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Property Description	: Not Applicable
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ARBITRATION AWARD

INDRP CASE No. 1602

United States Polo Association [Complainant] v *Taxmikant Shrotri*

[Respondent]

Disputed Domain Name: USPA.CO.IN
BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA
DATED: November 17, 2022



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[illegible]

ARBITRATION AWARD

In the matter of:

**United States Polo Association
1400 Centrepark Blvd, Suite 200,
West Palm Beach, FL 33401
United States of America**

[Complainant]

Disputed Domain Name:

<uspa.co.in>

-v-

**Laxmikant Shrotri,
313 Mahatma Society, Kothrud,
Pune, Maharashtra 411038
India**

[Respondent]

INDRP CASE No. 1602**1. The Complainant**

The Complainant is United States Polo Association, having address at 1400 Centrepark Blvd., Suite 200, West Palm Beach, Florida - 33401, United States of America.

2. The Respondent

The Respondent was until recently identified as Laxmikant Shrotri, 313 Mahatma Society, Kothrud, Pune, Maharashtra 411038 [Annexure 9 of the Complaint].



3. The Registrar

The Registrar with which the domain name is registered is: Net4India/Dynadot, LLC

4. Disputed Domain Name

<USPA.CO.IN>

5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy -.INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.

6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.



- (ii) Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on September 1, 2022 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1602] on September 1, 2022.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent's email ID: ishrotri@hotmail.com from its email ID in accordance with the Rules.
- (v) Complainant has vide email dated September 12, 2022 submitted a proof of service of hard copies of the Complaint and the Annexures to the Respondent. It further affirmed that the complaint and the annexures have been sent to the Respondent email ID on September 8, 2022.
- (vi) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated September 15, 2022 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit. However, in view of receipt of email failure notice while serving the said Notice dated September 15, 2022, I realized that the Respondent although had the hard copy of the complaint and the annexures but has no information as to the email ID of the Arbitrator in order to file a Reply.

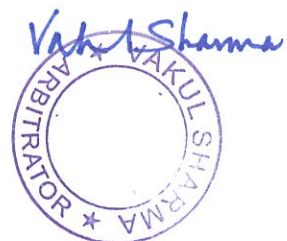


- (vii) It was felt that the Respondent should be given another opportunity to file its Reply. I, therefore issued a Notice dated October 3, 2022 to the Respondent granting another twenty days to submit its Reply, if any, failing which the Respondent right to file Reply stands closed and the Complaint shall be decided *ex-parte* on the basis of merits of the Complaint. The aforesaid Notice further provided email IDs of the Arbitrator for submission of Reply. Furthermore, the Complainant was also directed to serve a hard copy of the said Notice to the Respondent's address given in the complaint and submit a proof of delivery. The directions were subsequently complied by the Complainant.
- (viii) Despite giving a final opportunity, the Respondent has failed to submit any reply and hence vide notice dated October 3, 2022, I informed both the parties that *"the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint."*
- (ix) The Arbitration Award is now pronounced on this day, i.e., November 17, 2022 after considering the contentions of the Complainant, evidence on record and the Policy framework under my signatures. This is an ***ex-parte order*** as the Respondent has failed to file their Reply despite being given adequate opportunity.

7. Contentions of the Complainant

Complainant submits as follows:

- (i) The Complainant was founded in 1890 and is the second oldest official governing body of the sport of polo in the United States. The Complainant in pursuit of its



objective is to promote the game of Polo, launched its exclusive official brand-
“U.S. Polo Assn.” (“USPA”). Under this brand, the Complainant offers apparel for
men, women and children, as well as accessories, and travel and home goods in
approximately 185 countries across the world. Reliance is placed on Annexure(s) 1
& 2.

