



सत्यमेव जयते

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Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BHARAT S KUMAR
Second Party	: Not Applicable
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



BEFORE BHARAT S KUMAR, SOLE ARBITRATOR

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.IN REGISTRY

NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

INDRP Case No. 1993

DISPUTED DOMAIN NAME: <ELFBAR.IN>

ARBITRATION AWARD DATED JULY 18, 2025

#### Statutory Alert:

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BEFORE BHARAT S KUMAR, SOLE ARBITRATOR  
.IN REGISTRY  
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)  
INDRP ARBITRATION  
INDRP Case No. 1993  
DISPUTED DOMAIN NAME: <ELFBAR.IN>  
ARBITRATION AWARD DATED JULY 18, 2025

IN THE MATTER OF:

**Imiracle (HK) Limited**

19H MAXGRAND PLAZA,

NO.3 TAIYAU ST SAN PO KONG KLNHK.

Tel: +852-31021216

Fax No: +852-31021216

Email: [terroir.zhang@chofn.com](mailto:terroir.zhang@chofn.com)

Complainant No. 1

**Imiracle (Shenzhen) Technology Co., Ltd.**

2801, Tower A, Minsheng Internet Blog.,

No.5073 Menghai Ave., Nanshan Sub-dist.,

Qianhai Coop. Zone,

Shenzhen, China.

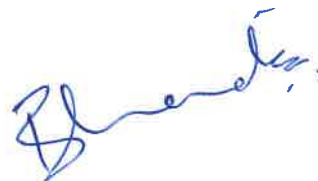
Tel: +852-31021216

Fax No: +852-31021216

Email: [terroir.zhang@chofn.com](mailto:terroir.zhang@chofn.com)

Complainant No. 2

VERSUS



**Elfbar India**

2nd floor, 2505,

78 Karol Bagh Road,

Rethibowli, Mehdiapatnam,

TS, India.

Tel: (91).7492817121

Email: [elfbarindia@gmail.com](mailto:elfbarindia@gmail.com)

Respondent

1. **The Parties in the proceeding:**

The complainant no. 1 in this administrative proceeding is Imiracle (HK) Limited, having its registered office at 19h Maxgrand Plaza, No.3 Taiyau St San Po Kong Klnhk. The complainant no. 2 is Imiracle (Shenzhen) Technology Co. Ltd. having its place of operation from 2801, Tower A, Minsheng Internet Blog., No.5073 Menghai Ave., Nanshan Sub-dist., Qianhai Coop. Zone, Shenzhen, China. The complainants have authorized Chofn Intellectual property (Mr. Zhang Lei) as their authorized representative in the present proceedings. Power of Attorneys (POA), for both the complainants have been filed with the complaint as **Annexure 2**. Pertinently, the POA do not mention the date of authorization, but mention the time frame within which both operate. The complaint was filed within this time frame of operation of the POAs, i.e on April 17, 2025, as per the last page of the complaint.

The Respondent in the present proceedings is **ELFBAR India**, having its address at 2nd floor 2505, 78 Karol Bagh Road, Rethibowli, Mehdiapatnam, TS, India. The complainant has also filed the publicly-available WHOIS record, for the domain name < elfbar.in >.



2. **Domain Name and Registrar:-**

The disputed domain name is <elfbar.in>. The domain name was registered on December 13<sup>th</sup>, 2024. The registrar with which the domain name is registered is Tucows Inc, 96 Mowat Avenue, Toronto, ON M6K 3M1, Canada. The email address of the registrar is [legal@tucows.com](mailto:legal@tucows.com), [domains@tucows.com](mailto:domains@tucows.com), [compliance@tucows.com](mailto:compliance@tucows.com).

