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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL60723116377769U
Certificate Issued Date : 15-Jul-2022 02:57 PM
Account Reference : IMPACC (SH)/ dlshimp17/ SAKET/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1704195812525147U
Purchased by : SRIDHARAN R RAM KUMAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SRIDHARAN R RAM KUMAR
Second Party : NIXI
Stamp Duty Paid By : SRIDHARAN R RAM KUMAR
Stamp Duty Amount(Rs.) : 100
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P. Kulkarni

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY**

INDRP Case No: 1572

IN THE MATTER OF:

Mattel, Inc,

333, Continental Boulevard,

El Segundo, California 90245-5012,

United States of America

Telephone – 91-120-4847550

Fax – 91-120-4847551

E-Mail – shwetaree@fiduslawchambers.com

...Complainant

VERSUS

Raja Khan,

Raja Medical Hall,

Main Road Bhangra,

Karimganj, Assam-788701

Telephone: (+91) 8135935335

E-mail: raja.drugs@gmail.com

...Respondent

AWARD

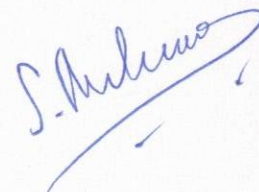
I. THE PARTIES:

1. COMPLAINANT

The Mattel Inc. is a company registered under the Companies Act, 1956, with its registered office at, 333, Continental Boulevard, El Segundo, California 90245 – 5012, United States of America (hereinafter the Complainant or Mattel).

2. RESPONDENT

The Respondent in the present complaint is Raja Khan, having his address as Raja Medical Hall, Main Road Bhangra, Karimganj, Assam- 788701



II. THE DOMAIN NAME AND REGISTRAR:

It was submitted that the domain name www.barbiedoll.in (hereinafter referred to as “disputed domain name”) is the subject matter of the present Complaint. It was submitted that the Registry is the National Internet Exchange of India (henceforth referred to as *NIXI*). The sponsoring Registrar with whom the domain name is registered is indicated as:

GoDaddy.com, LLC
14455 North Hayden Road,
Suite 219 Scottsdale,
AZ 85260
United States of America

III. PROCEDURAL HISTORY:

<u>Date</u>	<u>Particular</u>
May 19, 2022	Date of Complaint
June 03, 2022	The .IN REGISTRY appointed Sridharan Rajan Ramkumar as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.
June 04, 2022	Arbitral proceedings were commenced by sending notice to Respondent through e-mail 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 within 15 days of receipt of same.
June 19, 2022	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on June 04, 2022.

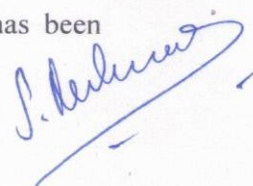
IV. FACTUAL AND LEGAL BACKGROUND:

1. It was submitted that the Complainant is a leading global toy company and owner of one of the strongest portfolios of children's and family entertainment

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franchises in the world. It was submitted that it owns some of the world's best-known and beloved brands, including BARBIE, FISHER-PRICE, HOT WHEELS, AMERICAN GIRL, THOMAS & FRIENDS, UNO and MEGA BLOKS. It was submitted that the Complainant employs around 25,000 people in 40 countries and territories and sells products in more than 150 nations. Web extracts of the 'about us' and 'awards' pages from Complainant's official website www.mattel.com were annexed as **Annexure-A**.

2. It was submitted that the Complainant adopted the trademark BARBIE in 1959 after one of the co-founders of the Complainant, Ruth Handler, observed her daughter Barbara playing with paper dolls and went on to create a 3-D doll for girls to play out their dreams. It was submitted that in 1959, the first doll under the trademark BARBIE named after Ruth's daughter made its debut at the New York Toy Fair, revolutionizing the toy industry forever. It was submitted that since then, the brand and character BARBIE has grown to become a global icon, inspiring girls everywhere to be anything.
3. It was submitted that the brand and character BARBIE is one of the most iconic figures in popular culture across the world. It was submitted that the influence of the dolls under the trademark BARBIE on young girls can be seen by the fact that the doll has had over 180 careers over the years which include six-time Presidential Candidate, astronaut (which was in 1965, years before Neil Armstrong reached the moon), Goodwill Ambassador for UNICEF, tennis player, baseball player, palaeontologist, computer engineer, doctor, architect, entrepreneur and film director etc. Relevant extracts from "www.barbiemedia.com" and third-party websites, showing some of the career's BARBIE has had over the years was enclosed collectively as **Annexure B**.
4. It was submitted that the trademark BARBIE has been licensed across different categories present in a wide variety of categories. It was submitted that BARBIE has grown to become an all-encompassing lifestyle brand. It was submitted that there is an official website of the Complainant, www.barbiecollector.com which redirects now to the Complainant's website www.barbie.mattel.com, which caters exclusively to BARBIE aficionados and collectors. Some excerpts from the membership page and the blog are enclosed as **Annexure C**.
5. It was submitted that the Complainant has several mobile applications under the trademark BARBIE which feature games involving the life of the BARBIE character. It was submitted that the mobile application "BARBIE Fashion Closet" has been



