



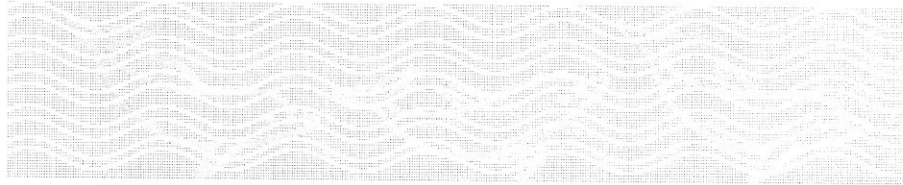
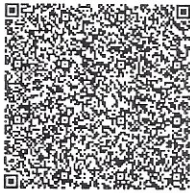
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL37593817349353S
Certificate Issued Date	: 17-Mar-2020 11:54 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLHIMP1784020216491475S
Purchased by	: POOJA DOOD
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DOOD
Second Party	: Not Applicable
Stamp Duty Paid By	: POOJA DOOD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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Disputed Domain Name: OSRAMINDIA.IN

Decision of Ms. Pooja Dodd, Sole Arbitrator

INDRP Case No. 1206

IN THE MATTER OF:

OSRAM GmbH

Marcel-Breuer-Straße 6

80807 Munich

Germany

...Complainant

Versus

Osram India LED Smart Light

Plot No. 8 D, Balaji Vihar,

Sri Ganganagar, Rajasthan – 335001,

India

...Respondent

1. The Parties:

1.1 The Complainant in this Arbitration Proceeding is OSRAM GmbH with its corporate headquarters at Marcel-Breuer-Straße 6 80807 Munich, Germany, represented by Khaitan & Co., Advocates, Notaries, Patent & Trademark Attorneys at One Indiabulls Centre, 13th Floor, 841 Senapati Bapat Marg, Elphinstone Road, Mumbai 400013 and also at 1105, Ashoka Estate, 24, Barakhamba Road, New Delhi 110001.



1.2 The Respondent is Osram India LED Smart Light with address listed as Plot No. 8 D, Balaji Vihar, Sri Gangadhar, Rajasthan – 3335001, India. The email address connected with the Respondent is skdelhi1919@gmail.com and the phone number connected with the Respondent is +91-7610055595.

2. Domain Name and Registrar:

2.1 The Disputed Domain Name is <osramindia.in> which was registered on September 23, 2019.

2.2 The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy.com, LLC situated at 14455 N. Hayden Rd., Ste. 226, Scottsdale, Arizona 85260 - 6993, United States of America.

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”), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

3.2 The Complaint was filed by the Complainant with NIXI, against the Respondent.

NIXI verified the Complaint and its Annexures for conformity with the requirements of the Policy and the Rules.

3.3 On February 5, 2020, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.

3.4 NIXI notified the Parties of my appointment as the Arbitrator *via* email on February 11, 2020 and served an electronic as well as a physical copy of the Complaint on the Respondent. I informed the Parties about the commencement of Arbitration Proceeding on February 11, 2020 and the Respondent was directed to submit a Response within 10 days from the notification to the Parties by NIXI.

3.5 On February 21, 2020, I informed the Parties that though no Response was received from the Respondent within the time period granted, in the interest of justice, I was granting additional time of 5 days, and that if no Response was filed by February 26, 2020, the Award would be passed on merits.

3.6 Thereafter on February 24, 2020, the Respondent replied stating "*we does not start any work on this domain name to do this final. If you do so we can suspend this domain name if any reputed loses you have*". Following this communication from the Respondent, I wrote to the Parties on February 25, 2020 informing them that if they wish to settle, I would terminate the Arbitration Proceeding and pass an award in accordance with the settlement reached. In my e-mail, I also mentioned that if

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the Parties are interested in reaching a settlement then they should contact each other and draw a settlement agreement and send it to me by March 6, 2020. However, the Complainant's legal representative responded that they have instructions to proceed with the matter without settlement.

3.7 I am therefore proceeding to pass the Award on merits.

4. Grounds for Arbitration Proceedings

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the domain name; and
- C. The Disputed Domain Name was registered and is being used in bad faith.