3. **Procedural History:**

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"). The arbitration proceeding is approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the respondent has agreed to the resolution of disputes pursuant to the said Policy and the Rules.
- 3.2 The complaint was filed by the complainant with NIXI against the respondent. On 16.05.2025, to ensure compliance, I had submitted statement of acceptance and declaration of impartiality and independence as required by the Arbitrator's Empanelment Rules (Rule 5). On 19.05.2025, I was appointed as the sole arbitrator to decide the disputes between the parties. NIXI notified both the parties of my appointment as arbitrator *via* email dated 19.05.2025. NIXI had also served by email an electronic copy of the complainant with annexures, on the respondent at the email address of the respondent, [elfbarindia@gmail.com](mailto:elfbarindia@gmail.com), whilst appointing me as an arbitrator.
- 3.3 On 19.05.2025, I had issued notice to the respondent and directed the complainant to serve the complete paperbook on the respondent by both post and email, i.e. the complaint which was filed by the complainant and the complete annexures (annexures 1 to 16). It is pertinent to note that the respondent has been marked on all email correspondences. It is noteworthy



that I had on 19.05.2025 also granted the respondent a time period of 15 days, to file a response to the complaint, from my email and the delivery of service of the complete paperbook. The service was done by the complainant's authorized representative, Mr. Terroir Zhang, on 23.05.2025, on the email address present through a WHOIS lookup, i.e [elfbarindia@gmail.com](mailto:elfbarindia@gmail.com). Mr. Zhang had also shared vide email dated 03.06.2025, the proof of courier, sent via EMS waybill number EB839877555CN of China Postal Express and Logistics, stating that the complainant had tried to serve, however owing to a 'wrong address' being mentioned the physical delivery could not take place.

3.4 That pursuant to no response from the respondent for 15 days after service of the complaint and the documents (annexures), I had on 11.06.2025 sent an email to the respondent stating that in the interest of justice, I am granting it 5 more days to file a response. I had on 16.06.2025, closed the respondent's right of filing a response and apprised it about the same too through email. That in the same email, I had also asked the complainant's representative whether they wish to seek any personal hearing, to which they declined the same and requested that the complaint further proceed on merits.

3.5 That, all the communications to the complainant, respondent and NIXI by this tribunal have been through email. None of the emails sent on [elfbarindia@gmail.com](mailto:elfbarindia@gmail.com) have bounced or returned. I therefore hold that the service is complete as per the INDRP rules as all correspondences effectively took place on [elfbarindia@gmail.com](mailto:elfbarindia@gmail.com).

**Respondent being proceeded ex-parte:**

3.6 I wish to highlight Clause 13(b) of the INDRP Rules of procedure requires that the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case. Clause 17 of



the INDRP Rules of procedure grant the power to an arbitrator to proceed *ex-parte*, in the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator.

3.7 The respondent has been given a fair opportunity to represent itself, respond to the complainant's assertions & contentions and counter the same, if it so wishes to. However, there has been no response by the respondent, despite effective service. It is noteworthy that Clause 18 of the INDRP Rules of procedure mandate that an arbitrator shall decide a complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the arbitrator deems to be applicable, as amended from time to time. In these circumstances this tribunal proceeds to decide the complaint on merits, in accordance with said act, policy and rules on respondent's failure to submit a response, despite having been given sufficient opportunity and time to do so and represent itself. As a result of the aforementioned, the respondent is proceeded *ex-parte*.

4. **Legitimate rights under which a complainant can approach NIXI:**

4.1 The complainant has invoked Clause 4 of the INDRP policy to initiate the arbitration proceeding. Clause 4 reads as under:

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

*(a) the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights; and*



*(b) the Registrant has no rights or legitimate interests in respect of the domain name; and*

*(c) the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.*

The complainant therefore has to satisfy this arbitral tribunal on all the three aforementioned clauses/conditions, i.e 4 (a), (b) and (c).

## **5. Case of the complainant**

5.1 The complainant avers that the complainant no. 1 in this administrative proceeding is Imiracle (HK) Limited, having its registered office at 19h Maxgrand Plaza, No.3 Taiyau St San Po Kong Klnhk. The complainant no. 2 is Imiracle (Shenzhen) Technology Co. Ltd. having its place of operation from 2801, Tower A, Minsheng Internet Blog., No.5073 Menghai Ave., Nanshan Sub-dist., Qianhai Coop. Zone, Shenzhen, China. Complainant no 1 and 2 are together referred to as "complainant". Copy of the business licenses of complainant no. 1 and complainant no. 2 have been attached with the complaint as **Annexure 4**.