- (ii) The Complainant’s extensive sales and its global outreach are a result of worldwide
distribution of the Complainant’s products through over 1,100 U.S. Polo Assn.
branded stores, as well as many thousands of independent retail and department
stores and e-commerce platforms. There is huge spread of the Complainant’s
branded stores operating across India. Reliance is placed on Annexure 3.
- (iii) The Complainant’s trademark “USPA” is an abbreviation for the Complainant’s
trade name/trademark “United States Polo Association” and it was adopted in the
year 1983. Thereafter, the Complainant commenced use of its brand “USPA” in
India as far back as 1999. Reliance is placed on Annexure 4 evidencing Screenshots
of the Complainant’s websites through Internet Archives dating back to December
1998.
- (iv) Accordingly, “USPA” trademark has acquired substantial goodwill and is an
extremely valuable commercial asset of the Complainant over a period of time. The
Complainant is thus the proprietor of the trademark “USPA” by virtue of priority
in adoption, continuous and extensive use, widespread advertising and the
tremendous reputation accruing thereto in the course of trade.

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- (v) The Complainant has registered USPA/U.S.POLO ASSN. under different classes of registration. Furthermore, the Complainant also holds various registrations for the mark “USPA” and its formatives globally. Reliance is placed on Annexure(s) 5 & 6. Further, in order to support the protection of the trademark on the Internet, Complainant has registered the word “USPA” and variations thereof as domain name in numerous gTLDs and ccTLDs.
- (vi) The Respondent has created the disputed domain name, as per WHOIS report on July 18, 2018 [Annexure 9].

In the context of the above, Complainant in its complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

I. Whether the domain name <uspa.co.in> registered by the Respondent is confusingly similar to the trademark “USPA” of the Complainant?

The Complainant submits that:

- (a) The disputed domain name is identical to the Complainant’s registered and well-known trademark “USPA”. The disputed domain name comprises solely of the Complainant’s well-known trademark “USPA” in its entirety. The Respondent has not even included any generic additional term to attempt a differentiation with the Complainant’s trademark “USPA”. In light of the glaring identity between the disputed domain name and that of the

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Complainant's trademark. Reliance is placed on the findings in *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Edmunds Gaidis*, Case No. D2021-0401 and *The Ritz Hotel, Limited v. Damir Kruzicevic* [WIPO Case No. D2005-1137].

- (b) It has established its rights in the trademark "USPA" on account of its extensive global use and trademark registrations. A man of average intelligence and imperfect recollection would be confused between the disputed domain name and the Complainant's trademark "USPA" as these are identical. Reliance is placed on *LEGO Juris A/S v. Domain Administrator, Rich Premium Limited / c/o WHOISTrustee.com Limited* (WIPO Case No. D2014-1565).
- (c) The user will be forced to associate/derive a nexus between the Respondent's website and that of the Complainant's popular trademark "USPA". It is further to be noted that the disputed domain name consists of links leading to third party websites selling the Complainant's goods under the trademark "USPA". Reliance is placed on Annexure 12.
- (d) The disputed domain name <uspa.co.in> is identical with the Complainant's well-known brand/trademark "USPA" in which Complainant has rights pursuant to Paragraph 4(a) of the INDRP.



II. Whether The Respondent has no rights or legitimate interests in respect of the domain name <uspa.co.in>?

The Complainant submits that:

- (a) The Respondent has registered a domain name that is identical to the Complainant's well-known trademark, without the Complainant's consent or authorization and with no rights or legitimate interests with respect of the disputed domain name.
- (b) The Respondent is not a licensee of the Complainant, nor has ever been authorized by the Complainant to use the Complainant's trademark or register the disputed domain name.
- (c) The Respondent has not made any legitimate use of the disputed domain name since its registration in August 2020. There is no evidence whatsoever of the Respondent's use of, or demonstrable preparations to use, the disputed domain name, in connection with a *bona fide* offering of goods or/ and services. To the contrary, the Respondent almost certainly registered the disputed domain name to divert Internet users to the Respondent's pay-per-click parking page. Reliance is placed on the Panel's findings in *SGII, Inc. v. New Ventures Services, Corp.* (WIPO Case No. D2019-2748) wherein, it was held that "...Moreover, Respondent's use of the disputed domain name in connection with a pay-per-click website as done here is not a legitimate


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or bona fide use.” Similar findings have been recorded in *Facebook, Inc. v. S. Demir Cilingir* (WIPO Case No. D2018-2746).

- (d) Therefore, concludes that the Respondent has no rights or legitimate interests in respect of the Domain Name according to Paragraph 4(b) of the INDRP.