downloaded over 10 million times on the Google Play Store. Extracts from the Apple App Store, and Google Play Store are collectively enclosed as **Annexure D**.

6. It was submitted that the Complainant's website "www.shop.mattel.com" offers products under the trademark BARBIE for sale and "www.barbie.mattel.com" provides information about the BARBIE brand, its history, its upcoming launches etc. It was submitted that the said websites are accessible to people across the world, including in India. Some extracts from the website are collectively enclosed as **Annexure E**.
7. It was submitted that the Complainant's brand BARBIE has a strong presence on social media as well. It was submitted that the Facebook page of BARBIE has 15.2 million followers on Facebook and the Instagram account of BARBIE has 2.2 million followers. It was submitted that BARBIE's vlog (video blog) on YouTube has over 10.9 million followers. It was submitted that the immense popularity of the trademark BARBIE on social media further indicates its global fame and reputation. Extracts from the Complainant's social media accounts are enclosed collectively as **Annexure F**.
8. It was submitted that the products under the trademark BARBIE have been advertised through television commercials, newspapers, and magazines adding to the reputation and goodwill of the Complainant's trademark BARBIE. Extracts from newspapers and popular publications covering recent BARBIE-related developments are enclosed as **Annexure G**.
9. It was submitted that the Complainant introduced the doll under the trademark BARBIE in India at least as early as 1987 and has been continuously, extensively, and uninterruptedly been using the trademark BARBIE in India since then for a wide range of goods and services. It was submitted that the Complainant has an extensive distribution network for its products and services under the trademark BARBIE in India. It was submitted that the products under the trademark BARBIE are also being manufactured in India for a number of years. It was submitted that in the 1990s, the Complainant introduced dolls under the trademark BARBIE in an Indian avatar, specifically aimed at the Indian market.
10. It was submitted that the Complainant's products under the BARBIE trademark are also available on popular Indian e-commerce marketplaces such as on www.amazon.in ("Amazon"). The Complainant has a dedicated store on Amazon and web extracts of these are enclosed as **Annexure H**.



11. It was submitted that the Complainant has over 1800 registrations for the trademark BARBIE in over 100 countries. An indicative list of the Complainant's registrations for its trademark BARBIE is enclosed as **Annexure I**.
12. It was submitted that In India, Complainant has registered the trademark BARBIE under The Trade Marks Act, 1999 ("Act") in several classes and details of some such registrations is as under:

Trademark	Registration No.	Class	Date of Registration
BARBIE	444951	28	31/10/1985
BARBIE	678299	16	28/08/1995
BARBIE	678300	25	28/08/1995
BARBIE	847694	03	09/02/1999
BARBIE	847695	06	09/02/1999
BARBIE	847696	09	09/02/1999
BARBIE	847697	14	09/02/1999
BARBIE	847698	18	09/02/1999
BARBIE	847699	21	09/02/1999
BARBIE	847700	24	09/02/1999
BARBIE	847702	26	09/02/1999
BARBIE	1058090	30	09/11/2001
BARBIE	1058091	32	09/11/2001
BARBIE	1058092	05	09/11/2001
BARBIE	1058093	11	09/11/2001
BARBIE	1058094	12	09/11/2001
BARBIE	1058095	20	09/11/2001
BARBIE	1823784	35	29/05/2009
BARBIE	2187654	41	08/08/2011
BARBIE	3376400	8, 29	29/09/2016

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Copies of trade mark registration certificates for aforementioned trademarks were enclosed as **Annexure J**.

13. It was submitted that relevant to Complainant's trademark BARBIE, the Complainant also owns the below mentioned domain names in its favour:

Domain name	Registration Date
<barbie.com>	19 th June 1996
<barbie.in>	2 nd May 2007
<barbiemedia.com>	20 th October 2008
<barbiedoll.com>	6 th January 1998
< <u>barbiecollector.com</u> >	17 th December 1996

Copies of Whois extracts of the aforementioned domain name registrations of the Complainant have been annexed to this Complaint as **Annexure K**.

