

தமிழ்நாடு TAMILNADU  
8 MAR 2020

**D. SARAVANAN**  
Advocate & Arbitrator  
Unit No.208, 2nd Floor, Beta Wing  
Reheja Towers, Near LIC  
No.113-134, Anna Salai, Chennai 600 002

**BZ 453522**  
P.S. SHANMUGA SUNDARAM  
STAMP VENDOR  
L.No. 84 / 109 / 88  
HIGH COURT CAMPUS  
CHENNAI - 600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

**INDRP Case No.1237**

Disputed Domain Name: <HELLENERGY.IN>

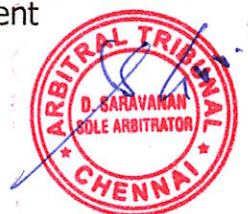
HELL ENERGY Magyarország Kft.  
1062, Budapest,  
Andrássy ut 126,  
Hungary  
Through its Authorized Signatory

.. Complainant

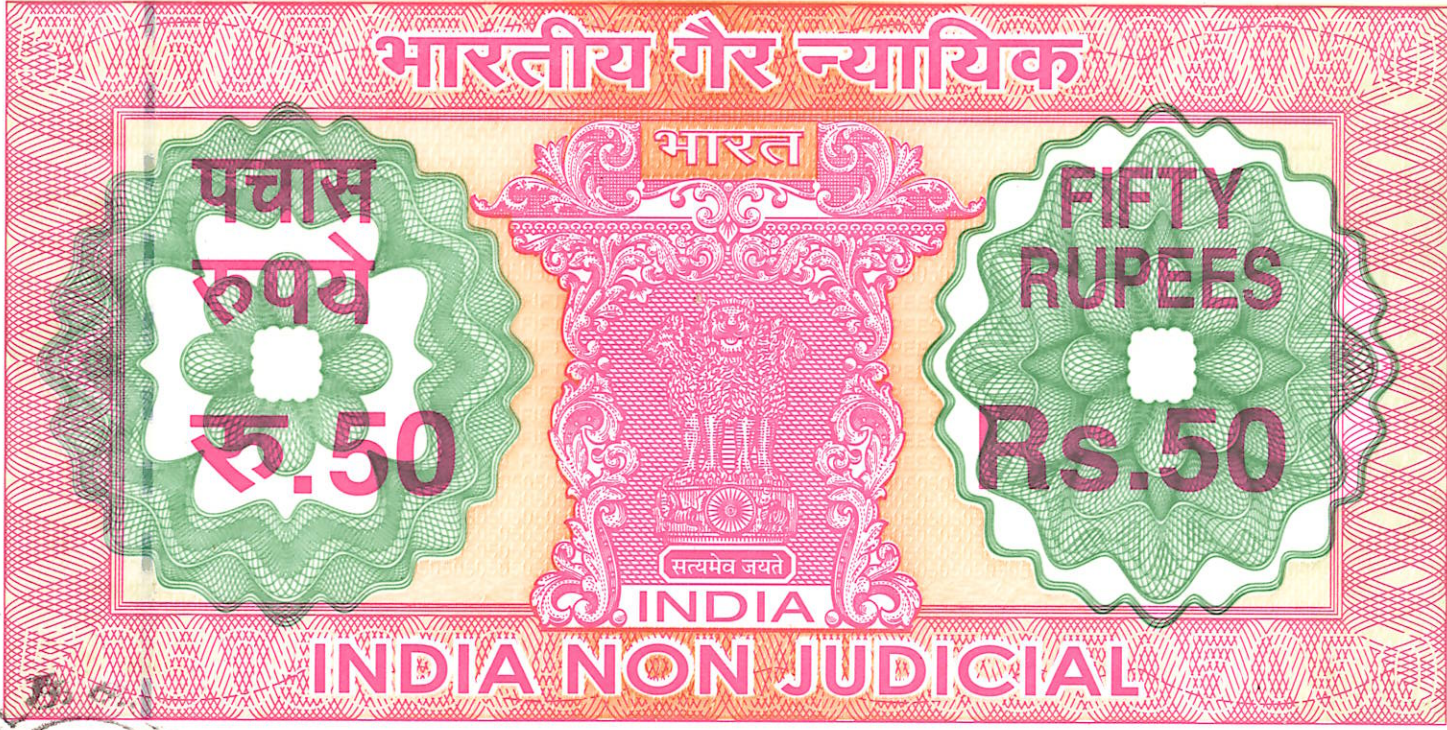
Vs.

Mr.Harry Sachdeva (alias Harpreet Sachdeva)  
A-1/132, Safdarjung Enclave,  
New Delhi- 110029  
India

.. Respondent







தமிழ்நாடு தமில்நாடு TAMILNADU

18 MAR 2020

**D. SARAVANAN**  
Advocate & Arbitrator  
Unit No.208, 2nd Floor, Beta Wing  
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AX 618671

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### 1. The Parties:

The Complainant HELL ENERGY Magyarország Kft., is a company organized and existing under the laws of Hungary with its office at the address 1062, Budapest, Andrassy ut 126, Hungary (earlier at the address 1075, Budapest, Karoly krt. No. 1.1/2, Hungary). The Complainant is represented through its Attorney, Vikrant Rana, S.S.Rana & Co., Advocates, having their office at 317, Lawyers Chambers, High Court of Delhi, New Delhi- 110003, India.

The Respondent Mr. Harry Sachdeva having his address at A-1/132, Safdarjung Enclave, New Delhi- 110029, India, is the current Registrant of the





disputed domain name <HELLENERGY.IN>. The Respondent neither represented himself nor was represented by anyone.

## 2. The Domain Name and Registrar:

The disputed domain name is <HELLENERGY.IN>. The domain name has been registered with .IN REGISTRY through its Registrar, GoDaddy.com, LLC (IANA ID: 146).

## 3. Procedural History:

30 <sup>th</sup> June, 2020	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
1 <sup>st</sup> July, 2020	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
3 <sup>rd</sup> July, 2020		.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while it was also informed by the NIXI that the hard copy of the same was not able to be sent to the Respondent due to pandemic Covid-19.