5. Summary of the Complainant's Contentions:

In support of its case, the Complainant has made the following submissions:

5.1 The Complainant is a private company operating under the OSRAM Group, headquartered in Germany. The Complainant was established a century ago and started as a German light bulb manufacturer, and has now successfully converted itself into an internationally recognized and renowned company in various sectors (especially lighting sector) including automotive, LEDs, emitters, lasers, sensors, light engines and modules, light management systems, electronic control gear, flexible lighting solutions, lamps and special lamps, luminaires, etc.

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5.2 The Complainant conducts its business under its mark OSRAM across continents in various countries including India, where the business is carried out through its subsidiaries. Products and services emanating from the Complainant under its well-known marks have acquired substantial goodwill and reputation.

5.3 The Complaint is based on the Complainant's well-known OSRAM mark as well as marks consisting of OSRAM (collectively the "Complainant's Marks"). OSRAM was adopted by the Complainant over a century ago and it carries on business in over 100 countries. The Complainant's Marks are extensively used internationally as part of the Complainant's corporate name, trading style, domain names, in addition to being a trademark. Annexure 4 accompanying the Complaint substantiates these claims.

5.4 The Complainant conducts business under its corporate name OSRAM across continents. The Complainant is the registered proprietor of the word mark OSRAM covering classes 9, 10, 11, 35, 37 and 42 in India and internationally. Further, the Complainant is also the owner of domain names consisting of the word OSRAM, in addition to one its official websites – www.osram.com. Annexure 5 and Annexure 6 accompanying the Complaint substantiate this.

5.5 The Complainant submits that the Complainant's Marks have garnered huge amount of revenue, goodwill and reputation both in India and Internationally. The Complainant also uses the Complainant's Marks in relation to various ancillary services. The products/services provided by the Complainant have been cited and discussed in numerous leading publications, which have circulation and readership

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all around the world including India. This includes achievements of the Complainant such as spearheading the creation of a global group in 2010 for the standardization of LED light engines. The Complainant has been regarded as one of the top 12 companies in the global general lighting market and in the subsequent year received a spot as one of the top 10 companies in the category of largest LED light manufacturers in the world. Further, the Complainant has incurred substantial amount of promotional and marketing expenditure internationally. Annexures 7, 8, 9, 10 and 12 accompanying the Complaint substantiate this.

5.6 A search through the various search engines from India such as Google and Yahoo, reveals the Complainant's Marks in several listings clearly establishing the enormous goodwill and reputation the Complainant's Marks enjoy all over the world including in India. Annexure 11 substantiates the Complainant's claim.

5.7 The Complainant has promptly, effectively, actively, and regularly defended its domain names and protected them against cyber-squatters and infringers. They have maintained and continue to preserve the well-known status and immense goodwill and reputation garnered by them. The rights in the Complainant's Marks and more specifically in the domain names have been recognized by the INDRP in 2012, and again in 2019. In the arbitration proceedings relied upon by the Complainant, the appointed learned arbitrators transferred the disputed domain names – www.osram.co.in and www.0sram.in to the Complainant based on the findings that the disputed domain names were identical or confusingly similar to the Complainant's Marks, the Respondents in the said disputes had no rights to use the disputed domain names and that the same had been registered in bad faith. The

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awards have been annexed as Annexures 13 and 14 by the Complainant and these decisions can be relied on as precedents for the purposes of this Award.

5.8 The Complainant submits that the Disputed Domain Name <osramindia.in> is identical to the Complainant's registered trademark OSRAM. It is contended that at the time of filing of this Complaint, the Disputed Domain Name resolved to an active website that is engaged in the sale of LED lighting for commercial purposes such as office spaces and industrial areas and for personal use, which is a sector identical to that of the Complainant. The Disputed Domain Name is likely to create a likelihood of confusion of the Respondent with the Complainant to the source, association, affiliation or endorsement of the impugned website. The Disputed Domain Name is likely to misdirect traffic to the Disputed Domain Name. In addition to the aforesaid, the Disputed Domain Name is likely to be linked to a domain name parking service like Google AdSense to wrongfully generate revenue from such misdirected/misguided traffic to the impugned website resulting out of the confusing nature of the disputed domain name. Further, the Complainant has noted that the mere addition of "India" in the Disputed Domain Name does not render the Disputed Domain Name different as "India" is a non-distinctive generic word. The Complainant has annexed Annexure 15 in support of the above contentions, however, as this Annexure does not show any URL, and the website the resolves to the Disputed Domain Name currently does not display the content alleged, I am not inclined to rely on it.