5.2 The complainant further avers that it is headquartered in Shenzhen and has branches in Shanghai, Hong Kong, the United States, Ireland and Germany. It states that ELF BAR is a range of disposable vapes that, despite only being launched a few years ago, have become one of the most popular brands in the market. That, like most other disposable vapes, they are pre-filled with e-liquid and usually contain a small single-use battery. It avers that ELF BAR is known for their fruity, sweet, candy-inspired e-liquids, with more than 30 flavours available across two dozen disposable device styles. It states that vapers have appreciated this combination of attributes, which has led to their popularity skyrocketing in recent years. It states that to date, the complainant's consumer base has covered dozens of countries around the





world, with monthly sales of over 10 million units and over one million consumers. That, its best-selling Elf Bars include the early pen-style Elfbar 600 and, more recently, the hugely popular BC3500 and BC5000. It states that the brand is even dipping its toes into the pod vape market with devices like the FB1000.

5.3 The complainant states that ELFBAR entered the UK in 2021 and in that year, it sold a record 2.5 million ELFBAR 600s per week, accounting for two thirds of all disposable e-cigarettes. To affirm the same, it has attached as **Annexure 6** - ELFBAR enters the UK market with sales reports. The complainant avers that ELFBAR has subsequently launched its business in Ireland, Germany, France, Italy, Spain and other countries complying with the TPD standard of the European Union, as well as non-EU countries. The complainant states that according to Google Trends, a large number of search queries about ELFBAR have appeared in 55 countries and territories worldwide in the last 5 years. To affirm the same, it has attached as **Annexure 7**, the Google Trends search data about ELFBAR. Further, it has also attached as **Annexure 8**, the featured exhibition photographs. The complainant further throws light on **Annexure 9**, an article Sao Paulo, Brazil--(Newsfile Corp. - November 21, 2023) - Global vaping technology pioneer ELFBAR unveils BC10000 in Latin America, the 1st ELFBAR product with up to 10,000 puffs.

5.4 The complainant also avers that the ELF BAR brand has reached over 50 countries on five continents. In some countries, between 2020 and 2022, the percentage of vapers using disposables rose from 6-7% to 45-50%. It states that its product's popularity and growth is a testament to the same. The complainant further avers that ELF BAR has also been warmly embraced by younger vapers, which it states is evident on social media. The complainant avers that the "elfbar hashtag" on TikTok had 1.76 billion views before April 4, 2023. To evidence the same, it has attached as **Annexure 10**, the data





released by U.S. Senator Charles Schumer. The complainant has also filed at **Annexure 11** a report stating that it sold products worth USD 132 million.

5.5 The complainant avers that based on its averments, it can be seen that it has a high level of popularity and goodwill among the general populace. The complainant further states that as its corporate name and core product trademark, ELF BAR has been in actual use and promotion for many years, it has become highly recognisable and known across the world. The complainant further relies on a google search, filed as **Annexure 12**, wherein it states that all the 'ELF BAR' search results point to it only. It follows that ELF BAR has a unique correspondence with the Complainant.

**The complainant's statutory claims pertaining to trademark "ELF BAR":**

5.6 The complainant states that it is the prior user and registered proprietor of the trademark 'ELFBAR' (device mark) in India. It further avers that the



device mark is registered through trademark registration number **5641906** and this has statutory rights over the same. In support of the aforementioned averments, the complainant has also filed a Indian trademark registration as **Annexure 5**.

**6. The dispute raised before this tribunal – case of the complainant:**

**The Domain Name and associated website**

6.1 The complainant states that it recently came across the respondent's domain name <elfbar.in> ('disputed domain name') which was registered on 13.12.2024. The complainant avers that the name of the respondent is ELF BAR India. The complainant further states that it searched for the name on the Indian official website

(<https://www.mca.gov.in/content/mca/global/en/mca/fo-llp-services/company-llp-name-search.html>) but found no result. It therefore avers that ELF BAR India is not a real entity, but a name deliberately created by the respondent to avoid legal punishment or to gain an advantage in the domain name dispute procedure. The complainant states that a preliminary investigation by it reveals that the respondent has no trademark rights in ELF BAR. It further states that the fact that the respondent registered the Disputed Domain Name and directed it to a page on a website similar to the complainant's business was clearly in bad faith. The complainant has attached the WHOIS extract of the disputed domain as **Annexure 3**.