16 <sup>th</sup> July, 2020	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry. However, the email sent to the respondents email id <harry@weirdoff.com> and <u>postmastr@hellenergy.in</u> was bounced as the address could not be found. This Tribunal is of the firm view that the service of notice deemed to have been completed on the respondent as contemplated under Section 3 of the Arbitration and Conciliation Act, 1996.
26 <sup>th</sup> July, 2020	:	Due date for filing response.
28 <sup>th</sup> July, 2020	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

#### 4. Factual Background:

##### 4.1 The Complainant:

HELL ENERGY Magyarország Kft., is a company organized and existing under the laws of Hungary with its office at the address 1062, Budapest, Andrássy út 126, Hungary (earlier at the address 1075, Budapest, Karoly krt. No. 1.1/2, Hungary). The Complainant is represented through its Attorney, Vikrant Rana, S.S.Rana & Co., Advocates, having their office at 317, Lawyers Chambers, High Court of Delhi, New Delhi- 110003, India.





#### 4.2 Complainant's Activities:

- (i) The Complainant submits that the Complainant is a company incorporated under the laws of Hungary and is engaged in the business of production and sale of energy drinks, having its registered office at the above-mentioned address. Copy of the certified extract of the Incorporation Certificate of the Complainant is annexed herewith and marked as **Annexure C-3**. The Complainant herein includes its predecessor(s)-in-interest, subsidiary companies, licensees, franchisees, sub-franchisees, distributors, associates and affiliates and group companies.
- (ii) The Complainant submits that the complainant is engaged in the business of production and sale of energy drinks and beverages under the brand name **"HELL ENERGY"** and its variations. The Complainant was incorporated in Hungary on September 24, 2004 and the mark **"HELL ENERGY"** was adopted by it as a company name, trade name as well as a trade mark for its energy drinks and other related drinks in the year 2006.
- (iii) The Complainant stated that he registered the top-level domain name [www.hellenergy.com](http://www.hellenergy.com) on **June 11, 2006** and has an interactive website on the interest. The said website showcases **Hell Energy's** high-quality goods under the trade marks **HELL, HELL ENERGY** and variations thereof as well as its business network and achievements. The said website is accessible globally and can be viewed by persons all over the world, including India (where the Respondent is situated), since 2006. Copies of website pages of the Complainant along with corresponding WHOIS results are annexed herewith and marked as **Annexure C-4 (colly)**.





- (iv) The complainant submits that, he also owns and operates the website [www.hellenergystore.com](http://www.hellenergystore.com) since October 01, 2013, wherein it showcases its variety of drinks under the trade mark **HELL/HELL ENERGY** and variations thereof. Even prior to **Hell Energy's** entry into India, Indian consumers were already aware of **Hell Energy** and the immense reputation entrenched in its world-renowned trade marks. Copies of relevant pages from the said website along with corresponding WHOIS results are annexed herewith and marked as **Annexure C-5 (colly)**.
- (v) The complainant submits that, he also applied and obtained registration for the trade mark **HELL (Device)** vide Registration No.189569 dated March 17, 2006 for the goods "**Beer; mineral and aerated waters' other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages**" in Hungary. Further, the Complainant applied and obtained registration of the mark **HELL ENERGY DRINK (Device)** vide Registration No.192320 dated March 02, 2007 in Hungary. Copies of the relevant extracts from the Hungarian Intellectual Property Office are annexed herewith and marked as **Annexure C-6 (colly)**. The Complainant also applied and obtained registration for the trade mark **HELL** vide International Registration No.933068 on January 11, 2007 for the goods '**non- alcoholic beverages and energy drinks**' in class 32 for the countries Denmark, Estonia, Finland, Ireland, Great Britain, Georgia, Germany, Lithuania, Sweden, Serbia, Turkey, Uzbekistan. Thereafter, the Complainant obtained registration over its trade marks **HELL, HELL ENERGY** and variations thereof in other jurisdictions of the world such as the United States, Germany, Mexico, Thailand, etc. By virtue of such registrations, the Complainant has the exclusive statutory right to use the trade marks, **HELL, HELL ENERGY** and variants thereof around the world. A list of the





Complainant's world-wide registrations for the marks **HELL, HELL ENERGY** and variations thereof along with copies of relevant extracts from the WIPO Global Brand Database and TMView search database are annexed and marked as **Annexure-7 (Colly)** by the complainant in the Complaint. With specific reference to India (where the respondent is situated), **Hell Energy** owns a registration for the mark **HELL**, the details of which have been mentioned below:

Registration No.	Trade Mark	Date of Registration	Class
3618853	<b>HELL</b>	August 23, 2017	[CLASS : 32] Energy Drink

Copy of the registration certificate is annexed and marked as **Annexure C-8**. The aforesaid trademark registration is valid and subsisting as on date. Because of the aforementioned registration, HELL Energy has the exclusive statutory right to use the said trade mark in India in respect of the goods for which it has been registered.

- (vi) The Complainant submits that, in order to promote the brand, in 2009 **Hell Energy** entered into a deal to sponsor the iconic UK based Williams Formula One Team, which saw the mark and the **HELL** name and logo placed on the race cars and the crew uniforms. Photographs reflecting the same are annexed and marked as **Annexure C-9** by the Complainant in the complaint. Formula 1 is the highest level of single-seater racing in the world. In 2009, the global TV audience was 520 million people, and saw raced in Spain, the United Kingdom, Germany, Hungary, Belgium and Italy, as well as across the world. **Hell Energy's** popularity and global reach increased dramatically and proliferated to all corners of the world, with its two year sponsorship deal with





the famous AT&T Williams Formula 1 Team, whereby **Hell Energy** became only the second energy drink manufacturer (after Red Bull) to have a visible presence in the glamorous world of Formula 1 (F1) racing. The active presence of **Hell Energy** brand, which is one of the top contenders in various championships and events. The **Hell Energy** racing team is renowned for its stellar performance in the TCR International Series. List of a few articles about **Hell Energy's** association with Formula One since 2009, as obtained from several websites which are accessible to people all across the world including India, are given as under:

Article source	Date of Publication
<a href="https://www.autoevolution.com/news/williams-sign-sponsorship-deal-with-hell-energy-drinks-6479.html">https://www.autoevolution.com/news/williams-sign-sponsorship-deal-with-hell-energy-drinks-6479.html</a>	May 07, 2009
<a href="https://www.f1network.net/boards/read/s107.htm?110.10478534.10478534,quote=1">https://www.f1network.net/boards/read/s107.htm?110.10478534.10478534,quote=1</a>	May 07, 2009
<a href="https://www.automotorsport.com/formula1-att-williams-hell-energy-drinks-hungarian-drink-brand-thomas-grosch-director---62784.html">https://www.automotorsport.com/formula1-att-williams-hell-energy-drinks-hungarian-drink-brand-thomas-grosch-director---62784.html</a>	May 07, 2009
<a href="https://www.motorsport.com/f1/news/spanish-gp-williams-signs-hell-energy-drinks/326948/">https://www.motorsport.com/f1/news/spanish-gp-williams-signs-hell-energy-drinks/326948/</a>	June 20, 2009

Copies of a few articles are annexed herewith and marked as **Annexure C-10 (Colly)**. Further, copies of relevant pages from the Complainant's websites regarding its racing team are annexed herewith and marked as **Annexure C-11 (Colly)**.

- (vii) The Complainant submits that, several Indian national frequently travel to and from Budapest, Hungary for various purposes. During the course of their travel, they often come across **Hell Energy's** energy drinks bearing its trade





marks **HELL, HELL ENERGY** and variations thereof, at duty free outlets and lounges at airports in many countries in Europe and even nearby shops. Copies of photographs reflecting **Hell Energy's** advertisement at the Airports are annexed herewith and marked as **Annexure C-12 (colly)**.

(viii) As stated above, to protect its valuable intellectual property rights, **Hell Energy** has registered its various trade marks including but not limited to, **HELL, HELL ENERGY** and formatives thereof, in various international jurisdictions, in respect of its goods and services. Due to extensive use, advertisement and promotion, widespread popularity and fame, **Hell Energy** and its trade marks command much valuable reputation and goodwill and is distinctive and identified worldwide, exclusively with the **Hell Energy's** products and service.

The Complainant submits that, apart from Hungary, **Hell Energy** drinks lead the market in Azerbaijan, Bulgaria, Romania, Bosnia-Herzegovina, Slovakia, Croatia, Greece, Cyprus and Macedonia. **Hell Energy's** success is down to excellent quality and the brand's reasonable prices, wide availability (striving to establish 70% distribution in each country), international marketing communication background and positioning according to consumer needs. **Hell Energy** is in a unique position on the energy drink market, and it can safely be said that **Hell Energy** is the market leader in multiple countries. **Hell Energy** has a thriving and ever- expanding global footprint, with its products now being available in almost 50 countries and is the second largest soft- drink maker in Hungary after Coco-Cola. Copies of a few articles, which are accessible to people worldwide including India, stating facts about **Hell Energy's** growth and market leadership are annexed herewith and marked as Further, several Indian nationals frequently travel to and from Budapest, Hungary **Annexure- C-13 (colly)**.



- (ix) That, Hell energy's work was nominated for the Oscars of Production Companies for the Strategic Manufacturing Awards in 2012, where it was ranked among Europe's top three factories in 'Global and World-class Production's.
- (x) The Complainant submits that, Hell Energy has expenses considerable amounts of time, money and efforts to attain the enviable position it occupied today in the energy drinks industry. Among the many steps taken by Hell Energy to expand it's global footprint, it has attended various key international food and beverages exhibitions, including but not limited to Anuga in Cologne (Germany), SIAL in Paris (France) and also the World Food Expo in Moscow (Russia), wherein the Complainant won the "Best New Market Entrant" and "Best Energy Drink" prizes. Additionally, Hell Energy has also won the following Global awards throughout the years:

S.No.	Particulars	Year
1.	Hungarian Product of the Year Award	<b>2012</b>
2.	Superbrands Award	<b>2012</b>
3.	MOMOT (The Hungarian Obesitology and Movement Therapy Association), Healthy Life Award	<b>2013</b>
4.	Superbrands Awards	<b>2013</b>
5.	Pegazus Awards	<b>2014</b>
6.	MagyarBrands (Hungarian Brands) Award	<b>2014- 2017</b>
7.	Superbrands Awards	<b>2016</b>
8.	World CSR Congress, Best Corporate Social Responsibility Practice Award	<b>2016</b>
9.	Superbrands Awards	<b>2018</b>





10.	ACQ-5 Manufacturing Company of the Year in Europe in the above 100 million Euro revenue category	<b>2018</b>
11.	European Business Awards, as the Hungarian national winner for 'The Germany Trade and Invest Award for International Expansion'	<b>2017-2018</b>
12.	Top 50 Hungary Company, The Budapest stock Exchange	<b>2018</b>
13.	EuroCan Tech, International Innovation Award	<b>2018</b>

Copies of photographs reflecting the Complainant's participation in various exhibitions along with articles reflecting information about several awards won by the Complainant are annexed by the Complainant as Annexure C-14 (colly).

- (xi) The Complainant submits that, Hell Energy's yearly global revenues from sale of its drinks under the trade marks, HELL, HELL ENERGY and variations thereof run into billions of Euros. Hell Energy also spends substantial amounts running into millions for Euros for promotion of its said brand and goods sold thereunder.
- (xii) The Complainant submits that, Hell Energy and its aforesaid trade marks and brand name have been the focus of much media attention over the years. A non-exhaustive list of several articles published about Hell Energy and its energy drinks sold under the trade mark "HELL"/ "HELL ENERGY" and its variations in international newspapers/magazines is as under:-

S.NO.	ARTICLE NAME	SOURCE	PUB. DATE
1.	F1- The Hell energy drink rumor in F1	TomorrownewsF1	April 08, 2009
2.	AT&T Williams signs Hell Energy drinks	Automobilesport.com	May 07, 2009



3.	Hell breaks loose in the UK energy drinks market	Talking Retail	June 08, 2009
4.	Hell Shakes The Italian Energy Drinks Market	Newsfood.com	June 19, 2009
5.	Spanish Go: Williams signs Hell Energy Drinks	Au.motorsport.com	June 20, 2009
6.	'Hell' Breaks Loose In The UK Energy Drinks Market	Foodbev Media	June 11, 2009
7.	Energy drink Hell aims to take on Red Bull with UK experiential push	Campaignlive	November 20, 2009
8.	HELL Conquers international markets too	Trade magazines	December 03, 2010
9.	Hell Nominated For World-Class Manufacturing Award	ESM Magazine	October 16, 2012
10.	Energy for the energy drink	ABB Power Magazine	October 05, 2015

It may be pertinent to mention herein that the aforesaid articles along with many more are available on the Internet which are accessible to readers in India as well, such as those on the websites [www.automobilsport.com](http://www.automobilsport.com), [www.au.motorsport.com](http://www.au.motorsport.com), [www.newinsianexpress.com](http://www.newinsianexpress.com), [www.worldofmetalmag.com](http://www.worldofmetalmag.com), [www.media-marketing.com](http://www.media-marketing.com), etc. Copies of a few articles are annexed and marked as Annexure C-15(colly) by the Complainant.

