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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1525

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.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.postpe.co.in

Dated: 19 May 2022

IN THE MATTER OF:

Resilient Innovations Pvt. Ltd.,

A 45, First and Second Floor, Corner Market,

Malviya Nagar, New Delhi-110017

..... Complainant

Vs.

Mr. Qurban Ali,

Kharabari, Udgra,

Kishanganj, Bihar-855117

..... Respondent

1. Parties

- 1.1. The Complainant in the arbitration proceeding is Resilient Innovations Pvt. Ltd., having address at A 45, First and Second Floor, Corner Market, Malviya Nagar, New Delhi-110017. The Complainant's authorised representative is Sim and San.
- 1.2. The Respondent in this administrative proceeding as per the 'Whois' record is Mr. Qurban Ali, having address at Kharabari, Udgra, Kishanganj, Bihar-855117 (as per **Annexure 2** of the complaint). Registrant has registered the disputed domain name with GoDaddy.com LLC.

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2. **The Dispute-** The domain name in dispute is www.postpe.co.in registered by the Respondent on 3rd May, 2021. According to the .IN 'Whois' search, the Registrar of the disputed domain name is GoDaddy LLC.

3. **Important Dates**

S. No	Particulars	Dates (All Communication done in electronic mode)
1.	Date on which NIXI's email was received seeking consent for appointment as Arbitrator.	March 28, 2022
2.	Date on which consent was given to act as an Arbitrator in the case.	March 28, 2022
3.	Date of Appointment as Arbitrator.	March 28, 2022
4.	Soft Copy of complaint and annexures were received from NIXI through email.	March 28, 2022
5.	Date on which notice was issued to the Respondent	March 29, 2022
6.	Date on which Complainant filed proof of completed service of complaint on Respondent	March 28, 2022
7.	Date on which Award passed	May 19, 2022

4. **Procedural History**

- 4.1 This is mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on

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<https://www.registry.in/INDRP%20Rules%20of%20Procedure>.

By

registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.
- 4.4 The Arbitrator issued notice to the Respondent on 29 March, 2022 at the email address postpehelpdesk@gmail.com calling upon the Respondent to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed proof of completed service of the complaint upon Respondent on March 28, 2022.
- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant, trading as Resilient Innovations Pvt. Ltd is a fintech company recognized for its interoperable unified payments interface (UPI) QR in 2018.
- 5.2 The Complainant adopted the trademark "POSTPE" and **postpe...** (wordmark and device mark hereinafter referred to

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as Postpe Trademark) in 2021 and through its trademark has been rendering the services of making and accepting payments through UPI and QR code. The Complainant is the registered proprietor of its trademark, POSTPE logo and word mark since 2021.

- 5.3 The Complainant being a fintech platform accepts payment via a range of payment apps such as Paytm, PhonePe, Google Pay, BHIM, Mobikwik, Freecharge, WhatsApp and 150+ other UPI apps.
- 5.4 Complainant registered its trademark POSTPE in India in 2021. The Complainant owns exclusive rights in the 'POSTPE' trademark in India under class 9, 35, 36, 38 and 42. Copies of registration certificates for the mark POSTPE in India is filed by the Complainant (as per **Annexure 3** of the complaint).
- 5.5 The Complainant has been using the "POSTPE" trademark distinctively in connection with its services and also maintains the website www.bharatpe.com (registered on 15th November, 2017) and other formative country level domains for its trademark as per Para V (6) of the complaint.
- 5.6 The Respondent in this arbitration proceeding as per the 'Whois' record is Mr. Qurban Ali. The email Id of the Respondent is postpehelpdesk@gmail.com (as per **Annexure 2** of the complaint). The Respondent registered the disputed domain name with GoDaddy.com LLC having email address abuse@godaddy.com.

