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Description of Document : Article 4 Affidavit
Property Description : NIXI AWARD PASSED BY DR. SHEEAL VOHRA IN INDRP 1536
Consideration Price (Rs.) : 101
(One Hundred And One only)
First Party : SHEETAL VOHRA
Second Party : SHEETAL VOHRA
Stamp Duty Paid By : SHEETAL VOHRA
Stamp Duty Amount(Rs.) : 101
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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP CASE NO: 1536
ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR DR. SHEETAL
VOHRA, LLB, LLM, PHD (LAW) ADVOCATE, DELHI HIGH COURT
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION POLICY
(INDRP)**

IN THE MATTER OF:

Swiss Arabian Perfumes Ind, LLC,
P.O. Box No. 1615, Saif Zone,
Sharjah, UAE

...Complainant

Versus

Wu Yu
No. 134, Daxue East RD, Xixiangtang,
Guangxi Material School, Nanning,
Guangxi, 53001, China

...Respondent

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

The Complainant in this administrative proceeding is Swiss Arabian Perfumes IND. LLC, having its address at Shaqaeq Tower, Office no. 101, P.O. Box no. 1615, Saif Zone, Sharjah, United Arab Emirates., which has filed the present complaint under rules framed under the INDRP. A copy of the INDR Policy was attached with the Complaint and marked as **Annexure – 1**.

Sheetal Vohra

The Complainant's authorized representative / counsel in this administrative proceeding is:

Mr. Amit Mehta
G-23/186, Sector-7,
Rohini, Delhi-110085
Ph.: +91-011-47057860
Email: office@saiandmehta.com

2. RESPONDENT

The Respondent/Registrant of the Disputed Domain Name is one Wu Yu of the address No. 134, Daxue East, Rd., Xixiangtang District, Nanning, Guangxi Materials School, Nanning, Guangxi, China-530001. A copy of the complete WHOIS details of the Respondent/Registrant as provided by NIXI was annexed with the amended Complaint and marked as **Annexure-2**.

The Respondent's contact details are:

Wu Yu
No. 134, Daxue East, Rd., Xixiangtang District, Nanning, Guangxi Materials School,
Nanning, Guangxi, China-530001.
Email: wy65535@126.com
Phone: 86.13153

The Respondent did not engage any counsel / advocate in the present administrative proceeding and neither did the Respondent file any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

II. THE DOMAIN NAME AND REGISTRAR:

The Disputed Domain Name is: www.swissarabian.in

The Disputed Domain Name is registered with IN Registry.

The accredited Registrar of the Disputed Domain Name is Dynadot.com.

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The Registrar's contact information is as under:

Dynadot, LLC

Dynadot Staff

United States

Ph: 6502620100

Email: info@dynadot.com;

A copy of the webpage being hosted at the disputed domain name was annexed with the Complaint and marked as **Annexure – 4**.

III. PROCEDURAL HISTORY:

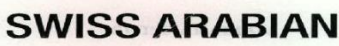

March 24, 2022	Date of Complaint
April 08, 2022	Sole Arbitrator appointed to adjudicate the dispute
April 08, 2022	Arbitral proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
April 23, 2022	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on April 09, 2022.

Hence this award is proceeded with on basis of the available pleadings and documents only.

Shreeta Wadia

CASE OF THE COMPLAINANT

The Complainant relied upon its following trademark registrations in support of the domain complain:

S. no.	Trademark	Class	Status	Specification of Goods
1		3	Registered (#2237146)	perfumes, toiletries, cosmetics and aerosols
2		3	Registered (#2237147)	perfumes, toiletrie, cosmetics and aerosols

Copies of registration certificates and status pages of each of the aforesaid trademark registrations of the Complainant were filed with the Complaint and marked as **Annexure-5 (Colly)**. A perusal of records of Indian Trade Marks Registry show that the aforesaid two trademarks have been registered in the name of Shirley May International FZE (Saif Zone) with user claim in India since 17/02/2008. It has been claimed by Complaint in succeeding paragraph that Complainant incorporated one of its group companies, i.e., Shirley May International FZE (Saif Zone) in 2001. It was further submitted that in the same year, the Complaint, along with its group companies, also adopted and started using SWISS ARABIAN as a trademark.