- (xiii) The Complainant submits that, Hell Energy also regularly issues press releases and blogs posts to keep its customers and the public informed about the latest development about the company. Copies of a few press releases are annexed herewith and marked as **Annexure C-16 (colly)**.





- (xiv) In view of the above, the Complainant and its energy drinks under the mark "HELL ENERGY" have gained immense popularity around the world and also in India even prior to its entry in the Indian market. The Complainant is also present on and connects with its customers worldwide including India through various popular social networking websites such as Facebook and Instagram. The Complainant is present in Facebook since 2012 and on Instagram since 2013. Details of the Complainant's social media accounts under the name "Hell Energy" are as under:-

<b>COMPLAINANT'S SOCIAL MEDIA LIKES/FOLLOWERS AS ON JUNE 19,2020</b>	
Facebook	Over <b>2 million</b> likes
Instagram	<b>76,300</b> followers


The likes and followers on the Complainant's said social media accounts increase daily. In modern times, the number of likes and followers of an entity on social media websites have become the benchmarks to ascertain its popularity among the masses. Copies of pages from the social media websites are annexed and marked as **Annexure C-17 (colly)**.

- (xv) Hell Energy entered the Indian market in October 2017 through its exclusive distributor Jes & Ben Groupon Pvt. LTD. which was incorporated in August 30,2017 by Mr.Harpreet Sachdeva being one of the promoters of that company (hereinafter, "Jes & Ben"). Copy of the Master Data as obtained from the website of Ministry of Corporate Affairs are annexed herewith and attached as Annexed C-17 (a)(colly). An Exclusively Distributorship Agreement dated October 04,2017 (as modified on November 27, 2017) was signed between the Complainant and Jes & Ben through its director Mr.Harpreet Sachdeva for sale and distribution of Complainant's HELL ENERGY drinks in



India. Copy of the said agreement is annexed and attached as Annexure C-17(b). Since then, the Complainant's high quality energy drinks under the trade marks HELL, HELL ENERGY and other variations are being sold in India through its distributor and dealers. Copy of the invoice dated November 27, 2017 issued in India is annexed herewith and marked as Annexure C-18.

**(xvi)** That subsequently, since Jes & Ben was in breach of the Exclusive Distributorship Agreement, the aforementioned exclusive distributorship was lawfully terminated with immediate effect vide email dated March 25, 2019 issued by Complainant. Jes & Ben along with Mr.Sachdeva (the Respondent) and other directors challenged the termination by filing a suit being CS (COMM.) No. 257 of 2019 in the Hon'ble High Court of Delhi which was dismissed with costs vide order dated September 23, 2019.

**(xvii)** Despite the termination of the Exclusive Distributorship agreement, Jes & Ben was continuing to advertise the trade marks "HELL" and "HELL ENERGY" and other device marks of the Complainant on its website www.jbgroup.com and on third party sites like www.indiamart.com. Accordingly, the Complainant was constrained to file the suit bearing CS (COMM) No. 4 of 2020 against Jes & Ben and its directors including Mr. Harpreet Sachdeva before the Hon'ble High Court of Delhi. Vide its ex parte interim injunction dated January 08,2020, the Delhi High Court was pleased to restrain Jes & Ben and its directors including the Respondent herein from in any manner infringing the Complainant's trade name and registered trade mark "HELL", device mark . And variations thereof or any other name or mark identical and/or deceptively similar to the Complainant's trade name and registered trademarks, by displaying the same on their website www.jbgroup.com and www.indiamart.com or any other place and from advertising or making any





reference thereto including on business listings, or in connection with its business or in any manner. Copy of the said order is attached and annexed as **Annexure C-18** (a). The said interim injunction order is continuing and operational as on date.

(xviii) Meanwhile, the Complainant has appointed other distributors and at present the Complainant's Hell Energy drinks are sold through Sangvi Agro Pulses, it's distributors, dealers and Sub-dealers etc. In India Hell Energy's popular energy drinks under the aforesaid trade marks and variations thereof are also available for sale in India on various third party websites such as [www.indiamart.com](http://www.indiamart.com), [www.bigbasket.com](http://www.bigbasket.com), [www.freshneasy.in](http://www.freshneasy.in) etc. Copies of relevant screenshots from the third party websites are annexed and marked as **Annexure C-19** (colly).

(xix) Hell Energy's brand is one of the most prominent Energy drinks in India with favorable brand recall. The name **HELL/ HELL ENERGY** is a prominent part of Hell Energy's trading style and corporate name. Due to the long, continuous and extensive use the high quality of goods provided by He'll Energy under its aforesaid trade marks, the same have become exclusive to, and are identified and associated with, Hell Energy alone.

(xx) Hell Energy has organized and participated in various events in India such as National level trade Event "Aahar", Winter Lawn Tennis Championship organized by the sports Authority of India etc., In order to promote and popularize its aforesaid brand/ trade marks. Hell Energy was also promote in the mighty Himalayas at the "Highest Motorable Road in the World" at khardungala Top, Ladakh. Copies of photographs reflecting the Complainant's participation in such events are Annexed and marked as Annexure C-20 (colly) in the complaint.



