

**INDRP ARBITRATION  
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]  
ADMINISTRATIVE PANEL PROCEEDING  
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**=In the matter of Arbitration Proceeding for the Domain name**

**<www.fairmontinn.in>**

**and in the matter of INDRP case no : 1614**

**FRHI Hotels & Resorts S.à r.l.  
a company incorporated under the laws  
of Luxembourg having its office at  
8-10 Avenue de la Gare,  
L-1610 Luxembourg,  
Grand-Duchy of Luxembourg .....**

**Complainant**

**Vs.**

**Sushil VP  
2nd Floor, Regency Tower,  
National Highway  
17, Puthiyatheru, Kannur  
Kerala 670011  
[sushilvp.psi@gmail.com](mailto:sushilvp.psi@gmail.com) .....**

**Respondent**

**ARBITRATION AWARD**

**Disputed Domain Name: <www.fairmontinn.in>**

That NIXI have appointed the undersigned as sole arbitrator pursuant to the complaint filed by the complainant M/s. **FRHI Hotels & Resorts S.à r.l.a** having its office at **8-10 Avenue de la Gare,L-1610 Luxembourg, Grand-Duchy of Luxembourg** represented through its representative in



India, by invoking this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name <*www.fairmontinn.in*> against the Registrant / Respondent Mr. Sushil VP 2nd Floor, Regency Tower, National Highway, 17, Puthiyatheru, Kannur Kerala 670011 managed by its admin: naveen.jankalaiah@gmail.com

The Complainant in the proceedings is M/s. **FRHI Hotels & Resorts S.à r.l.a having its office at 8-10 Avenue de la Gare,L-1610 Luxembourg, Grand-Duchy of Luxembourg**, , the Complainant, has business operations in many countries across the globe, including India.

The Registrant / Respondent, who had registered domain name <*www.fairmontinn.in*> through the IN. registry registrar GoDaddy.com, LLC,, the office address and other details of the Registrant / Respondent are withheld by registrar through invoking “REDACTED FOR PRIVACY ” as its details were not available earlier in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. **FRHI Hotels & Resorts S.à r.l.a having its office at 8-10 Avenue de la Gare,L-1610 Luxembourg, Grand-Duchy of Luxembourg** has filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent for registering domain name illegally but as a matter of fact a identity theft and thereby claiming a relief of transferring the registered domain name <*www.fairmontinn.in*> from the Respondent / Registrant to the Complainant herein.



The NIXI has provided the WHOIS records to the sole arbitrator on its initial proceedings that contains the name address and other details of the Registrant / Respondent and the same is being incorporated by the undersigned arbitrator for issuance of the notice in this domain complaint at first instance.

That after entering upon as sole arbitrator in the above said arbitral reference, as such, the undersigned had issued the 1<sup>st</sup> notice by way of directions to the complainant and the Registrant / Respondent herein on Dated 30th of September 2022 to comply issued directions as stated herein in the notice under time bound manner, as prescribed under the INDRP ARBITRATION rules and Procedures.

## **1. The Parties:**

1.1 The Complainant in this arbitration proceeding is M/s. **FRHI Hotels & Resorts S.à r.l.a having its office at 8-10 Avenue de la Gare,L-1610 Luxembourg**, company incorporated and existing under the laws of The France, who has invoked this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name <*www.fairmontinn.in*> against the Registrant / Respondent address details of which is provided to sole arbitrator by the WHOIS database maintained by the National Internet Exchange of India [NIXI].

## **2. The Domain Name and Registrar:**

2.1 The disputed domain name <*www.fairmontinn.in*> \_ is registered by the



IN. registry registrar M/s “REDACTED FOR PRIVACY” the registrar has withheld address and other details of the Registrant / Respondent, as such address details of the Registrant / Respondent were not available in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. **FRHI Hotels & Resorts S.à r.l.a having its office at 8-10 Avenue de la Gare,L-1610 Luxembourg** has approached NIXI for availability of the address of the Registrant / respondent herein and further filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent,

### **3. Arbitration Proceedings Procedural History:**

3.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:



3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder.