## 7. Analysis

7.1 It is pertinent to note that Paragraph 4 of the INDRP Domain Name Dispute Resolution Policy, mentions about class of disputes, which grants any person who considers that a registered domain name conflicts with his/her legitimate rights or interests, the right to file a complaint with the .IN Registry. There are 3 conditions which an aggrieved right holder may file the complaint under. The complainant has in the present complaint mentioned that its rights under all the three conditions have been violated:

- i. Condition 4(a) - The Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the complainant has rights;

The complainant states in the complaint that it has statutory and common law rights in the trademark (label mark) **ELF BAR** and such rights predate the registration of the disputed domain name. It further states that its goods bearing its said trademark **ELF BAR** and its variants are being sold for many years. The complainant states that unwary customers would purchase the respondent's goods bearing the complainant's trademark,

which it believes would be of inferior quality. It further has shared, as **Annexure 14**, alleged letters from Indian residents, which it claims, affirms not only usage of its trademark by the respondent, but also sale of counterfeit goods using the same. Further, the complainant has also shared as **Annexure 15**, snapshots of the respondents website, [www.elfbar.in](http://www.elfbar.in) (impugned website herein) which not only uses the complainant's trademark name and trademark, ELF BAR, but also uses a deceptively similar version of the complainant's label mark on its webpage. It states that the *mala fide* of the respondent is evident as they seek to ride on the goodwill and reputation accrued by the complainant for selling goods bearing its **ELF BAR** trademark. The complainant further avers that the respondent is unauthorizedly and deliberately also using the complainant's trademark ELF BAR as its trading name. It further states that it ran a search on the Ministry of Corporate Affairs (MCA), Govt of India website which allegedly confirms that the respondent is not a registered company but is merely using the trade name "Elf Bar India" to gain an advantage online.

The complainant thus states that in the present case, the disputed domain name is confusingly similar to the complainant's trademark **ELF BAR** and the complaint has successfully satisfied the first requirement set out in clause 4(a) of the INDRP. It relies on **Annexure 13** - INDRP 1531 to prove its contentions.

I have gone through the pleadings and documents filed by the complainant. With regard to the fulfilment of paragraph 4(a) of the INDRP policy, it is evident that the complainant has been continuously and extensively using the mark ELF BAR in the course of trade and commerce since the year 2020 internationally. The complainant has also registered its trademark ELF BAR, vide registration number 5641906, in class 34 in India (trademark registrations). Though its sale in India is presently allegedly banned (vape products ban by GOI), its statutory rights thus, in the trademark ELF BAR



is well established. It is pertinent to note that the disputed domain name elfbar.in was registered on December 13, 2024, almost two years after the registration of the trademark, ELF BAR in India.

It is noteworthy that a perusal of the disputed domain name 'elfbar.in' of the registrant/respondent shows that the respondent has used the complainant's trademark ELF BAR in its entirety. The disputed domain name 'elfbar.in' is deceptively similar, or some may say near identical to the 'ELF BAR' trademark of the complainant. It is well established that the mere addition of a TLD such as "in" to a registered trademark(s), is not significant in distinguishing a domain name. It has been held by prior panels deciding under the INDRP, such as in *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, that there is confusing/deceptive similarity where the disputed domain name wholly incorporates a complainant's trade mark. It is further noteworthy that, 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 'elfbar.in' from the complainant's trademark ELF BAR. In **Satyam Infoway Ltd vs Siffynet Solutions Pvt. Ltd AIR 2004 SC 3540**, the Hon'ble Supreme Court of India stated that the law pertaining to the Trademark Act, 1999 shall be applicable to domain names in India. The Hon'ble Supreme Court of India also observed that domain names have the same characteristics of a trademark and thus act as a source and business identifier. 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. "

The complainant has rights in the trademark ELF BAR by way of trademark registration in India. Pertinently, the use is prior to the date on which the respondent created the impugned domain <elfbar.in> incorporating the complainant's trademark and trade name ELF BAR in totality and as a whole. I agree that using the word "elf bar" not only creates confusion, but may even make a potential web user believe that this may well be associated with the complainant.