IV. FACTUAL AND LEGAL BACKGROUND:

About the Complainant:

1. It was submitted that the Complainant was founded in the year 1974 by Mr. Hussein Adam Ali, a visionary young man from Yemen with a wealth of knowledge and a deep passion for perfumery. It was submitted that the Complainant has been using the mark SWISS ARABIAN since 1974. It was submitted that the Complainant incorporated one of its group companies, i.e., Shirley May International FZE (Saif Zone) in 2001. It was submitted that in the same year, the Complaint, along with its group companies, also adopted and started

Shirley May

using SWISS ARABIAN as a trademark. It was submitted that the Complainant has been using the mark SWISS ARABIAN since 1974.

2. It was submitted that the Complainant is a pioneer in perfumes and over the years, it grew from strength to strength. It was submitted that the Complainant company was enriched by its association with Givaudan SA, one of the world's largest and most respected manufacturers of exclusive perfume ingredients. It was submitted that it has a very huge marketing network across the globe including in India.
3. The Complainant submitted that it is the first perfume manufacturer in the UAE. It operates five modern manufacturing facilities spread across an area of 165,000 sq. ft. and over 1200 employees. It was submitted that the Complainant is producing more than 35 million bottles of perfumes annually and export to over 80 countries, with more than 1000 sales points and more than 112 Outlets across GCC & Africa (including India). It was submitted that the Complainant became the first perfume company in the U.A.E. to achieve ISO 9001 Quality Management Certification. The Complainant submitted that its stringent adherence to quality standards like ISO 9001, ISO 22716, ISO 14001 and OHSAS 18001 standards enables it to provide superior quality products to its customers that meet the highest level of expectation. It was submitted that the products of the Complainant are also available and sold online through various e-commerce platform including Ebay, Amazon, Flipkart, Snapdeal as well as its own website hosted at <https://www.swissarabian.com>. A copy of the webpages hosted at the website www.swissarabian.com was annexed with the Complaint as **Annexure – 6**.
4. It was submitted that the Complainant has a strong distribution network having more than 1000 retail sales points across the globe including in India.
5. The Complainant further submitted that it has been conferred with many prestigious awards and recognition for its quality products available under various brands including the flagship brand SWISS ARABIAN. It was submitted that this includes Swiss Arabian Kashkha -Fragrance of the year (Arabian Popular Appeal-Female Category) for the year 2011; Swiss Arabian Kashkha - Fragrance of the year (Arabian Popular Appeal-Female Category) for the year 2012; Swiss Arabian Attar Al Ghutra -Fragrance of the year (Arabian Popular Appeal- Male Category) for the year 2013.

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6. It was submitted that the Complainant also owns domain name registration for <swissarabian.com> since at least September 26, 1998 and hosting an active business website. It was submitted that the said website is accessible from India and a large number of users from India access the same on a regular basis for the purchase of Applicant's products. It was submitted that the Complainant also owns domain name registration for <swissarabiangroup.com>, <swissapg.ae>, <swissa.ae> and <swissarabian.us>. A copy of the WhoIs record for the domain names owned by the Complainant (through its Director Mr. Nabeel Adam Ali) featuring the mark SWISS ARABIAAN were annexed with the Complaint and marked as **Annexure – 7**.
7. It was submitted that in order to secure statutory protection, the Complainant has filed applications for the trade mark SWISS ARABIAN and variations thereof in respect of various goods and services in different classes and has also obtained registrations for the same in various countries including in India. A list of worldwide trademark registrations owned by the Complainant by itself or through its group companies and registration certificates were annexed with the Complaint and marked as **Annexure – 8 (Colly)**.
8. It was submitted that the Complainant has also successfully enforced its rights in the mark SWISS ARABIAN before the Hon'ble Bombay High Court. It was submitted that the Complainant has succeeded in Suit No. 367 of 2016 before the Hon'ble Bombay High Court whereby it restrained M/s Swiss Arabian Perfumes from using the mark "SWISS ARABIAN". A copy of the order dated October 4, 2016 passed by the Hon'ble Bombay High Court in favour of Shirley May International FZE (Saif Zone), Plaintiff before Hon'ble High Court of Bombay was annexed with the Complaint and marked as **Annexure – 9**.
9. It was submitted that much reputation and valuable goodwill have accrued to the Applicant and its trade mark SWISS ARABIAN by reason of uninterrupted use, sales, sales promotion work and also by reason of the superior quality of goods sold thereunder in various countries. It was submitted that the Complainant's worldwide sales and revenue figures in respect of the various products sold under the trade mark SWISS ARABIAN runs into millions of U.A.E. Dirham. The Complainant provided a table of its worldwide sales figures in respect of the brand SWISS ARABIAN since 2002 as under:

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Year	Amount AED (UAE Dirhams)
2002	27,767,708
2003	28,146,948
2004	34,500,871
2005	31,903,387
2006	32,096,281
2007	33,066,244
2008	39,526,844
2009	40,549,284
2010	45,057,608
2011	45,085,469
2012	46,275,079
2013	51,794,461
2014	50,675,041
2015	50,018,712
2016	56,375,129
2017	52,498

10. It was submitted that owing to the quality products and overwhelming goodwill and reputation, the mark SWISS ARABIAN has been awarded the status of SUPERBRANDS in 2019. A copy of the award was annexed with the Complaint and marked as **Annexure – 10**.

11. It was submitted that owing to long, consistent and extensive use of the mark SWISS ARABIAN worldwide and the significant goodwill and reputation earned by the Complainant, the mark SWISS ARABIAN has not only attained goodwill and reputation arising from use of the mark in India but has also attained trans-border reputation in India, from diffusion into India of the reputation and goodwill outside India.

12. It was submitted that in India, the Complainant has exclusive stores in New Delhi and Kerala. A print of webpage hosted at <https://swissarabian.com/in/store-locator/> was

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annexed with the Complaint and marked as **Annexure - 11**.

13. It was submitted that the Complainant is also making sales in India by way of direct sales. The details of direct sales made by the Complainant were annexed with the Complaint and marked as **Annexure - 12**.

14. It was submitted that the Complainant recently became aware of the domain name <swissarabian.in> registered in the name of the Respondent. It was submitted that the Registrant has redacted its details from the WhoIs records and thus, the Complainant approached NIXI seeking details of the registrant of the disputed domain name vide email dated 23.03.2022.

The Complainant relied upon the following grounds in support of the Complaint and its claim that the disputed domain name has been adopted in *malafide* manner:

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights;

(Policy, para. 4(i), Rules, para 3(b)(vi)(1))

- a. It was submitted that the disputed domain name fully incorporates and is confusingly similar to the trademark SWISS ARABIAN registered in favor of the Complainant.
- b. It was submitted that the disputed domain name <swissarabian.in> is identical and/or confusingly similar to the Complainant's prior registered, used, and well-known trademark SWISS ARABIAN as it incorporates and reproduces the Complainant's registered trademark "SWISS ARABIAN" in its entirety and differs only in respect of addition of the country code Top Level Domain (ccTLD) extension ".in" which is insignificant.
- c. It was submitted that due to overwhelmingly long, consistent, and extensive use, the Complaint has become known by the SWISS ARABIAN mark. It was submitted that the Complainant has statutory as well as common law rights in the SWISS ARABIAN mark and the disputed domain name is confusingly similar to the mark SWISS ARABIAN. The Complainant sought to place reliance on the UDRP Complaint titled *Society of St. Vincent de Paul, Council of the United States v. Alex Yip*, (D2004-0121) dated May 25, 2004)

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wherein the WIPO Panel held that “*Complainant having been known by the acronym SVDP and having common law trademark rights in that acronym, this Panel finds that the disputed domain name which incorporates the acronym in its entirety and sequentially, is confusingly similar to the mark in which Complainant has rights.*”