6. Parties Contention

6.1 Complainant's Submissions

- 6.1.1. Complainant operates its business using the trademark "POSTPE" and is engaged in providing services of Unified Payments Interface (UPI) and QR code since 2021. The Complainant claims that it has been using its POSTPE mark continuously for its new digital payment platform since

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April 2021. The Complainant also claims to maintain the website www.postpe.app and www.postpe.club as mentioned in Para V (13) of the complaint.

6.1.2. The Complainant's trademark POSTPE is one of the sub brands of the Complainant's trademark BHARATPE. Due to its established reputation offline and online, the word POSTPE has been exclusively associated with the Complainant and no one else. The Complainant claims to have gained popularity, reputation and is widely known through use of its trademark "POSTPE".

6.1.3. The Complainant states that the trademark POSTPE is registered in India in classes 9, 35, 36, 38 and 42 for both word mark wef 28th April, 2021 and logo mark which wef 11th June, 2021 (as per Para IV (10) of the complaint).

6.1.4. The Complainant submits it is the owner and proprietor of registered domain name www.bharatpe.com (registered on 15th November, 2017) www.postpe.app and www.postpe.club. The Complainant also has a very strong social media presence on social media platforms. The Complainant claims to have a specific Facebook page (<https://www.facebook.com/postpeapp>), YouTube page (https://www.youtube.com/channel/UCCv8hcA0jYMu77_MC39X7mw/about), Twitter page (<https://twitter.com/postpeapp>) and Instagram page (<https://www.instagram.com/postpeapp/>) as per Para V(18) of the complaint.

6.1.5. In addition, the Complainant has also developed and launched a mobile app under the POSTPE mark. Through the said Mobile Application, a customer can avail the services of the Complainant anywhere and anytime, through their handheld device. Complainant claims that ever since the launch of the Mobile Application, the same has become extremely popular amongst consumers. The said Mobile Application is available through

various platforms including Google Play Store available at (<https://play.google.com/store/apps/details?id=com.postpe.app>) and at Apple App Store (<https://apps.apple.com/in/app/postpe/id1586002156>). The said Mobile Application has received over Twenty-Eight lakh downloads till date (as per Para V (19) of the complaint).

- 6.1.6. The Complainant also submits that its trademark BHARATPE was coined and adopted and has been used honestly and with bonafide intent since 1st Aug., 2016. The trademark POSTPE and the other brand trademarks of the Complainant has brought monumental business success. In only 3 years, the Complainant has become one of the youngest unicorns in the country with a valuation of more than US\$ 3 billion. The Complainant has also become the fastest growing/leading fintech companies in India processing 1367 lac UPI transactions a month with an annualized Transaction Processed Value (TPV) of over US\$ 16 billion. The Complainant has raised close to INR 43,136,821,746 (approx. figure) in equity and INR 649 crores debt, from seasoned and top-quality investors from across the world (as per Para 8 of the complaint).
- 6.1.7. The Complainant received a banking license from RBI and has launched its banking services under the trade name Unity Small Finance Bank. Unity Small Finance Bank, promoted by the Centrum-BharatPe combine, is looking to target over 100 million members of Payback - a loyalty programme company BharatPe acquired in June - to become a digital bank.
- 6.1.8. The Complainant submits that it has received several awards and accolades. In August 2019, the Government of India and Ministry of Electronics and Information Technology (MEITY), while recognizing the Complainant's efforts to help digitize India at the grassroots level, awarded the Complainant for Innovation in Digital Payment at its annual awards. In 2020, the Complainant was listed in the CB Insights List of the

world's most promising fintech companies wherein the Complainant was amongst top 20 Indian start-ups. In December 2020, the Complainant was featured in the Next 50 in Global Tech 2020: Fintech list at the World Innovation Awards. The Complainant also won at the NASSCOM Fintech Awards 2021 for the 'Lending' category. The Complainant won Gold in the 'Best Payment and Fintech Awards' category for Excellence in Payments at IAMAI's 11th India Digital Awards. The Complainant has received various other awards (as listed in the complaint in Para V (11)).