5.9 The Complainant has alleged that the Respondent does not have any legitimate interest or rights in the Disputed Domain Name as the content on the Respondent's website has been copied from that of the Complainant's Competitor's website.

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Further, the Complainant has alleged that the Respondent is not commonly known by the Disputed Domain Name and that the Respondent has taken steps to create a connection between themselves and the Complainant.

5.10 The Complainant has purported that owing to their tremendous goodwill and reputation, the Respondent has adopted the Disputed Domain Name with a *mala fide* intention.

5.11 In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure 1	Copy of the .IN Domain Name Dispute Resolution Policy.
Annexure 2	Copy of the .IN Domain Name Dispute Resolution Rules of Procedure.
Annexure 3	Excerpt of osramindia.in WhoIs data from the .IN Registry and the E-mail received from the .IN Registry with the details of the Respondent.
Annexure 4	List of the global registrations/applications of the Complainant for the Complainant's Marks.
Annexure 5	Copies of documents downloaded from the online database of the Trade Marks Registry in respect of the Complainant's Marks.
Annexure 6	Copies of documents regarding the domain name registrations in the name of the Complainant
Annexure 7	An extract showing the total revenue from the Complainant's Annual Report for 2018.
Annexure 8	An extract showing the total revenue by specific regions from Complainant's Annual Report for 2018 evidencing revenue by regions.
Annexure 9	An extract from Complainant's Annual Report for 2018 evidencing the total annual marketing and other expenses.

Annexure 10	Copies of publications where Complainant's Marks have been discussed.
Annexure 11	Copies of search results obtained from the search conducted on search engines by the Complainant.
Annexure 12	Extract from Forbes website mentioning the Complainant in the global 2000 list for 2016.
Annexure 13	Documents evidencing the proceedings initiated by and in favour of the Complainant in India.
Annexure 14	Documents/awards evidencing proceedings initiated by and in favour of the Complainant in India.
Annexure 15	Snapshots from the Disputed Domain Name.
Annexure 16	Respondent's website evidencing that the content was copied from the Complainant's Competitor's website
Annexure 17	Printout of the webpage obtained while trying to register the domain name osramindia.in

6. Discussions and findings:

6.1 The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present its case. Even though sufficient time, including additional time, was granted, the Respondent chose to refrain from submitting any Response to the Complaint.

6.2 Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw

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such inferences as are appropriate from the Respondent's failure to respond to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's response and in turn, the lack of interest in the Disputed Domain Name.

7. The issues involved in the Dispute:

7.1 The Complainant invokes Paragraph 3 of the Rules to initiate the Arbitration Proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory Arbitration Proceeding in terms of Paragraph 4 of the Policy, which determines the elements for a domain name dispute, which are:

- 1) Whether the domain name in question is identical or confusingly similar to a trade mark;
- 2) Why the Respondent cannot claim any legitimate interest in the trade mark;
and
- 3) Why the domain name in question should be considered as having been registered and being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

7.2 Element 1- The Respondent's domain name is identical/confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Disputed Domain Name is confusingly similar to the Complaint's marks, corporate name and domain names of the Complainant for the following reasons:

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- a) The Complainant has statutory as well as common law rights in the Complainant's Marks in several countries of the world including in India and also by virtue of its extensive use. Further, the Complainant is the prior adopter and user of the Complainant's Marks. The case of *Dell India v. Raj Kumar, INDRP/249 (22 September 2011)*, as relied upon by the Complainant fits in the present scenario.
- b) The Disputed Domain Name contains the Complainant's OSRAM mark in its entirety. Such adoption is enough to confuse a consumer with average intelligence and imperfect recollection. When a domain name contains a trademark in its entirety, the domain name is deemed identical or at least confusingly similar to the complainant's trademark. The following precedents cited by the Complainant are relied upon. [Decisions relied upon: *Lego Juris A/S v. Robert Martin, INDRP/125 (14 February 2010)* and *G.A Modelfine S.A v. Naveen Tiwari, INDRP/082 (20 February 2009)*].
- c) The dominant and distinctive feature of the Disputed Domain Name is the word "osram". The only difference between the Disputed Domain Name and the Complainant's Marks resides in the addition of "India", placed strategically after the Complainant's Mark – OSRAM, so as to give an indication to an unaware consumer that the Respondent and the Disputed Domain Name are somehow associated with the Complainant or the Indian operations of the Complainant. A user/visitor of common prudence with average intelligence and imperfect recollection may not be able to differentiate between the domain names of the Complainant and the Disputed Domain Name. This renders the Disputed Domain Name deceptively similar, also considering that the said