- d. It was submitted that the Complainant extensively and prominently uses the mark SWISS ARABIRAN, as well as domain names incorporating the mark in disseminating, marketing, and advertising its goods/services. Further, it was also submitted that considering the Complainant’s rights in the domain name - particularly in <**swissarabian.com**> - the disputed domain name viz. <**swissarabian.in**> is identical and confusingly similar to the Complainant’s mark. The Complainant relied upon the INDRP Complaint no. 050 *ITC Limited v. Vishal*, dated November 30, 2007 wherein the NIXI Panel held that “*In the present case not only is the trademark entirely incorporated in the domain name, the second level domain name is identical to the Complainant's domain name in the dot com domain. Where the Respondent registers a domain name that is identical to the Complainant's domain name used for its official website in another domain it is held to be confusingly similar*”.
- e. It was submitted that the Complainant has rights in the mark SWISS ARABIAN, and the domain name <swissarabian.in> is confusingly similar to the mark SWISS ARABIAN.

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B. The Respondent has no rights or legitimate interests in the disputed domain name;

(Policy, para. 4(i), Rules, para 3(b)(vi)(2))

- a. It was submitted that the Respondent has no rights or legitimate interest in the disputed domain name swissarabian.in. It was submitted that the Complainant has never assigned, licensed, or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever.
- b. It was submitted that the Respondent does not have any rights or legitimate interest in respect of the disputed domain name swissarabian.in. It was submitted that the Complainant has never authorized or licensed Respondent to use the SWISS ARABIAN mark. It was submitted that the Complainant does not have any past dealings with the Respondent.
- c. The Complainant submitted that the webpage hosted at the disputed domain name <swissarabian.in> carries sponsored listings/advertisements, which redirects Internet users to third party business sites. It was submitted that the use of the disputed domain name swissarabian.in by the Respondent using the Complainant's well-known trademark to redirect Internet users to other websites is not a bona-fide use and does not confer rights or legitimate interests upon the Respondent. The Complainant referred to the INDRP Case no. 125 dated February 14, 2010 titled *Lego Juris A/S v. RobertMartine* wherein it was held that no legitimate rights and interest vested in the Respondent therein when the said Respondent was using the disputed domain name for redirecting internet users to other websites. The Complainant also relied on another INDRP Case bearing no. 122 titled *Sandvik Intellectual Property AB v. Yan Wei* dated December 23, 2009 wherein the NIXI Panel ordered transfer of the disputed domain name where the Respondent parked the domain name to earn revenue through adds display on the website. It was submitted that the webpage hosted at the disputed domain name swissarabian.in depicts no other activity. A copy of the webpage hosted at the disputed domain name was annexed with the Complaint as **Annexure – 4**. At the time of passing of this award, on clicking on the domain name swissarabian.in, the status shown is that... “*The domain has expired and may be available at auction. If this is your domain, you can still renew it*”.

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- d. It was submitted that the Respondent is generating internet traffic to derive income; and such use is not recognized as *bonafide* use under the Policy. The Complainant referred to *Lego Juris A/S v. RobertMartine* bearing no. INDRP/125 dated February 14, 2010. (Panel holding no legitimate rights and interest of the Respondent when he was using the disputed domain name for redirecting internet users to other websites); The Complainant relied on *Sandvik Intellectual Property AB v. Yan Wei*, INDRP/122 (NIXI December 23, 2009) (panel ordering transfer of the disputed domain name where the Respondent parked the domain name to earn revenue through adds display on the website).
- e. It was submitted that the Respondent is not commonly known by the domain name and has not acquired any trade/service mark rights to the knowledge of the Complainant. It was submitted that the Respondent is not making any legitimate non-commercial and fair use of the domain name.
- f. It was submitted that the Respondent is engaged in a monetization exercise with intent for commercial gain by misleadingly diverting consumers. It was also submitted that the Respondent was providing third party links for the hyperlinks like ‘Dubai Company, ‘Old Perfume Dubai’ etc. which, the Complainant submitted, also amounts to misrepresentation.
- g. It was submitted that the Respondent is not commonly known by the domain name and has not acquired any trade/service mark rights to the knowledge of the Complainant.
- h. It was submitted that the Respondent is not making any legitimate non-commercial and fair use of the domain name swissarabian.in and referred to the INDRP Case in *Tata Motors Ltd. v. Mr. Baliram Devtwal* bearing no. INDRP/898 dated June 15, 2017 . The INDRP Panel held in this case that “*the mere addition and difference in top level domain names of the words like ‘.in’ does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for any legitimate or charitable purpose. He is trying to earn unlawfully out of the registration of disputed domain name, by taking disadvantage of similarity of disputed domain name with the Complainant’s name, fame, goodwill and global recognition.*”
- i. It was submitted that the Respondent has no legitimate rights and interests in respect of the domain name <swissarabian.in>