6.1.9. The Complainant submitted that the disputed domain name www.postpe.co.in is identical to and is clear imitation of the 'POSTPE' trademark and has been used with an intention to deceive and mislead consumers at large. The Respondent has no legitimate interest or right in the domain name and has registered it to mislead consumers and capitalize on the Complainant's reputation and goodwill (as per **Annexure 4** of the complaint).

6.1.10. Further, the Complainant has never granted any authorization, license or any rights to the Respondent to use the trademark. However, to make unfair commercial gain and to tarnish the trademark of the Complainant, the Respondent registered the disputed domain name www.postpe.co.in using the trademark "POSTPE" in its entirety. The Respondent has not shown its registration and use of disputed domain name in connection with any bona fide offering of goods and services.

6.1.11. In addition, the Complainant submitted that the Respondent has registered the mark in bad faith and is using its trademark illegally. Such use is to attract internet traffic by creating a likelihood of confusion with the Complainant's name or mark and to make unjust monetary gain by falsely projecting an association or affiliation with the Complainant.

6.1.12. The Complainant sent a legal notice dated 5th October, 2021 to the Respondent directing the Respondent to cease all usage of the POSTPE

Mark and takedown and transfer the Disputed Domain Name to the Complainant (as per **Annexure 5** of the complaint). The Respondent did not respond to the legal notice and refused to respond to any further communication attempts made by the Complainant.

6.2. Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 8(b) reads as follows:

"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."

6.2.3 Further the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance with law."

6.2.4 In present arbitration, despite due service, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.

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7. Discussions and Finding

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right
- b) The Respondent has no rights or legitimate interest in the domain name and
- c) The Respondent's domain name has been registered or is being used in bad faith

7.2 **The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))**

The Complainant submitted that it owns trademark registrations using the word "POSTPE" in India and has filed documents of its registered trademark to prove its right in the trademark "POSTPE" (as per **Annexure 3** of the complaint). The Complainant submitted that POSTPE is a trademark well recognized amongst the consumers and has huge goodwill on internet as well. Thus, the trademark has popularity and has been continuously associated with Complainant and is extensively used with regard to UPI and QR based code services.

The Arbitrator finds that the disputed domain name www.postpe.co.in is clearly identical and deceptively similar to Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted documentary evidence to prove its rights and ownership in POSTPE mark. A cursory glance at the disputed domain name <postpe.co.in> makes it obvious that the Respondent has exactly incorporated the essential elements of the Complainant's POSTPE mark

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and thus the disputed domain name is identical/ deceptively similar to the Complainant's mark.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for the purposes of UDRP standing. (*Dell Inc. v George Dell & Dell Netsolutions*, case no. D2004-0512 (WIPO Aug 24, 2004), *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000).

The disputed domain name consists of "POSTPE", the Complainant's trademark in entirety, followed by ccTLD ".co.in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125(2010); *Viacom International Inc. v. MTV ALBUMS-Mega Top Video Albums Peter Miadshi*, WIPO case No. D2002-0196 (April 16, 2002); *Wal Mart Stores Inc. v. Kuchora Kal*, WIPO case no. D2006-0033 (March 10, 2006). The Complainant has relied on numerous decisions of WIPO panel regarding registration of domain names similar to the domain registered by the Respondent. The Complainant has relied on *Daifuku, Co., Ltd. v. X Herb Garden* (WIPO Case No. D2003-0075), *AREVA v. St. James Robyn Limoges*, (WIPO Case No. D2010-1017), *Facebook, Inc. v. Ronal Yau* (WIPO Case No. DIO2020-0001).

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As the Respondent's disputed domain name incorporates entire mark of Complainant's trademark POSTPE, the Arbitrator finds that the Respondent's domain name is identical or confusingly similar to Complainant's registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interest in respect of the domain name (Para 4(b))

Under para 6 of the INDRP policy, a Respondent can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to 'POSTPE' trademark, in which the Complainant enjoys substantial reputation and goodwill including registration of trademark in India (annexed as **Annexure 3** of the complaint). Complainant alleges Respondent has no legitimate interest in the disputed domain name and has brought on record web shots of disputed domain name wherein complainant's logo and other content from its website is copied allegedly without authorization (as per **Annexure 4** of the complaint).