- (xxi) The yearly sales of Hell Energy's goods and services in India under the aforesaid trade marks run into crores of Indian Rupees. The Complainant's reputation and Goodwill in its said trade name and trade marks and variations thereof in India has not come from sales alone. The Complainant has been spending substantial amounts each year for promoting its said trade marks by means of print as well as electronic media in India, running into lakhs of Indian Rupees.
- (xxii) In view of Hell Energy's registrations for the trade marks HELL, HELL ENERGY and variations thereof, presence in many countries of the world, national and international advertisement campaigns, features in print and electronic media, national and international advertisement campaigns, features in print and electronic media, prestigious awards and recognitions, growth in revenue and sales, its trade name and trade mark HELL, HELL ENERGY and its variations have become well-known and famous. Further, the Complainant's trade mark **HELL / HELL ENERGY** has been derived from its corporate name HELL ENERGY Magyarország Kft.
- (xxiii) **Hell Energy** considers its name and trade marks **HELL, HELL ENERGY** and its variations have become well-known and famous. Further, the Complainant's trade mark **HELL/ HELL ENERGY** and its variations as its valuable intellectual property and makes every effort to protect the same. Protection of the **Hell Energy's** trade marks extends beyond registration activities to enforcement actions, which range from opposing trade mark applications for the same or similar trade marks, filing domain name complaints and commencement of legal action in court of law, if necessary.
- (xxiv) **HELL/ HELL ENERGY** is not only the trade mark and trade name of the





Complainant, but it is its trading style as well as its House Mark. By virtue of the prior adoption, long standing and uninterrupted use, extensive publicity and the Complainant's proprietary rights in its trade mark and name **HELL/ HELL ENERGY** and variations thereof, both under common law and statutory protection, the said trade marks have acquired a high degree of distinctiveness and are identified by the market and general trade and public as exclusively belonging to the Complaint and its goods, and the same have a significant reputation amongst the trade and public.

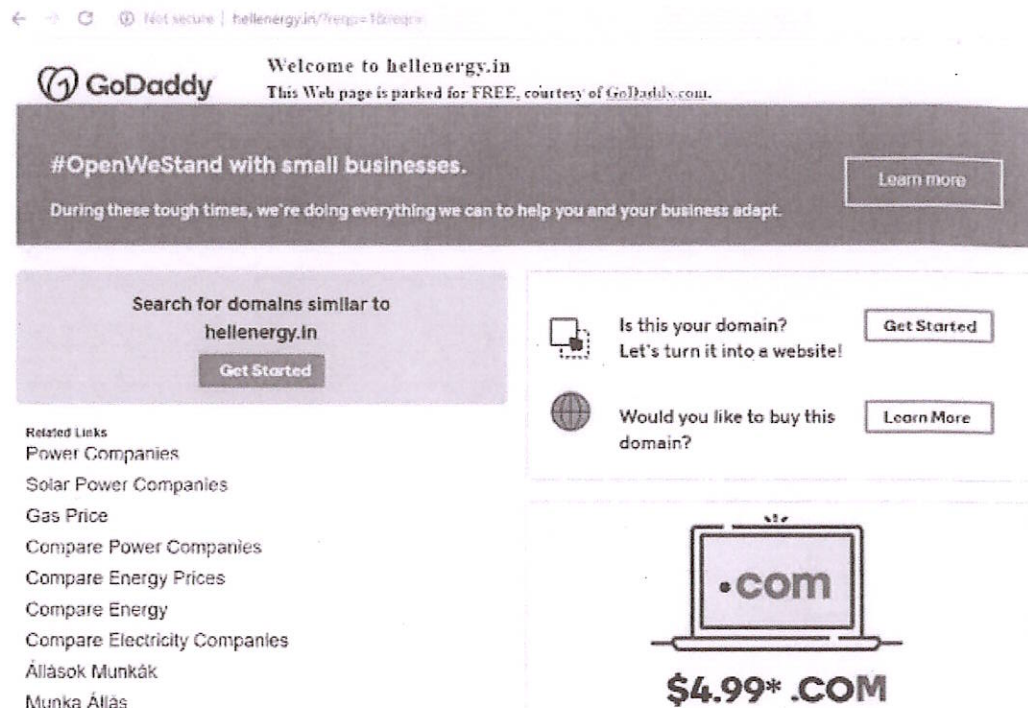
(xxv) As a result of the above-described extensive use and promotion, the Complainant's marks **HELL/ HELL ENERGY** and variations thereof have become distinctive and well-known and have enjoyed distinctiveness, goodwill and reputation long prior to the date in which the Respondent registered the disputed domain name.

(xxvi) Recently, the Complainant took successful action by way of filing a complaint under the UDRP against the domain name [www.hellrockenergy.com](http://www.hellrockenergy.com) in the name of Heaven Traders LLP vide order dated June 02,2020.

#### 4.3 Complainant's Trading Name:

- (i) It is submitted that it was recently brought to the Complainant's notice that a domain name, namely **<hellenergy.in>** was registered on **December 13, 2017** by the Respondent. An Internet search revealed a parked page courtesy of GoDaddy.com, LLC at the domain **<hellenergy.in>** with no content being hosted thereat. Relevant snapshot of the impugned webpage as of June 12, 2020 has been pasted below:





Upon disclosure by NIXI, it is revealed that the registrant of the impugned domain name is Mr. Harry Sachdeva (alias Harpreet Sachdeva) of the address A-1/132, Satdarjung Enclave, New Delhi — 110029. The said address is the same as the registered office address of Jes & Ben Group Pvt. Ltd., the former distributor of the Complainant, and Mr. Harry alias Harpreet Sachdeva is a director of the said company. Further, the said domain name was registered by Respondent in bad faith while Jes & Ben and the Respondent were still the exclusive distributor of the Complainant in India, without the permission or knowledge of the Complainant. The submissions hereinabove may kindly be referred to.

- (ii) The Complainant submits that, as the said domain name is phonetically, visually, conceptually identical to the Complainant's trade marks HELL/





HELLENERGY, domain names www.hellenergy.com and www.hellenergystore.com and also its corporate name HELL ENERGY, Complainant is constrained to file the present complaint, in order to safeguard its valuable Intellectual property rights.