14. It was submitted that on the basis of its trademark rights in BARBIE, the Complainant has been successful in several domain name disputes under the Uniform Domain Name Dispute Resolution Policy ("UDRP"). It was submitted that the details of such UDRP decisions in the Complainant's favour are as below:

<u>Particulars</u>	<u>WIPO Case</u> <u>Number</u>	<u>Domain name(s)</u>	<u>Decision</u> <u>Date</u>
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Mattel, Inc V. PrivacyProtect.org / Stuparu Darius	<u>D2012-1281</u>	barbiedollmaker.com dressupgames.biz dressupgames.info dressupgames.net dressupgames.org games4u.com barbiegames4u.com bratzbarbiedressup.com fairybarbiegames.com fashionbarbiedolls.com fashionbarbiegames.com fashionbarbiegirls.com freebarbiegames.biz freebarbiegames.info freebarbiegames.org barbie.net games-barbie.org	barbie- barbie- barbie- barbie- barbie- games- games-	13th August 2012
Mattel, Inc V. Domains by Proxy, Inc./Above.com Domain Privacy	<u>D2011-2264</u>	barbiedressupgames.net		23rd February 2012
Mattel, Inc V. Maria Morariu	<u>D2011-2229</u>	barbiedollgames.net barbie.com	jocuri-	8th February 2012
Mattel, Inc V. Glaciar State S.L.	<u>DES2009-0040</u>	barbiestore.es		8th November 2009

15. It was submitted that the Complainant had recently come across the disputed domain name which was registered on 5th July 2020. It was submitted that the disputed domain subsumes the Complainant's registered trademark BARBIE in its entirety. It was

submitted that this amounts to infringement of the Complainant's rights in the trademark BARBIE. It was submitted that at the time of filing the instant Complaint, the disputed domain name was valid till 5th July, 2022. The WHOIS extract of the disputed domain were enclosed as **Annexure L**.

16. It was submitted that the disputed domain name resolves into a website ("Respondent's Website"). It was submitted that although made to appear like a blog about Complainant's products, the Respondent's website contains hyperlinks which enable the Respondent to monetize the Complainant's trademark BARBIE. It was submitted that Respondent's website suggests its visitors to purchase BARBIE branded dolls and provides weblinks for making such purchases. It was submitted that webpages on the Respondent's website mention the text "GET OFFER – Get the best deal on all the Original Barbie doll from Amazon India". It was submitted that this hyperlinked text redirects to BARBIE doll product listings on the website "www.amazon.in" ("Amazon") and several of such products are counterfeits of Complainant's BARBIE branded products. Extracts of Respondent's Website showing the concerned weblinks were annexed as **Annexure M**.

17. It was submitted that the Respondent is an affiliate under the Amazon's affiliate marketing program and therefore earns commissions on each purchase made using the weblinks which the Respondent has embedded in its website. One of the Amazon affiliate links embedded in Respondent Website are as below and screen shots of these webpages were enclosed as **Annexure N**.

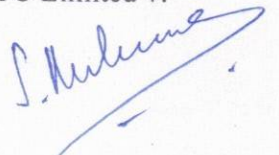
- a. https://www.amazon.in/s?k=barbie+dolls+birthday+gift&language=en_IN&crd=2YH45GL51XXWX&linkCode=sl2&linkId=9186894a7f0c93d75e5c359147e00a3c&srefix=barbie+doll+as+birth%2Caps%2C500&tag=bestdisc007da21&ref=as_li_ss_tl
- b. https://www.amazon.in/s?k=barbie+dolls+set+for+girls&language=en_IN&crd=88UI9XR4XCXS&linkCode=sl2&linkId=a976628360424282997354ff54a914de&srefix=barbie+doll%2Caps%2C1391&tag=bestdisco07da-21&ref=as_li_ss_tl
- c. https://www.amazon.in/s?k=barbie+doll&language=en_IN&linkCode=sl2&linkId=78319086759609d09bec00bd8ff3a8a5&tag=bestdisco07da-21&ref=as_li_ss_tl

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18. It was submitted that Respondent's weblinks are customised links under the Amazon affiliate marketing program. It was submitted that any purchase made using these links provides monetary compensation to the Respondent. It was submitted that by using the Complainant's trademark BARBIE in the disputed domain name, the Respondent is not only driving traffic to its website but also profiting from sale of counterfeit BARBIE products. It was submitted that Respondent's use of the disputed domain name subsuming the Complainant's trademark BARBIE, is clearly with an intention of commercial gain by misleadingly or diverting consumers. It was submitted that such indiscriminate hyperlinking to Amazon product listings, several of which are unauthorised, will also tarnish the goodwill and reputation of the Complainant's trademark BARBIE.
19. It was submitted that with a view to offer the Respondent an opportunity to address its concerns, the Complainant sent a legal notice dated 14th January, 2022 to the Respondent at its email address r.d@live.in which has been mentioned on its website. A copy of the legal notice was enclosed as **Annexure O** along with the email delivery confirmation. It was submitted that the Respondent did not respond to the Complainant's legal notice.