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C. The domain name is registered and being used in bad faith
(Policy, para. 4(i), Rules, para 3(b)(vi)(3))

- a. The Complainant submitted that bad faith is implicit in the registration of the disputed domain name. It was submitted that the Respondent registered the disputed domain name in issue on March 31, 2021, by which time the Complainant has been using the mark SWISS ARABIAN mark for more than 40 years.
- b. It was submitted that in view of (i) Complainant's statutory and common law rights in the mark SWISS ARABIAN (ii) the use of the mark by the Complainant for several years prior to Respondent's registration of the disputed domain name, (iii) Complainant's prior use of the SWISS ARABIAN mark on the Internet, in other domain names and as a trade name, (iv) the tremendous fame, goodwill, and reputation associated with this mark, and (v) the content of the Respondent's website, it is impossible to conceive of any circumstance in which Respondent could have registered the disputed domain name swissarabian.in in good faith or without knowledge of the Complainant's rights in the mark SWISS ARABIAN.
- c. The Complainant further submitted that the Panel can infer Respondent's knowledge of Complainant's rights in the SWISS ARABIAN mark based on its widespread registration and use of these marks existing at the time when Respondent registered the disputed domain name. The Complainant referred to the UDRP Panel decision in *Unisys Corp. v. Unisys Consulting, LLC* bearing no. D 2004-0138 dated April 15, 2004 wherein it was observed that the respondent had knowledge of the complainant's mark in consideration of the wide recognition of the complainant's mark, as well as the complainant's registration and use of its mark.

Shreeta Wadia

- d. It was submitted that the very fact that the Respondent is using the disputed domain name swissarabian.in in relation to a click through page itself shows that the Respondent has registered the disputed domain name in bad faith. It was submitted that the Respondent would be deriving a financial benefit from the web traffic diverted through the domain name to linked websites on the webpage hosted at the disputed domain name. The Complainant submitted that this showed that Respondent has intentionally attracted unwary internet users to its website and other on-line locations for commercial gain through confusion as to the source, affiliation or endorsement of the website or location. Reliance was placed on *Bacarrat SA v. Doreen Jungnickel/Darius Herman Domcreate* bearing INDRP no. 018 dated October 6, 2006 wherein the Panel stated that it was established beyond reasonable doubt that by parking of the domain in a pay per click site "S E D O", the Respondent is deriving commercial benefit from the likely confusion with the Complainant's trademark which indicate the registration and use of domain name in bad faith. The Complainant also relied on WIPO decision *Compart AG v. Compart.com/Vertical Axis, Inc.* bearing no. D2009-0462 dated July 9, 2009 wherein it was held that the use of a domain name for Pay Per Click parking page amounts to bad faith use.
- e. The Complainant alleged that the Respondent was offering the disputed domain name for sale on the webpage hosted at the disputed domain name which conclusively established the bad faith of the Respondent. In this regard, the Complainant referred to the WIPO case titled *Refer Elite Model Management Corporation v. Wesley Perkins* bearing no. D2006-0297 dated May 15, 2006 wherein it was held that that "[T]he offer for sale of the domain names in dispute through Sedo show that Respondent registered the domain names in dispute for the purpose of renting, sharing or selling the domain name registrations to a competitor of Complainant for valuable consideration in excess of Respondents documented out-of-pocket cash related to the acquisition of the domain name in dispute."
- f. It was further submitted that the Respondent is a habitual cyber-squatter. The Complainant cited the UDRP Panel decision of *Belfius Bank S.A. / Belfius Bank N.V. v. Wu Yu* (D2021-1879) dated WIPO August 6, 2021 wherein it was held that:
- "The Panel has independently established that the Respondent has been found to have acted in bad faith by at least one, but probably more, UDRP Panels. The Panel*