#### 4.4 Respondent's Identity and activities:

- (i) The Complainant submits that, the Respondent in the present dispute has registered the domain <hellenergy.in> thereby illegally and without authority misappropriating the trademarks 'HELL/HELL ENERGY' which is the exclusive property of the Complainant and the HELL ENERGY Magyarország Kft. An extract of the whois lookup through GoDaddy LLC, the Registrar of the disputed domain name is filed by the Complainant in the Complaint as **'Annexure C-2' and 'Annexure C-2a'** respectively. The Whois details shows that the Respondent has created the disputed domain name as recently as on 13<sup>th</sup> December 2017 and the details of the registrar have been masked so as to avoid identification. A perusal of the website, which is attached in the Complaint by the Complainant under paragraph No.29, shows the existence of the webpage run under the disputed domain name.

#### 5. Dispute

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.



6. Parties contentions:

A. Complainant:

(i) The domain name <hellenergy.in> is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

- a) The Complainant submits that the Complainant is the proprietor of the trademarks **HELL/ HELL ENERGY** in India and has been continuously and exclusively using the same in relation to their business since many years, i.e. much prior to the date on which the Respondent registered the domain <hellenergy.in>. By virtue of longstanding use and registration, the Complainant's trademarks **HELL/ HELL ENERGY** qualifies to be well-known marks.
- b) The impugned domain name <hellenergy.in> comprises of the Complainant's trade mark **HELL ENERGY** in toto. Therefore, the domain name <hellenergy.in> is visually, phonetically, conceptually, deceptively and confusingly identical/ similar to Complainant's corporate and trade name HELL ENERGY Magyarország Kft, trade mark **HELL/HELL ENERGY** and the Complainant's domains <hellenergy.com> and <hellenergystore.com>.
- c) That, given the identity of the impugned domain name <hellenergy.in> with the Complainant's name and mark **HELL/ HELL ENERGY**, the same is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with Complainant, when it is not so. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas*





*Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of domain name, Therefore, it cannot be said to distinguish the Respondent's domain name <hellenergy.in> from the Complainant's trademark **HELL/ HELL ENERGY**. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*.

- d) Reliance is also placed on a prior decision of this 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 before 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 a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."*

In the present dispute as well, the Complainant has acquired rights in the trade marks **HELL/ HELL ENERGY** by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain <hellenergy.in> incorporating the Complainant's identical company name, trade mark and trade name **HELL ENERGY** in toto.



e) This evident identity between the Respondent's domain name and the Complainant's marks, domain names and company name incorporating **HELL ENERGY** is likely to mislead, confuse and deceive the Complainant's customers as well as the general lay public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name. As evidenced in the preceding paragraphs, Complainant's rights over the marks **HELL ENERGY** predate the Respondent's registration of the impugned domain <hellenergy.in> by more than decade, which as per the WHOIS records, was only registered/created on **December 13, 2017**.

Therefore, the conditions under the INDRP Paragraph 4(i) stand suitably established.

**(ii) The Respondent has no rights or legitimate interest in the domain name <hellenergy.in> [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**

a) The Complainant submits that, for the facts stated hereinabove, the Respondent has no right or legitimate interest in the domain name <hellenergy.in>. Complainant has not authorized the Respondent at any point of time to register the impugned domain name. Further, the Respondent cannot assert that it is using the domain name in connection with a bona fide offering of goods and services in accordance with Paragraph 7(i) of the .IN Policy, as it is not operating any website from the impugned domain. This has been held by a prior panel in *CareerBuilder, LLC v. Stephen Baker, Case No. D2005-0251*.

b) That, the Respondent does not have any right or legitimate interest in the name **HELL/ HELL ENERGY** within the meaning of Paragraph 7 (ii) of the Policy. The Respondent is not making a legitimate, non-commercial or fair use





of the domain name. It appears that the Respondent has deliberately chosen to use the domain name <hellenergy.in>, which is phonetically, visually, conceptually, deceptively and confusingly identical/ similar to the Complainant's trademarks, prior domain names and corporate name, so as to suggest a direct connection or affiliation with the Complainant's trademarks **HELL/ HELL ENERGY** and to create a direct affiliation with Complainant and its business when in fact there is none.

- c) The Respondent cannot assert that they are currently making a legitimate, non-commercial or fair use of the domain name, in accordance with Paragraph 7 (iii) of the .IN Policy. In fact, the Respondent is not making any use of the impugned domain at all, however has kept it blocked for use by legitimate users by placing a parked page. In view thereof, it is clear that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 7 (iii) of the INDRP. Further, any use of the domain name <hellenergy.in> in the future by the Respondent is likely to create a false association and affiliation with the Complainant and its well-known trade mark **HELL/ HELL ENERGY** as well as its official website at HELLENERGY.COM. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate, non-commercial or fair use of the domain name in accordance with Paragraph 7 (iii) of the .IN Policy.
- d) Respondent herein registered the impugned domain <hellenergy.in> several years after the Complainant adopted the trade mark **HELL/ HELL ENERGY** in relation to their business and that too during his distributorship with the Complainant. Further, Respondent is presently not making any use of the domain with a bona fide offering of goods or services, in fact, it is not



currently making any use of the domain at all. In the circumstances of this case the Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 7 (iii) of the .IN Policy since there is no apparent legitimate justification for the Respondent's registration of the <hellenergy.in> domain name that is visually, phonetically, conceptually, deceptively and confusingly identical/ similar to the Complainants' trade name/mark. Further, the continued ownership of the disputed domain <hellenergy.in> by the Respondent, despite not having any legitimate or fair reason to do so, prevents the Complainant from reflecting their trademark in the subject domain name. In *Motorola, Inc. vs NewGate Internet, Inc. (WIPO Case D2000-0079)*, it was held that use of the trademarks can not only create a likelihood of confusion with the Complainants marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

- e) The Complainant submits that it is not possible to conceive of any plausible use of the domain name <hellenergy.in> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known trade mark **HELL/ HELL ENERGY**. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name.

**(iii) The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP]:**

- a) The Complainant submits that, as per paragraph 6(iii) of the INDRP Policy, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the





Respondent has registered and was previously using the domain name to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location.

