been observed by the INDRP panel in **AB Electrolux v. Yerec International Limited [INDRP/359]** for **<aeg-electrolux.co.in>** and also by WIPO Panels for UDRP cases in **Fort Knox National Company v. Ekaterina Phillipova [WIPO Case No. D2004-0281]** for **<true-pay.com>**; **Gilead Sciences, Inc. v. Brandon Bomberg, Twin Cities Holdings [WIPO Case No. D2020-0613]** for inter alia **<gilead-sciences.online>**, **<gilead-sciences.site>**. In the UDRP case of **Worldpay Limited v. pay world / PrivacyProtect.org [WIPO Case No. Case No. D2014-0018]** with respect to the domain name **<world-pay.biz>**, the panel inter alia held that "*The disputed domain name contains all the elements the Complainants' trademark WORLDPAY, differing only by virtue of a hyphen between the two words. The addition of a hyphen does not serve to distinguish the disputed domain name from the trademark in question.*", which is similar to the instant case wherein the words **ATC** and **TOWER** are separated by a punctuation mark (hyphen).

Prior INDRP panels have also upheld rights of Complainants in cases wherein the disputed domain name is a popular acronym of the Complainant's name/mark, for example **Lifestyle**

Equities C.V. v. Arvind Mudaliyar [INDRP/1082] for <BHPC.IN> (acronym of Beverly Hills Polo Club); and *Mahindra & Mahindra Limited v. M and M Associates [INDRP/355]* (Mahindra & Mahindra / M&M) for <MandM.IN>.

It has been upheld by prior INDRP panels, including the ones cited by the Complainant - *Inter-Continental Hotels Corporation vs. Jaswinder Singh (INDRP/278)* and *Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148)*, that in cases where the disputed domain name incorporates a mark in its entirety, it is adequate to prove that the domain name is either identical or confusingly similar to the mark. The same has also been held by other INDRP panels, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093* <kennethcole.in>, *Carrier Corporation, USA v. Prakash K.R. INDRP/238* <Carrier.net.in>, *M/s Merck KGaA v. Zeng Wei INDRP/323* <Merckchemicals.in>, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887* <Colgate.in> and *The Singer Company Limited v. Novation In Limited INDRP/905* <singer.co.in>.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain <ATC-TOWER.IN> is confusingly identical/similar to the Complainant's trade mark(s).

ii. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)

The Complainant has contended that the Respondent has no connection whatsoever with the ATC Group and neither has it licensed or otherwise authorised the Respondent to use the ATC Trademarks.

In the present dispute, Complainant has established that it has rights over the names/marks/designations ATC and ATC TOWER and that the domain <ATC-TOWER.IN> is confusingly identical/similar to the Complainant's trade mark.

Complainant has contended that while the burden of establishing that the Respondent has no rights or legitimate interest in respect of the disputed domain name lies on the Complainant, the same shifts to the Respondent if the Complainant makes a prima facie case showing that the Respondent has no legitimate interest in the domain name. In addition to the cases cited by the Complainant, the same has also been upheld by INDRP panels in the cases of *Luxottica Holdings Corp v. Lokesh Morade [INDRP/139]* for <sunglasshut.in>; *Alticor Inc v. Aryanent [INDRP/192]* for <nutriliteindia.co.in>; and *Hitachi Limited v. Kuldeep Kumar [INDRP/1092]* for <hitachicorporation.in>.

The element under Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden



thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in ***Huolala Global Investment Limited v Li Chenggong (INDRP /1027)*** that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

Under paragraph 7 of the INDRP policy, it is stated that Respondent can demonstrate rights or legitimate interests in a disputed domain by showing - (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

It has further been held by numerous UDRP panels, that the Respondent may be presumed to have constructive notice of the Complainant's trade mark if the Complainant can show that the mark has ubiquitous use, including online use and that such knowledge can be construed as an indicator of bad faith. Moreover, in the present case, based on the contents of the complaint and the unrebutted evidence placed on record, including but not limited to the similarity of the contents of the Respondent's website with the Complainant's website at ATCTOWER.IN as well as the identical offering of goods/services, it is evident that the Respondent was aware of the Complainant and its trade marks prior to registering the disputed domain name.

Further, it has been contended by the Complainant that the Respondent has no plausible reason to register a domain name which is so nearly identical to the Complainant's domain name ATCTOWER.IN and that the Respondent does not appear to be providing telecom related services in reality as is portrayed on the website hosted on the disputed domain name. Complainant has further contended that the adoption of the disputed domain name by the Respondent is a deliberate attempt to inter alia, illegally direct internet traffic to the disputed domain name, with the intent to mislead the Complainant's prospective customers and illegally collect money by creating an illusion of association with the Complainant. In view of the above, it can be stated that the Respondent cannot be said to be making legitimate or fair use of the domain name.

The Complainant has established a prima facie case of its rights in the names/marks/designations **ATC** and **ATC TOWER**, and in view of the facts and circumstances and evidence on record, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bonafide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(ii) of the .IN Domain Name Dispute Resolution Policy.

iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)

Paragraph 6 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or (iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Based on the evidence on record, it appears that by registering and using the domain **<ATC-TOWER.IN>**, the Respondent has engaged in conduct as enumerated in paragraph 6 (iii) of the INDRP, that *it has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.* This is further evident by the factum of the similarity between the website hosted on the disputed domain name and the Complainant's own website at ATCTOWER.IN.

Complainant has contended that besides the similarity in the website content, the Respondent also appears to be visiting homes/premises of individual site owners with an intent to impersonate the ATC Group in order to dupe unwary site owners. Complainant has further contended that there have been instances of actual confusion, wherein customers have in fact been deceived and defrauded by the Respondent into making payments. Complainant has further contended that Respondent's malafide intent is further evidenced by the fact that no government licenses appear to have been acquired by the Respondent, which is a pre-requisite

to provide telecom infrastructure services in India. Complainant has also contended that such activities of the Respondent, under the guise of an (false) association with ATC Group, clearly depicts bad faith of the Respondent.

Further, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In light of the above and evidence placed on record in support thereto, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

8. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has rights over the trade mark names/marks/designations **ATC** and **ATC TOWER**. The Complainant has herein been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain **<ATC-TOWER.IN>** to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana, Sole Arbitrator

Date: June 22, 2020.

Place: New Delhi, India.