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has verified, using publically (sic) accessible historical WhoIs data, that the Respondent was the unsuccessful respondent in Indeed Inc. v. Wu Yu, WIPO Case No. DQA2019-0002, based on the Respondent's email address. There are numerous other UDRP cases decided against a respondent named "Wu Yu" of China, including of the same province as the Respondent.

The Panel has independently established, through publically accessible reverse WhoIs databases, that the Respondent is, or was in the past, the registrant of almost 4,000 domain names, many of which seem to have been registered in bad faith, taking advantage of well-known trademarks, e.g. <blizzardgames.us> (legitimate site of well-known games producer: "www.blizzard.com"), which is offered for sale with a minimum price of EUR 800; <facebk.cm>, used for PPC advertising relating to Facebook and offered for sale; <fastandfurious8sitemoviemad.us>, taking advantage of the well-known movie franchise FAST & FURIOUS, used for PPC advertising and offered for sale with a minimum price of USD 800; and <suzukibikes.us>, also used for PPC advertising relating to the well-known motorbike brand SUZUKI and offered for sale.

The present case would appear consistent with this modus operandi. It is clear that the Respondent has engaged in a pattern of bad faith registration and use of third-party trademarks and this case is merely a continuation of that pattern. A pattern of bad faith conduct is relevant in assessing bad faith generally (WIPO Overview 3.0 at sections 3.2.1 and 3.2.2), and paragraph 4(b)(ii) of the Policy is eminently applicable here."

A copy of the Order dated August 06, 2021 passed by the WIPO Administrative Panel in the above matter was annexed with the Complaint and marked as **Annexure-13**.

V. PARTIES CONTENTIONS:

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A. COMPLAINANT

- a. The disputed domain name www.swissarabian.in is identical and / or confusingly similar to the Complainant's prior registered, used and well-known trademark 'SWISS ARABIAN' registered in favour of the Complainant.
- b. The disputed domain name incorporates and reproduces the Complainant's registered "SWISS ARABIAN" trademark in its entirety and differs only in respect of addition of country code Top Level Domain extension ".in".
- c. The Complainant has statutory as well as common law rights in its SWISS ARABIAN mark.
- d. That considering the Complainant's rights in its domain name www.swissarabian.com, the disputed domain name is identical and confusingly similar to the mark and domain name of the Complainant.
- e. The Respondent does not have any rights or legitimate interest in the disputed domain name.
- f. The Complainant has never authorized or licensed the Respondent to use the SWISS ARABIAN mark.
- g. The webpage hosted at the disputed domain name carries sponsored listings/advertisements which redirects Internet users to third party business sites.
- h. The Respondent's use of the disputed domain name is intended to generate income and is not *bonafide*.
- i. The Respondent is not commonly known by the disputed domain and has not acquired any trade/service mark rights to the knowledge of the Complainant.

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- j. The disputed domain name was registered by the Respondent in bad faith.
- k. The Respondent registered the disputed domain name only by the time when the Complainant had already been using the SWISS ARABIAN mark for over 40 years.
- l. The fact that the Respondent is using the disputed domain name in relation to a click through page diverting the web traffic to the websites linked to the webpage on the disputed domain name shows the Respondent's bad faith in registering the disputed domain name.
- m. The Respondent offering the disputed domain name for sale on the webpage conclusively establishes Respondent's bad faith.
- n. The Respondent is a habitual cyber-squatter, as evident from WIPO Panel decision in *Belfius Bank S.A. / Belfius Bank N.V. vs. Wu Yu* (D2021-1879).