Despite service of notice to file its reply, the Respondent failed to file its reply to the averments and claims made in the Complaint. Further, the Respondent has failed to prove any rights or legitimate interests in the disputed domain name/trademark 'POSTPE.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. Complainant has also submitted that it has not authorized nor licensed Respondent to use its POSTPE mark and Respondent has failed to rebut the same. The Complainant submits that the Respondent has registered the disputed domain name with a view to engage in unfair commercial use of the mark POSTPE with the sole aim to make illegal monetary benefits from unauthorised use of the goodwill and reputation of the Complainant's mark

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POSTPE. The Complainant has relied on *Cavinkare Pvt. Ltd. v. LaPorte Holdings, Inc and Horshiy, Inc.*, (WIPO Case No. D2004-1072).

Complainant contends that Respondent has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. Further, the Complainant submitted that the Respondent does not have any rights or legitimate interest in the disputed domain name and it intends to make unjust and illicit commercial profits. The Arbitrator is of the view that unlicensed and unauthorized use of domain name incorporating complainant's trademark proves respondent has no legitimate rights nor interest in the domain name pursuant to ICANN Policy 4(b).

The Disputed Domain Name currently points to a website that offers identical finance related services as the Complainant and that the public is likely to be confused into thinking that the Disputed Domain Name has a connection with the Complainant and that there is a likelihood of confusion as to source, sponsorship, affiliation, or endorsement.

It is the Respondent's responsibility to determine whether the Respondent's domain name registration is likely to infringe or violate someone else's rights. The Respondent has failed to discharge this burden as well. Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name. the Complainant has relied on *Nobelstiftelsen (The Nobel Foundation) v. Ousainou Jeng* (WIPO Case No. D2011-1385).

Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

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7.4 The Registrant's domain name has been registered or is being used in bad faith (Para 4(c))

For the purpose of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant submitted that 'POSTPE' trademark has acquired considerable amount of goodwill with respect to UPI and QR interface making it a preferred choice of millions of merchants. The Complainant has secured registration of the mark "POSTPE" in classes 9, 35, 36, 38 and 42 (annexed as **Annexure 3** with the Complaint) and has millions of merchants in India using it. The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.postpe.co.in despite prior knowledge to make unfair gains which amounts to bad faith registration. The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case No. D2012-2395 and *Carige Vita Nuova S.P.A. v. Vita Nuova Public Organization, Domain Management / Whois Privacy Services by Domain Protect LLC*, WIPO Case No. D2010-1912, *Burberry Limited v. Ruo Chang*, WIPO Case No. D2010-1304).

The Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain showing its unfair use by Respondent. This is evident from **Annexure 4** of the complaint.

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WIPO Overview 3.0 notes in Section 3.14 “panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. The same principle is relied on in *Adobe Inc. v. Amin Mohammad Salehi, Uranos*, case no. DIR2020-0006, June 30, 2020.

Despite notice, Respondent failed to submit its response and evidence to claim bonafide registration of disputed domain name in respect of its offering of goods/services. Such registration and use is likely to mislead the consumers of an affiliation with Complainant which amounts to bad faith registration under .IN policy.

Thus, Arbitrator finds that Respondent’s disputed domain name is likely to mislead the consumers by creating a likelihood of confusion with the Complainant’s name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). It is a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).

For the aforestated reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395).

For the aforestated reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

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8. DECISION

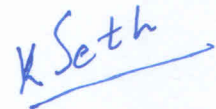
On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.postpe.co.in to the Complainant.

The Award is passed on this 19 May 2022

Place: Noida



Dr. Karnika Seth

Sole Arbitrator