V. DISCUSSION

1. **The Respondent's domain name is identical to a name, trademark/ trade name in which the Complainant has rights:**
- a) It was submitted that the disputed domain name [<barbiedoll.in>](http://barbiedoll.in) subsumes the Complainant's trademark BARBIE in its entirety and hence is identical to the Complainant's trademark.
 - b) It was submitted that the Complainant has established that it has statutory and common law rights in the trademark BARBIE and such rights predate the registration of the disputed domain name by decades. It was submitted that the Complainant is also the holder of a domain name registration for [<barbiedoll.com>](http://barbiedoll.com) which is prior to the disputed domain name [<barbiedoll.in>](http://barbiedoll.in).
 - c) It was submitted that past INDRP decisions have held that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of INDRP, ITC Limited v.



Travel India (INDRP Case No. 065), Allied DOMEQ Spirits and Wine Limited v. Roberto Ferrari (INDRP Case No. 071), International Business Machines Corporation v. Zhu Xumei (INDRP Case No. 646) and Jaguar Land Rover v. Yitao (INDRP Case No. 641).

- d) It was submitted that the presence of a generic and descriptive word namely 'doll' in the disputed domain name, does not affect the finding of identity or confusing similarity for the purpose of INDRP. It was submitted that the Complainant relies on past INDRP decision in Advance Magazine Publishers Inc v. Abhishek Singh (INDRP Case No. 1240).
- e) It was submitted that the Complainant also relies on past INDRP decisions in Nike Inc. v. Nike Innovative CV Zhaxia (Case No. INDRP/804); Metropolitan Trading Company v. Chandan Chandan (Case No. INDRP/811); Lego Juris A/s v. Robert Martin (Case No. INDRP/125), where it was held that if a disputed domain name completely incorporates the trademark / service mark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's disputed domain name.
- f) It was submitted that in the present case, the disputed domain name is identical to the Complainant's trademark BARBIE and the Complaint has successfully satisfied the first requirement set out in clause 4(a) of the INDRP.

2. The Respondent has no rights or legitimate interests in respect of the domain name;

(a) It was submitted that under clause 6 of the INDRP, any of the following circumstances, if found by the Arbitrator, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:

- Before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bonafide* offering of goods or services; or
- The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- The Respondent is making a legitimate non-commercial or fair use of the



domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

- (b) It was submitted that none of the above circumstances are present in the present dispute. It was submitted that the disputed domain name has not been used in connection with *bonafide* offering of goods or services by the Respondent. It was submitted that the disputed domain name is being used by the Respondent to attract consumers by portraying itself as an affiliate of the Complainant and then making illegal profits by misdirecting the consumers to the BARBIE products sold on Amazon, several of which are counterfeits.
- (c) It was submitted that Respondent's use of the disputed domain name is for commercial gain as the Respondent's website is full of Amazon affiliate links which the Respondent's intends to profit from. It was submitted that Respondent has no legitimate interest in the disputed domain name, rather the sole purpose of its registration is to misappropriate the reputation associated with the Complainant's famous trademark BARBIE.
- (d) It was submitted that the Complainant has not authorised, licensed, or permitted the Respondent to register or use the domain name or to use the trademark BARBIE. It was submitted that the Complainant clearly has prior rights in the trademark BARBIE which precedes the registration of the disputed domain name.
- (e) It was submitted that the Complainant has therefore established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name. It was submitted that the Complainant relies the decisions in Eurocopter, an EADS Company v. Bruno Kerrien Case No. INDRP Case No. 116, Voltas Ltd. v. Sergi Avaliani, INDRP Case No. 1257, Hitachi Ltd v. Kuldeep Kuamr INDRP Case No. 1092, Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624; and Payoneer, Inc. / Payoneer Europe Limited v. Korchia Thibault, Quinv S.A. WIPO Case No. DEU2019-0013.
- (f) It was submitted that in light of the above, the Complainant has successfully satisfied the second requirement set out in clause 4(b) of INDRP.