III. Whether the domain name <uspa.co.in> was registered or is being used in bad faith?

The Complainant submits that:

- (a) The Respondent has registered the disputed domain name solely with an ulterior motive to make monetary profits by providing a space for advertisement of third-party websites listing the Complainant’s products.
- (b) The lack of any legitimate, good faith use suggests the Respondent’s strong bad faith. The disputed domain name was registered by the Respondent after complete knowledge of the Complainant’s extremely popular trademark “USPA” with an ill-motive to gain unfair advantage.
- (c) The Respondent is simply unlawfully monetizing on the Complainant’s goodwill and reputation by providing pay-per-click links to the Complainant’s products on the disputed domain name. Such inactivity suggests a strong bad faith on part of the Respondent. In support, the Complainant relies on the Panel’s decision in *Telstra Corporation Limited v. Nuclear*



Marshmallows, (WIPO Case No. D2000-0003), wherein the Panel held that, “...it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith.” Further in Ferring B.V. v. Domain Administrator, Fundacion Privacy Services Ltd. (Case No. D2021-0784) wherein it was observed that “As regards bad faith use, the Domain Name redirected at times to websites displaying links to third party websites, which suggests that, presumably, Respondent received PPC fees from the linked websites that were listed thereon. It has been recognized that such use of another’s trademark to generate revenue from Internet advertising can constitute registration and use in bad faith.”.

- (d) In view of the above, it is clear that the disputed domain name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

8. Respondent’s Contentions

Despite given adequate opportunities, Respondent has failed to submit any Reply.

9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent’s default does not automatically result in a decision in favour of the Complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainant must prove that:




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

The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.

I have considered the Complainant's pleadings, documentary evidence, conditions as laid down in the aforesaid Policy alongwith the relevant case law. My opinion is as follows:

- (a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?**

The Complainant has placed on record details of its 'USPA' under different classes of trademark in India and globally [Annex 5 & 6]. as documentary evidence to highlight that 'USPA' is undisputedly a well-known trademark world-wide, including India. From the documentary evidence as placed before me, it is quite evident that 'USPA', a well-known trademark is incorporated in its entirety by the Respondent in the disputed domain name <uspa.co.in>, which in my view is sufficient to establish that the Respondent's disputed domain name is identical or confusingly similar to Complainant's registered trademark. The Complainant's portfolio of domain names [both ccTLDs and gTLDs] containing domain names with 'USPA' as prefix [Para # 8 of the Complaint] demonstrate that the



Complainant's interest in the disputed domain name is legitimate and is necessary to maintain and protect its exclusive and proprietary hold over its trademark.

I consider that there is a force in the arguments of the Complainant that the disputed domain name <uspa.co.in> is confusingly similar to the Complainant's registered trademark registered under different classes. I found the concern of the Complainant genuine. It is true that a man of average intelligence and imperfect recollection would be confused between the disputed domain name and the Complainant's trademark "USPA" as these are identical. When I visited the website by typing <uspa.co.in> I did find a link "USPA Clothing" leading further to <sedoparking.com> and subsequently to third party websites selling the Complainant's goods under the trademark "USPA". I am of the view that such an arrangement of diverting potential customer to an "un-licensed" confusingly similar or identical domain name would be detrimental to the Complainant commercial but also reputational interests and such practices cannot be accepted.

I am of the opinion that the Respondent by not only registering the disputed domain name but also uploaded a website with third party links selling the Complainant's goods under the trademark "USPA" is bad in law.

Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:

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

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



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

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

(d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.

In my opinion, the Respondent has knowingly registered the Complainant's trademark in the form of virtual confusingly similar name <USPA>, which is followed by a *suffix*, CO.IN [ccTLD] to complete the domain name string <USPA.CO.IN>. I am inclined to accept the Complainant's submission that the Respondent's registration of domain name <USPA.CO.IN> confusingly similar to the Complainant's trademark with the sole purpose of unlawful gains. It only suggests that the Respondent was aware of the brand value of USPA when it registered the disputed domain name <USPA.CO.IN>. I believe that it is an attempt on the part of the Respondent to attract potential consumers to monetize web traffic to a web-page linked to <USPA.CO.IN>. It is to be noted that the Respondent has failed to deny the said evidence relied upon by the Complainant despite being given ample opportunities. I am of the opinion that the benefit under the circumstances lies with the Complainant. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(a) – (d) of the policy as mentioned above. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.