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Disputed Domain Name is likely to be referred to as that of the Complainant. It has been held that inclusion of “hyphens and of the descriptive terms” does not prevent a finding of confusing similarity. Further, the inclusion of the word “India” creates affiliation with the Complainant rendering consumers to believe that the Disputed Domain Name is the Complainant’s Indian website. This addition of India is not sufficient to rule out the likelihood of confusion. [Decisions relied upon Gilead Sciences, Inc., Gilead Sciences Ireland UC, Gilead Sciences LLC v. Registration Private, Domains By Proxy, LLC / apple infoway, MillionHealthPharma / Preetha Infoway, Apple Infoway WIPO Case No. D2018-2281; Group Kaitu, LLC , Darkside Productions, Inc. v. NetDirect WIPO Case No. D2011-0220, Beachbody, LLC v. A & L, Ran Hill WIPO Case No. D2010-2060, Indeed Inc. v. Indeed India Case No. INDRP/1188]

Therefore, considering the above factors, documents and the submissions made by the Complainant, it can be said that the Disputed Domain Name is virtually identical and confusingly similar to the Complainant’s Mark, related domains as well as the Complainant’s corporate name. The Disputed Domain Name being identical and confusingly similar to the Complainant’s Marks will inevitably lead consumers to believe that it is affiliated in some way to the Complainant. Thus, I find that the Disputed Domain Name is identical and confusingly similar to the Complainant’s Marks, domain names and corporate name.

7.3 Element 2 - The Respondent has no rights or legitimate interests in respect of the

Disputed Domain Name:

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- a) In order to establish that the Respondent has rights and legitimate interest, the Respondent is required to show either of the following as per paragraph 7 of the Policy:
- 1) That before the dispute, the Respondent was preparing to use the Disputed Domain Name or the name corresponding to the same;
 - 2) That the Respondent is commonly known by the Disputed Domain Name; or
 - 3) That the Respondent is making a legitimate or fair use of the Disputed Domain Name.
- b) The Respondent has failed to provide any document in support of any of the abovementioned factors or to establish any legitimate interest over the Disputed Domain Name. The Complainant has already stated that the Respondent has no connection with the Complainant and that the Complainant has not consented to the Respondent's use of the Disputed Domain Name. [Decisions relied upon: American Woodmark Corporation v. Azcem Cv WIPO Case No. D2015-0089; Charles Jourdan Holding AG v. AAIM WIPO Case No. D2000-0403, Disney Enterprises Inc. v. Mr Aven Case No. INDRP/1199].
- c) The Respondent is not commonly known by the Disputed Domain Name and seems to have used the same to mispresent to the public and trade that the Respondent is associated with the Complainant. As per Annexure 3, the Disputed Domain Name is registered in the name of Osram India LED Smart Light, even though there is no connection between the Respondent and the Complainant. Neither has the Respondent offered any defense nor has it put forth any explanation for the use of Osram in the name of the Registrant Organization. It is reasonable to presume that the name of the Respondent is

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not Osram, which is also apparent from the Respondent's e-mail id i.e. skdelhi1919@gmail.com. Further, the Complainant's Marks are exclusively associated with the Complainant and the Respondent has not shown any proof of activity associated under the Disputed Domain Name or under the mark OSRAM which could justify the use of the same. The case of *Morgan Stanley v M/s Keep Guessing*, INDRP/024 (27 June 2007) cited by the Complainant is relied upon.

d) The Complainant has provided sufficient evidence to show that they have statutory as well as common law rights in its well-known marks in several countries including India by virtue of extensive use and global trademark portfolio for Complainant's Marks. There is no doubt that the Complainant is the prior adopter and user of the Complainant's Marks. The Respondent's silence weighs in favour of the Complainant as the Respondent has chosen not to prove any rights or legitimate interest in the Disputed Domain Name. [Decisions relied upon: *EdFund v. Jack Benny* WIPO Case No. D2007-0805 and *HSBC Holdings Plc v. Hooman Esmail Zadeh, M-Commerce AG*, INDRP/32 (24 March 2007)].

e) It is pertinent to note that the Complainant has reiterated the Respondent has no authorization from them to use the Complainant's Marks in any manner whatsoever and that the Disputed Domain Name is unauthorizedly and wrongfully registered by the Respondent for commercial purposes to mislead and divert consumers or to tarnish the reputation of the Complainant's Marks. The decision of *Wockhardt Limited v Kishore Tarachandani*, INDRP 382/2012 (14 August 2012) cited by the Complainant is relied upon.