3. The disputed domain name has been registered in bad faith;

- a) It was submitted that under clause 7(c) of the INDRP, if by using the domain name, the Registrant has intentionally attempted to attract users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location; then the Arbitrator shall take this as evidence of the registration and use of a domain name in bad faith.
- b) It was submitted that the Complainant submits that the circumstance mentioned in clause 7(c) of INDRP is indeed present in the instance case. It was submitted that the Respondent has registered the disputed domain name subsuming the Complainant's trademark BARBIE with the sole reason of attracting Internet users to its website. It was submitted that by using the disputed domain name, the Respondent is attracting users to its website and redirecting them to Amazon product listings under the Complainant's trademark BARBIE in a hope to make commercial gains. It was submitted that moreover, several of such product listings are unauthorised and the products are counterfeits of Complainant's products under BARBIE.
- c) It was submitted that by using the disputed domain name, the Respondent is creating likelihood of confusion via-a-vis the Complainant's trade mark BARBIE. It was submitted that one of the chief and most popular products under the Complainant's trademark BARBIE are dolls. It was submitted that Respondent's use of the word 'doll' in conjunction with 'barbie' in its domain name <barbiedoll.in> solely rides on the reputation of the Complainant's trademark.
- d) It was submitted that the Complainant relies on past decisions in Bharti Airtel Limited vs. Rajeev Garg, INDRP Case No. 285, Merck KGaA vs. Zeng Wei – INDRP Case No. 323, General Motors India Pvt. Ltd. & Anr. vs. Anish Sharma – INDRP Case No. 799, and Sensient Technologies Corporation v. Katrina Kaif, Corporate Domain – INDRP Case No. 207, where respondent's bad faith was found from intentionally attempting to attract for gain Internet users to the respondent's website or other online



location by creating a likelihood of confusion with complainant's mark. It was submitted that the Respondent is also guilty of trademark infringement and passing off the Complainant's trademark BARBIE.

- e) It was submitted that several UDRP panels have consistently found that it ought to be presumed that the Respondent had constructive notice of the Complainant's trademark and its goods and services if it was shown by the Complainant to be well known or in wide use on the Internet or otherwise. It was submitted that such knowledge of the Respondent is an indicator of bad faith on its part in having registered the disputed domain name. The Complainant relied on *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. D2009-0320 and *The Gap, Inc. v. Deng Youqian*, WIPO Case No. D2009-0113. It was submitted that the Respondent had constructive knowledge of the Complainant's rights in the trademark BARBIE, by way of Complainant's legal notice dated 14th January, 2022.
- f) It was submitted that clause 3(d) of the INDRP requires a registrant to not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It was submitted that the obligations imposed by clause 3(d) are an integral part of the INDRP applicable to all registrants, cannot be ignored as was observed by the Ld. Arbitrator in *Momondo A/S v. Ijorghe Ghenrimopuzulu*, INDRP Case No. 882. It was submitted that the Respondent had an onus to ensure that the registration of disputed domain name did not violate the Complainant's trademark rights in BARBIE. It was submitted that the disputed domain name has been registered and is being used in bad faith.

VI. PARTIES' CONTENTIONS:

1. COMPLAINANT

- (a) The Respondent's domain name is identical to a name, trademark/ trade name in which the Complainant has rights.
- (b) Respondent has no legitimate interest in the domain name.
- (c) Respondent has registered the domain name in bad faith.

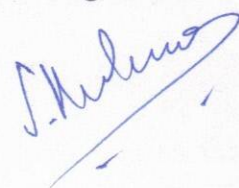
2. RESPONDENT

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. That I have received no Response / Reply to the Complaint on behalf of the Respondent though proper service was effected to her email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit its reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

VII. FINDING

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

- that that the Respondent's domain name is deceptively similar/identical to the trademark/ trade name in which the Complainant has rights;
- that the disputed domain name BARBIEDOLL.IN registered by the Respondent incorporates the Complainant's well-known BARBIE trademarks in their entirety;
- that due to the fame of the distinctive and reputation of the trade mark BARBIE, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant;
- that the Respondent has no rights or legitimate interests in respect of the domain name;
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances;
- that Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the BARBIE trademark;
- that the Complainant has prior rights in the trademark BARBIE which precedes the registration of the disputed domain name by the Respondent;
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name;
- that the disputed domain name has been registered in bad faith;
- that the disputed domain name is deceptively similar to the Complainant's registered trademark, BARBIE in which the Respondent cannot have any rights or legitimate interest;



VIII. 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 "BARBIEDOLL.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 15th day of July 2022.



Sridharan Rajan Ramkumar
A Sole Arbitrator

Date: 15/07/2022