The respondent has not filed any response to the assertions put forth by the complainant. The averments of the complainant thus remain unrebutted.

In view of the above facts and submissions of the complainant, on perusal of the documents filed and annexed with the complaint, I therefore hold that the disputed domain name < elfbar.in> of the registrant (respondent) is identical and/or confusingly/deceptively similar to the trademark ELF BAR of the complainant.

- ii. Condition no.4 (b) the Respondent (Registrant) has no rights or legitimate interest in respect of the domain name:

The complainant states that pursuant to the e-cigarette ban by the Government of India, it is not carrying out any commercial activities within India. It further states that the impugned domain name, elfbar.in, is suspected of selling counterfeit products. It further avers that it has received many complaints from Indian natives, who sent



email correspondences to its official email address [legal@elfbar.com](mailto:legal@elfbar.com). To rely on the same, it has attached the correspondences as **Annexure 14**. The complainant further avers that the disputed domain name 'impersonates' or suggests an association with it and makes it evident to the user of their being some type of a sponsorship or endorsement by the complainant. It further relies on **Annexure 15**, the screenshots of the disputed domain name.

The complainant asserts that the respondent is unable to invoke any of the circumstances set out in Paragraph 6 of the .IN Policy to demonstrate rights or legitimate interests in the domain name. To further its claims, the complainant states that the disputed domain name has not been used in connection with *bona fide* offering of goods or services by the respondent. It avers that the disputed domain name is being used by the respondent to attract consumers by portraying itself as an affiliate of the complainant and making commercial gains by selling goods bearing the complainant's trademark(s) ELF BAR.

The complainant also avers that the respondent's use of the disputed domain name is for commercial gain as the respondent's website offers for sale goods bearing the complainant's ELF BAR trademark and its variants. It states that the respondent's use of the complainant's ELF BAR trademark is unauthorised. The complainant states that the respondent's acts are probative of its intention to make profit from unauthorised use of complainant's ELF BAR trademark. Therefore, it states that the respondent has no legitimate interest in the disputed domain name, rather the sole purpose of its registration is to misappropriate the reputation associated with the complainant's trademark, ELF BAR.





The complainant claims that it has therefore established a *prima facie* case that the respondent has no rights and legitimate interests in the disputed domain name.

I agree with the assertions put forth by the complainant. I believe that the complainant has established its rights in the trade mark ELF BAR. It is significant to note that the use of ELF BAR in the respondent's domain name is definitely likely to give a false impression to internet users that the disputed website is either owned by the complainant or is affiliated to the complainant in some manner. The respondent cannot conceivably claim that its use of the complainant trademark is *bona fide* as per paragraph 6(a) of the .IN Policy or is commonly known by the domain name in accordance with paragraph 6(b) of the .IN Policy.

The mere fact that the disputed domain name is registered does not imply that the respondent has any rights or legitimate interests in them. In *Deutsche Telekom AG v. Phonotix Ltd.* (WIPO Case No. D2005-1 000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the disputed domain name by the respondent is not a legitimate, non-commercial or fair use. The respondent thus has no rights or legitimate interests in, the disputed domain name.

The adoption of word/mark "ELF BAR", therefore in the disputed domain name affirms the malafide intention of the respondent to make use of and ride on the coat tails of the complainant for earning commercial benefits. Such a conduct demonstrates anything, but a legitimate interest in the domain name. In the *Sports Authority Michigan, Inc. v. Internet Hosting*, NAF Case No. 124516, it was held



*'It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii), when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark'.*

It is pertinent to note that the complainant has also not licensed the use of the mark, ELF BAR, to the respondent. In such as situation, there is no reason for the respondent to use the same as its domain name. The use is therefore unauthorized. A decision of a previous panel, *Wacom Co. Ltd. v. Liheng*, INDRP/634, is relevant in this case. It was stated that:

*"the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name"*

It is reiterated that the respondent (registrant) has not filed any response to counter the complainant's assertions, despite service. The respondent has thus failed to satisfy the conditions contained in clauses 6(a), (b) and (c) of INDRP Policy. Significantly, the respondent has never been identified with the disputed domain name or any variation thereof. The respondent's (Registrant) use of the disputed domain name will inevitably create a false association and/or affiliation with complainant and its trademark/label marks, ELF BAR.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the respondent has no rights or legitimate interests in respect of the disputed domain name. Accordingly, condition 4(b) of the INDRP policy is decided in the favour of the complainant.



- iii. Condition 4(c): The Registrant's domain name has been registered or is being used in bad faith:

To look into condition 4 (c) of the INDRP policy, clause 7 is to be looked into. Clause 7 of the INDRP policy states as under:

*For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the Registration and use of a domain name in bad faith:*

- (a) 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*
- (b) 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*
- (c) by using the domain name, the Registrant 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; or*
- (d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.*

The complainant states that the issue at hand falls 7 (c) of the INDRP policy as the Registrant(respondent) has intentionally attempted to



attract users to the Registrant's website. The complainant states that the respondent has registered the disputed domain name subsuming the complainant's trademark ELF BAR, with the sole reason of attracting prospective customers to its website and gain commercially. The complainant states that by using the disputed domain name, the respondent is attracting users to its website to view product listings under the complainant's trademark ELF BAR and its variants in order to make commercial gains. The complainant states that the product listings on the respondent's website are unauthorised. Therefore, it states that the respondent's use of its trademark 'ELF BAR' in the disputed domain name is solely to ride on the complainant's reputation. It relies upon **Annexure 16**, WIPO Case No. D2014-1693, to prove its contentions.

It is pertinent to reiterate that the complainant is vested with statutory rights in its ELF BAR trademark in India (Annexure 5). The use of the trademark ELF BAR has been from the year 2020, internationally. The respondent's registration of a disputed domain name wholly incorporating the complainant's trademark is most certainly to ride on the coat tails of the complainant's commercial success. It is also noteworthy that the actions of the respondent seem to fall squarely within subclause (c) hereinabove.

Given the enormous success of the complainant's business, its known trademark ELF BAR, there seems to be no reason for the respondent to adopt an identical name/ mark with respect to the impugned domain name. This adoption by the respondent, of course seems to create a deliberate and false impression in the minds of users that the respondent is somehow associated with or endorsed by the complainant. A case by a previous panel, *M/s Merck KGaA v Zeng Wei JNDRP/323*, can be referred wherein it was stated that:



*"The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration. "*

It is noteworthy that Rule 3 of .IN Domain Name Dispute Resolution Policy (INDRP), casts obligations on a registrant, such as the respondent here. The same provides as under:

### 3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

(a) the credentials furnished by the Registrant for registration of domain name are complete and accurate;

***(b) to the knowledge of Registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;***

(c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and

***(d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It is the sole responsibility' of the Registrant to determine whether their domain name registration infringes or violates someone else's rights.***

It is evident from above rule that rule 3(b) and (d) puts an obligation on the Registrant, the respondent herein, before registering a domain name. The registrant is to verify that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party.



From a perusal of the averments and documents filed herewith, there is therefore no doubt that the respondent has got the disputed domain name registered in bad faith and to ride on the complainant's ELF BAR trademark's goodwill and reputation, not only in India, but globally too. The actions of the respondent are thus in contravention with paragraph 4(c) of the INDRP policy. I therefore hold that the respondent's domain name has been registered in bad faith.

### **Decision**

In view of the foregoing, I hold that the disputed domain name, <elfbar.in> is identical and/or confusingly similar to the complainant's 'ELF BAR' trademark. I further hold that the respondent has no rights or legitimate interests in respect of the disputed domain name and that the same was registered in bad faith by the respondent.

In accordance with the INDRP Policy and Rules, I direct that the disputed domain name registration be transferred to the complainant. No order as to costs.

Date: 18.07.2025

Place: New Delhi



Bharat S Kumar

Sole Arbitrator