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- f) A perusal of the documentary evidence before me, including the email I received from the Respondent, establishes that the Respondent has not demonstrated any intention or preparations to use the Disputed Domain Name, and I agree that the Respondent does not have any right or legitimate interest in the Disputed Domain Name. Earlier panels have held that when the Respondent does not contest the Complainant's assertion and himself states that he does not have any interest, then the Panel should conclude that the Respondent does not have any legitimate interest in the Disputed Domain Name. [Decision relied upon: ACCOR v. Winston Minor WIPO Case No. D2003-1002].

For the reasons above, I find that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

7.4 Element 3 - The Disputed Domain Name should be considered as having been registered and being used in bad faith.

- a) The Complainant has proved beyond doubt that the Complainant's Marks have acquired tremendous goodwill and reputation across the globe and qualify as well-known marks. It is inconceivable that the Respondent was not aware of the Complainant's Marks and/or the exclusive rights of the Complainant over those marks and it seems that the Respondent did not have any other purpose for registering the Disputed Domain Name but to trade-off on the reputation of the Complainant's Marks. When the entire mark is copied in the disputed domain name, it is a clear case of abusive registration.

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- b) Referring to paragraph 3 of the Policy, it is the Respondent's responsibility not to infringe or violate any rights of any third party. Given the fame of the Complainant's Marks, it is safe to assume that the Respondent was "in the know" of the existence and fame of the Complainant's Marks, corporate name and domain names. Thus, registration of the Disputed Domain Name shows a deliberate action by the Respondent to attract commercial gain and override the reputation of the Complaint and this constitutes bad faith. Panels have held that the ICANN Policy "use in bad faith" requirement is met by registering a domain name that will ultimately result in consumer confusion, even where the Disputed Domain Name has not been used to identify a website. [Decisions relied upon: Moog Inc. v. James White WIPO Case No. D2018-0886; Trivago N.V. v. Shiv Singh Case No. INDRP/1171; Pathway IP S.A.R.L. v. Regus India Case No. INDRP/1168; Carrefour v. yxp WIPO Case No. DLA2013-0002; CBS Broadcasting Inc. v. LA-Twilight-Zone WIPO Case No. D2000-0397].
- c) Additionally, Annexure 3 evidences that the Respondent opted for domain name privacy and this blatant disregard of the Policy and the Rules can be inferred as bad faith. The Respondent intentionally opted to use "Osram India LED Smart Light" as the name of the Registrant's Organization, which seems to be done solely to deceive and misrepresent that there is an association between the Respondent and the Complainant. The Respondent has registered a domain name which gives the impression that it is in some way connected to the Complainant, and this is a clear indication of the Respondent's malafide and fraudulent intent.

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d) The registration and use of the Disputed Domain Name constitutes trademark infringement and will result in the dilution of the Complainant's well-known and reputed marks. The registration and use of the Disputed Domain Name also amount to the tort of passing off. The Respondent has therefore made false representations whilst registering the Disputed Domain Name and have breached the service agreement with the Registrar. [Decision Relied on: *Wockhardt Limited v Kishore Tarachandani*, INDRP 382/2012.

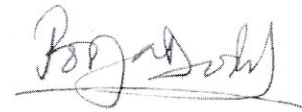
e) The above-mentioned combination of factors lead me to believe that there is a merit in the Complainant's allegation of bad faith, including the Complainant's strong trademark rights, lack of evidence of good faith use. In view of the above, it is evident beyond reasonable doubt that the Respondent has adopted the Disputed Domain Name in bad faith.

8. Decision:

8.1 In view of the foregoing, I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's Marks, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

8.2 The parties are to bear their own costs.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.

A handwritten signature in black ink, appearing to read 'Pooja Dodd', with a horizontal line drawn underneath it.

Pooja Dodd

Sole Arbitrator

Dated: April 9, 2020