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:

The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

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

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also

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gone through documents filed by the Complainant with the Complaint. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually deceptively similar to the trademark and domain name of the Complainant over which the Complainant, who is prior adopter, prior user and the Complainant / its Group Companies are registered proprietor of the 'SWISS ARABIAN' trademarks as well as the domain names with the word SWISS ARABIAN, thus having absolute and sole rights. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name www.swissarabian.in and hence the same needs to be transferred to the Complainant. I hold that the company name / trade name / trade mark / house mark / domain name SWISS ARABIAN and the device marks



and

SWISS ARABIAN

have solely and exclusively

become associated and recognized with the Complainant and its affiliates / Group Companies. I hold that due to such exclusive association of the SWISS ARABIAN word



marks as well as the “

” and “

SWISS ARABIAN”

device marks and the variations thereof with the Complainant, and also considering the prior registered domain name of the Complainant / its affiliates / Group Companies containing the SWISS ARABIAN mark, the Complainant alone has the right to utilize the SWISS ARABIAN trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the SWISS ARABIAN word as well as the



and

SWISS ARABIAN

device marks and the same are

associated only with the Complainant.

Shreeta Wale

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights;

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name www.swissarabian.in is identical and / or confusingly similar to the registered “SWISS ARABIAN” trademarks of the Complainant / its affiliates / Group Companies for the following reasons:

- a. I find that the disputed domain name <swissarabian.in> is identical and/or confusingly similar to the Complainant’s / its affiliates / Group Companies prior registered and used trademark SWISS ARABIAN as it incorporates and reproduces the Complainant’s / its affiliates / Group Companies registered trademark “SWISS ARABIAN” in its entirety and differs only in respect of addition of the country code Top Level Domain (ccTLD) extension “.in” which is insignificant.
- b. I find that due to overwhelmingly long, consistent, and extensive use, the Complaint / its affiliates / Group Companies have become known by the SWISS ARABIAN mark. I find that the Complainant / its affiliates / Group Companies have statutory as well as common law rights in the SWISS ARABIAN mark and the disputed domain name is confusingly similar to the mark SWISS ARABIAN.
- c. I find that the Complainant / its affiliates / Group Companies extensively and prominently uses the mark SWISS ARABIAN, as well as domain names incorporating the mark in disseminating, marketing, and advertising its products / business. I also find that the Complainant’s / its affiliates / Group Companies rights in the domain name - particularly in <swissarabian.com> - the disputed domain name viz. <swissarabian.in> is identical and confusingly similar to the Complainant’s mark.
- d. Therefore, in view of the abovesaid findings, I hold that the conditions under Paragraph 4(a) of the INDRP stand suitably established.

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B. The Respondent has no rights or legitimate interests in the domain name;

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Respondent has no right or legitimate interest in the disputed domain name <www.swissarabian.in> for the following reasons:

- a. I hold that the Respondent has no rights or legitimate interest in the disputed domain name. I note that the Complainant has never assigned, licensed, or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever.
- b. I find that the Complainant has never authorized or licensed Respondent to use the SWISS ARABIAN mark. I note that the Complainant does not have any past dealings with the Respondent.
- c. I find that the Respondent is not commonly known by the domain name and has not acquired any trade/service mark rights to the knowledge of the Complainant. I find that the Respondent is not making any legitimate non-commercial and fair use of the domain name.
- d. Therefore, in view of the abovesaid findings, I hold that the Respondent has no rights or legitimate interests in respect of the disputed domain name under the provisions of Paragraph 4(b) and Paragraph 6 of .IN Policy.

C. The domain name is registered and being used in bad faith.

I hold that the Respondent has registered the impugned domain name in bad faith as per Paragraph 7(c) of the INDRP for the following reasons:

- a. I find that bad faith is implicit in the registration of the disputed domain name. I find that the Respondent registered the disputed domain name in issue on March 31, 2021, by which time the Complainant had been using the mark SWISS ARABIAN mark for more than 40 years.
- b. I note that in view of (i) Complainant's / its affiliates / Group Companies statutory and common law rights in the mark SWISS ARABIAN (ii) the use of the mark by the

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Complainant / its affiliates / Group Companies for several years prior to Respondent's registration of the disputed domain name, (iii) Complainant's / its affiliates / Group Companies prior use of the SWISS ARABIAN mark on the Internet, in other domain names and as a trade name, and (iv) the goodwill, and reputation associated with this mark, it is impossible to conceive of any circumstance in which Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark SWISS ARABIAN.