(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?

There is nothing on record to suggest that Respondent is either licensee or authorised agent of the Complainant. In other words, the Respondent has no legal right or legitimate interests in the disputed domain name. I am of the view that the Complainant has been able to demonstrate clearly that the composition of the disputed domain name constitutes clear evidence that the Respondent has been successful in diverting users looking for the Complainant to the website at the disputed domain name, consisting of a pay-per-click page featuring several sponsored links, leading to third parties' commercial websites, where products of Complainant's competitors are being offered for sale. This by no stretch of imagination can constitute legitimate non-commercial or fair use, further demonstrating a lack of legitimate interests regarding said domain name.

Also, Paragraph 6 of the INDRP provides:

6. Registrant's Rights and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b) :

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(c) the Registrant 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.



I have evaluated the evidence on record and came to a conclusion that none of the aforesaid limbs as highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. The Complainant has never authorized or licensed the Respondent to use USPA trademark in any way or for any purpose. The Respondent does not have any association or affiliation with the Complainant and neither the Complainant has any past dealing or commercial understanding with the Respondent. I accept the Complainant's contention that the registration of the disputed domain name by the Respondent lacks bonafide. Complainant has been able to establish a *prime facie* case of Respondent's lack of legitimate rights and interests in the domain name thus shifting the burden on the Respondent to show rights or legitimate interests [*Bulgari S.p.A. v DomainBook* [INDRP/1002], *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455, *Belupo d.d. v. WACHEM d.o.o.* WIPO Case No. D2004-0110, *Sampo plc v. Tom Staver* WIPO Case No. D2006-1135, *Audi AG v. Dr. Alireza Fahimipour* WIPO Case No. DIR2006-0003.]. There is not an *iota of evidence* to show that USPA trademark is exclusive and proprietary to the Respondent. It is to be noted that the Respondent has failed to counter or deny assertion made by the Complainant. I am of the opinion that the *malafide* intent of the Respondent is quite evident from webpage/website hosted by the Respondent resolving into third party commercial links offering the Complainant's products and thus clearly establishing the fact that the Respondent actions are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name. This existence or hosting of a rogue webpage/website bearing USPA trademark may never be called a legitimate activity on the part of the Respondent. In view of the above, the requirement of the Policy as stated in Paragraph 4 (b) is satisfied.



(c) Whether the Registrant's domain name has been registered or is being used in bad faith?

In the absence of any documentary evidence showing any legal arrangement with the Complainant, any use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name proves *malafide* intent on the part of the Respondent.

Further, Paragraph 7 of the policy provides:

7. Evidence of Registration and use of Domain Name in Bad Faith

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

(a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source,



sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The documentary evidence placed on record by the Complainant clearly shows that the Respondent has indeed taken advantage of the Complainant's reputation, brand value and goodwill by registering the disputed domain name <USPA.CO.IN>. The *malafide* intent is clear from the webpage/website supporting <USPA.CO.IN> resolving into third party links selling Complainant's products. I am of the view that the webpage/website resolving into clickable links leading to third party websites underline the Respondent's intention to abusively benefit from Complainant's reputation and trademark USPA to obtain commercial gains. The Respondent is taking unfair advantage of the Complainant's rights. The Complainant has been able to demonstrate that the USPA trademark is only associated with the Complainant. The Respondent/Registrant has been making money illegally by using the name and fame, of the Complainant.

In view of the above factual legal matrix, I agree that the adoption of the said mark by the Respondent is dishonest and in bad faith.

Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Registrant's registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4 (c) is satisfied.



10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <USPA.CO.IN> to the Complainant.

There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award is being sent to both the parties thru email for their information and record. NIXI is further directed to dispatch a hard copy of the award to the Respondent's address as mentioned in the Award, as the email ID of the Respondent is inoperative.



Vakul Sharma

(Sole Arbitrator)

Dated: November 17, 2022