- b) The Respondent has registered the impugned domain name in bad faith, as he is not only the former distributor of the Complainant, but he also registered the said domain name during the existence of the distributorship contract without the permission, authorization or even the knowledge of the Complainant. Therefore, the Respondent was aware of and had actual knowledge of the Complainant's trade marks, domain names and corporate name long prior to registering the domain name. The continued registration of the impugned domain name by the Respondent is also in violation of the ex parte ad interim injunction order dated January 08, 2020.
- c) Furthermore, the fact that the mark **HELL ENERGY** is a unique combination of words that has been coined by the Complainant further aggravates the Respondent's bad faith, in as much as, the Respondent is using the identical combination with respect to the impugned domain name <hellenergy.in>. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <hellenergy.in> which incorporates the Complainant's mark **HELL/ HELL ENERGY** in toto. In light of the continuous and exclusive use of the mark **HELL/ HELL ENERGY** by the Complainant over many years, these marks have no meaning other than as an identifier of the Complainant. Hence, the Respondent had no reason to adopt an identical name/ combination with respect to the impugned domain



name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

- d) Additionally, the fact that the Respondent is currently not using the domain for any purpose and no content is being hosted therein, gives the impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold any legitimate interest in the domain name. Reliance is placed on this panel's decision in *Flipkart Online Services Private Limited v. Azeem Ahmed Khan* wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith". Reliance is also placed on *Instagram, LLC v. Contact Privacy Inc. / Sercan Lider (WIPO Case No. D2019-0419)* wherein it was held that "passive holding can be sufficient to find bad faith use". In another decision in *Johnson & Johnson v. Daniel Wistbacka (WIPO Case No. D2017-0709)* while discussing the elements constituting bad faith with respect to passive holding of respondent's domain name as noted in the landmark case of *Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-0003)*, it was held that,

*..In particular it seems that the fifth element (i.e., impossibility to conceive of any plausible active use) is actually a conclusion which was made on the base of the preceding four elements and that this fifth element plays a decisive role in determining whether any particular passive holding can be regarded as a "bad faith" use of a domain name in dispute. In the present case*





*like in the above cited case, the Panel cannot conceive of any plausible use of the disputed domain name that would be legitimate, absent an authorization from the Complainant. As the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that an active website connected to the disputed domain name is operated or endorsed by the Complainant, when such is not the case. The Panel accordingly reaches the conclusion that the passive holding of the disputed domain name amounts to use in bad faith given the circumstances of the case.*

The facts and contentions enumerated above establish that Respondent's domain name registration for <hellenergy.in> is clearly contrary to the provisions of paragraph 4(iii) of the INDRP.

- e) The Complainant therefore submitted that, in view of the above, Complainant has established that the mark **HELL / HELL ENERGY** is distinctive and well-known, and that the Respondent had prior knowledge of the Complainant's aforesaid mark. Owing to the fame attached to the Complainant's mark **HELL/ HELL ENERGY**, which is a result of extensive use and promotion in relation to its world-renowned services and the fact that the Complainant's services are available all over the world, including in India (wherein the Respondent resides), it is implausible for the Respondent to have registered the domain name for any reason other than to trade off the reputation and goodwill of the Complainant's mark **HELL/ HELL ENERGY**.



**B. Respondent:**

The Respondent, in spite of notice dated 16<sup>th</sup> July, 2020 and default notice dated 27<sup>th</sup> July, 2020 did not submit any response.

**7. Discussion and Findings:**

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and that Respondent have been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on 28<sup>th</sup> July, 2020.

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:

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

**(a) Identical or confusing similarity:**

- (i) The Arbitral Tribunal finds that the Complainant has provided evidences that





it possesses the registered trademarks "**HELL/ HELL ENERGY**" around the world, including India. The same is evident from **Annexures C-3, C-6, C-8 & C-17-b** marked by the Complainant. The Complainant has registered domain names under "**HELL/ HELL ENERGY**" and the same is evident from **Annexure C-4 & C-5**. The Complainant's mark was first adopted by them in year 2004 and thus it is the rightful proprietor of the trademark HELL ENERGY by virtue of priority in adoption and registration, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade. From **Annexure C-3**, this Tribunal perceives that the earliest registration of the Complainant's mark, HELL ENERGY dates back to September 24, 2004. Whereas, from **Annexure C-2**, this Tribunal perceives that the disputed domain name was registered on December 13, 2017 much later to the registration of the Complainant's mark.

- (ii) The identical domain name using the marks "**HELL / HELL ENERGY**" is bound to cause confusion and deception in the minds of public that Respondent has come connection, association or affiliation with the Complainant, when it is not so. In the INDRP case, *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, it was held that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark, then it is bound to cause confusion and deception in the minds of the public. Further, in cases such as *Dell Inc v. Mani, Soniya INDRP/753*, it was established that a TLD/ccTLD such as ".in" is an essential part of domain name, and therefore it cannot be said to distinguish the Respondent's domain name from the Complainant's trademark.
- (iii) Additionally, in the Case of *M/s. Retail Royalty Company v. Mr. Folk Brook INDRP/705*, where, on the basis of od the Complaiant's registered trademark



and domain names for "**AMERICAN EAGLE**", having been created by the Complainant much before 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 a business identifier. A domain name helps identify the subject of the trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name of the Complainant.*" This can be applied to the instant case in hand where from the **Annexures C-6, C-9, C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-19 & C-20** it can be very well comprehended that the trade marks "**HELL/ HELL ENERGY**" originally has its own branches of business expansions and the popularity it has gained by its name. From **Annexure C-17** the Complainant's reach in the social media can be witnessed. Replicating a well established trade marks such as "**HELL/ HELL ENERGY**" very largely will be an act of misleading any general audience who gets to know about the disputed domain name <hellenergy.in>.

- (iv) This Tribunal is therefore convinced from the documents marked by the Complainant that the Complainant owns the marks "**HELL/ HELL ENERGY**". The disputed domain name <hellenergy.in> incorporates the Complainant's mark in entirety and hence is identical or confusingly similar to the Complainant's mark.
- (v) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.