- c. I find that the Respondent's knowledge of Complainant's / its affiliates / Group Companies rights in the SWISS ARABIAN mark can be inferred from its widespread registration and use of these marks existing at the time when Respondent registered the disputed domain name.
- d. I find that the very fact that the Respondent is using the disputed domain name in relation to a click through page itself shows that the Respondent has registered the disputed domain name in bad faith. I find that the Respondent would be deriving a financial benefit from web traffic diverted through the domain name to linked websites on the webpage hosted at the disputed domain name. I find that this shows that Respondent has intentionally attracted unwary internet users to its website and other on-line locations for commercial gain through confusion as to the source, affiliation or endorsement of the website or location.
- e. I further find that the Respondent at the time of filing of the Complaint was offering the disputed domain name for sale on the webpage hosted at the disputed domain name, which conclusively establishes the bad faith. In this regard, I find it opportune to rely upon the WIPO decision in D2006-0297 titled *Elite Model Management Corporation v. Wesley Perkins* where it was held that "[T]he offer for sale of the domain names in dispute through Sedo show that Respondent registered the domain names in dispute for the purpose of renting, sharing or selling the domain name registrations to a competitor of Complainant for valuable consideration in excess of Respondents documented out-of-pocket cash related to the acquisition of the domain name in dispute."
- f. I further find that the Respondent is a habitual cyber-squatter, as is evident from the WIPO panel decision in *Belfius Bank S.A. / Belfius Bank N.V. v. Wu Yu* (D2021-1879) which was

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a UDRP domain complaint against the Respondent herein. It was observed in this case that there were numerous UDRP cases decided against a respondent named “Wu Yu” of China including of the same province as the Respondent, who is also the Respondent in the present administrative proceedings. It was held that the Panel had “*established, through publicly accessible reverse WHOIs databases that the Respondent is, or was in the past, the Registrant of almost 4000 domain names, many of which seem to have been registered in bad faith, taking advantage of well-known trademarks.*” It was further observed that the Respondent had engaged in a pattern of bad faith registrations and use of third-party marks and that that UDRP case was merely a continuation of that pattern. It was held that a pattern of bad faith conduct was relevant in assessing bad faith generally. Hence, I hold that the Respondent is a habitual cyber-squatter and it is beyond doubt that the disputed domain name has been registered in bad faith.

- g. Hence, in light of the above notings and findings, it is clear that the Respondent’s registration of the disputed domain name www.swissarabian.in is in bad faith, and without sufficient cause.

In view of all the above facts and well-known legal precedents, I find and hold as under:

- That the disputed domain name www.swissarabian.in is confusingly similar to the ‘SWISS ARABIAN’ trademarks of the Complainant / its affiliates / Group Companies.
- That the Complainant / its affiliates / Group Companies have acquired statutory as well as common law rights in the SWISS ARABIAN trademark
- That the disputed domain name is confusingly similar to the SWISS ARABIAN trademark of the Complainant / its affiliates / Group Companies.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name www.swissarabian.in.
- That the Complainant / its affiliates / Group Companies have never authorized or licensed Respondent to use the SWISS ARABIAN marks.
- That the Respondent is not commonly known by the disputed domain name and has not acquired any trade/service mark rights to the knowledge of the Complainant, hence, the Respondent is not legitimately non-commercial and fair use of the disputed domain name.
- That the disputed domain name has been registered in bad faith.
- That the Complainant / its affiliates / Group Companies are senior user in respect of the SWISS ARABIAN trademarks by over 40 years as compared to the Respondent.

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- That it is impossible to conceive of any circumstance in which Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's / its affiliates / Group Companies rights in the SWISS ARABIAN trademarks.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent <SWISSARABIAN.IN> to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 28th day of April, 2022.



Dr. Sheetal Vohra

Sole Arbitrator

Date: 28/04/2022