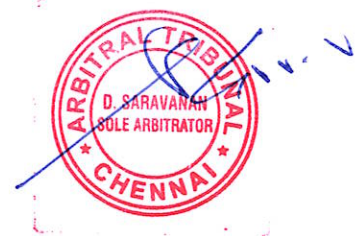




- (vi) The Arbitral Tribunal therefore concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

**(b) Respondent's Rights or Legitimate Interests:**

- (i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the .IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal however does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the marks "**HELL/ HELL ENERGY**". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.
- (ii) Further as observed above, the Complainant's registration of mark dates back to 2004 whereas, the disputed domain name is registered only in the year 2017. In the case of *CareerBuilder, LLC v. Stephen Baker*, Case No. D2005-0251, it has been held that, the Respondent cannot assert that it is using the domain name in connection with a bona fide offering of goods and services in accordance with paragraph 7(i) of the .IN Policy, as it is not operating any website from the impugned domain. This Tribunal observed that the present facts of the case squarely applies to the ratio held in the said decision wherein



the Complainant has prior registration of the marks "**HELL / HELL ENERGY**" and the Respondent neither has any connectivity nor owns any other website from the impugned domain name. The Respondent has not substantiated their right in the said mark and that it is most likely that the marks "**HELL/ HELL ENERGY**" are known to the Respondent prior to the registration of the disputed domain name.

(iii) The WHOIS lookup in **Annexure C-2**, reflects that the disputed domain name, <hellenergy.in> belongs to the Respondent herein namely, "Mr. Harry Sachdeva (alias Harpreet Sachdeva), having his address at A-1/132, Safdarjung Enclave, New Delhi- 110029, India". The said address is the same as the registered office address of Jes & Ben Group Pvt. Ltd., the former distributor of the Complainant, who already knew about the Complainant and who is not even in the slightest manner connected with the Complainant or Complainant's marks, namely "**HELL / HELL ENERGY**" or authorized by the Complainant to create a domain name which exactly represent the Complainant, apart from being a distributor. A person not related to the Complainant or the trade marks "**HELL / HELL ENERGY**" other than being a distributor, having created the disputed domain name <hellenergy.in> without any authorization from the Complainant paves way for the reasonable doubts about the Respondent's rights over the disputed domain name <hellenergy.in>, which was well established in the case *CareerBuilder, LLC v. Stephen Baker*, Case No. D2005- 0251. From this it can be understood that the Respondent do not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits.

(iv) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is





neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark. The Respondent is therefore found to have acted in a way that tarnishes the Complainant's well-known marks "**HELL / HELL ENERGY**", by using the mark without any proper authorization. Further, in the case of *Motorola, Inc. vs NewGate Internet, Inc (WIPO Case D2000-0079)* it was held that use of the trademarks can not only create a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of its website, but also creates dilution of the marks.

(v) In light of the above, this Tribunal finds that the Respondent does not have any rights or legitimate interest in the domain name.

(vi) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

(i) It is seen from **Annexure C-2**, the Respondent had registered the disputed domain name on 13<sup>th</sup> December, 2017 which is very much after the date of registration of the Complainant's trademark. By that time, the Complainant's marks, "**HELL/HELL ENERGY**" through extensive and continuous use, had acquired immense goodwill and reputation amongst the public and trade. The rights of the Complainant in the marks are also well established by various precedents submitted by the Complainant, in the Complaint.



- (ii) The registration of a famous trademark without legitimate interests in the same is prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademark/ corporate name. The proposition that the registration of a domain name incorporating a well known trademark of the Complainant is bound to be in bad faith has been upheld by numerous INDRP & WIPO decisions submitted by the Complainant, in the Complainant.
- (iii) The Complainant in **Annexure C-18** has further establishes that there was a exclusive Distributorship Agreement with the Company Jes & Ben Group Pvt Ltd, a distributor of **HELL ENERGY** drinks in India which was incorporated by Mr.Harpreet Sachdeva, the Respondent and that the Respondent is already aware of the Complainant's reach among people. It can also be seen that there was a breach in the aforementioned Exclusive Distributorship agreement and the same was lawfully terminated by the Complainant with immediate effect vide email dated March 25, 2019 and that despite the termination of exclusive distributorship Jes & Ben was continuing to advertise the trade marks "**HELL**" and "**HELL ENERGY**" on its website. Hence, The Complainant filed a suit bearing CS (COMM) No.4 of 2020 against Jes & Ben before the Hon'ble High Court of Delhi. The order copy of the Hon'ble High Court of Delhi restraining the directors of Jes & Ben Group including the Respondent from using the Complainant's trademarks vide an ex-parte order can be noted from the **Annexure C-18(a)**.
- (iv) From the aforementioned details of the Complainant's activities in India the relationship between the Complainant and Respondent can we very well established and despite the fact that the Respondent being a director of Jes & Ben, who was then holding an exclusive distributorship, the Respondent





creating a similar domain name is itself an evidence of bad faith, which can be evidently witnessed in this case that the Respondent has registered the disputed domain name, but has not been using the same for any legitimate purpose. The disputed domain name does not resolve to a website or other online presence and there is nothing to show that such a website or online presence is under the process of being created which amounts to passive holding and its further indication of use of the disputed domain name in bad faith by the Respondent under the present circumstances.

(v) In *Flipkart Online Services Private Limited v. Azeem Ahmed Khan* it was held that "*parking of domain names incorporating someone else's trademark constitutes bad faith*". And also in the case *Instagram LLC v. Contact Privacy Inc. / Sercan Lider (WIPO Case No. D2019-0419)* it was held that "*passive holding can be sufficient to find bad faith use*". The case laws *Johnson v. Daniel Wistbacka (WIPO Case No.D2017- 0709)* and the landmark case *Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-0003)*, it was held that "*passive holding of the disputed domain name amounts to use in bad faith given the circumstances of the case*". These decisions can be applied to the present case in hand where there is the existence of passive holding of the disputed domain name <hellenergy.in> by the Respondent, which evidently established his bad faith.

(vi) From the discussions above, it is drawn that the Respondent is involved in cyber-squatting by registering domain name containing well known trademarks and thereby making illegal benefits.

(vii) The Respondent has no legitimate rights or interests in the disputed domain name and there was a *mala fide* intent for registering the disputed domain



name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

(viii) The Arbitral Tribunal is satisfied that the Respondent's registration and use of the Complainant's domain name is in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.

(ix) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

#### **8. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the marks "**HELL / HELL ENERGY**" and also the disputed domain name <hellenergy.in> be transferred to the Complainant.



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**D.SARAVANAN**  
**Sole Arbitrator**  
30<sup>th</sup> July, 2020  
Chennai, INDIA