The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

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

3.3 The present Arbitral Proceedings have commenced on 30th of September 2022 by issuing of 1<sup>st</sup> notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully served by the complainant to the Respondent / Registrant through email.

3.4 Further as per the issued Notice to the Respondent / Registrant was directed to file their reply, detail statement, if any, to the above said

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complaint within 15 (fifteen) days from the date of this Notice or by **14th of October 2022**, failing which the Complaint shall be decided on the basis of the merits. The respondent / registrant namely having Mr. Mr. Sushil VP 2nd Floor, Regency Tower, National Highway, 17, Puthiyatheru, Kannur Kerala 67001 had failed to submit reply, or detail statement in the above arbitral reference even after receipt of notice of 30th of September 2022 through email address as sent under rule 5(c) of INDRP Rules and procedure for submission reply, detail statement, if any, on or before 14th of October 2022 ,

3.5 As per available email record placed, the sole arbitrator is of considered view that the respondent / registrant was duly served through listed email address and despite of receipt of this notice the Registrant / Respondent had failed to submit its reply to the sole arbitrator panel office by 14th of October 2022 .

3.6 The Registrant / Respondent reluctance to file reply, clearly proves that the respondent / registrant was not interested in pursuing the present arbitration proceedings, as such the sole arbitrator had on vide its order dated 16th of October 2022, foreclosed the right of the respondent / registrant of filing of reply and proceeded with deciding of this domain dispute complaint <*www.fairmontinn.in*> solely on merits.

#### **4. Factual Background:**

4.1 The Complainant in these administrative proceedings is M/s. **FRHI Hotels & Resorts S.à r.l.a** having its office at **8-10 Avenue de la**



**Gare,L-1610 Luxembourg, Grand-Duchy of Luxembourg** by invoking this administrative domain arbitration proceeding through it authorized signatory, in respect of domain name <*www.fairmontinn.in*> against the Registrant / Respondent

**5 .Parties Contentions:**

5.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <*www.fairmontinn.in*> illegally.

5.2 The Registrant / Respondent had failed to submit its reply or detailed statement to the sole arbitrator panel within 15 days of the issued notice but had also had failed to comply directions of the said notice as well.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <*www.fairmontinn.in*> is stated as under:

**A. Complainant Grounds for proceedings**

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*



***III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.***

The Complainant submits its detailed contentions in their complaint that are described in details as under:

**I) Background of the Complainant and its statutory and common law rights related prior Adoption and use:**

5.4 The complainant is a The Complainant (formerly known as FRS Hotel Group (Lux) S.à.r.l.), is a company organized and existing under the laws Luxembourg having its office at 8-10 Avenue de la Gare, L-1610 Luxembourg, Grand-Duchy of Luxembourg s the owner of the FAIRMONT trademarks is registered proprietor of the well-known trademark FAIRMONT.

5.5.. The Complainant company is owned by Accor, a world-leading travel and lifestyle group, having more than 5,000 hotels, resorts and residences in more than 100 countries around the world. The Complainant, together with its affiliates under common ownership and control on an established international business asone of the leading luxury hotel companies in the world

5.6 The Complainant mark 'FAIRMONT' was first adopted as a hotel name by the predecessor in interest of Fairmont Hotels in the year 1907 in San Francisco and has been in use ever since. The FAIRMONT San Francisco



hotel soon became one of the best-known hotels in the United States and is now listed on the United States National Register of Historic Places. Representative historical newspaper articles about Fairmont Hotels' business from the 1960s but through long and continuous use, excellent quality of services rendered, and due to extensive publicity and advertisements, the "FAIRMONT" trademark has become iconic in the hotel industry and in relation to residential accommodations. As one of the leading hospitality brands in the world, the name "FAIRMONT" is associated with luxury and good living both in India and all over the world.

5.7 The Complainant Fairmont Hotels has been recognized as one of the most distinguished brands in the world in the field of hospitality. Fairmont Hotels was the highest-rated brand in the Hotel (Luxury) category in the 2015 Brand Keys Customer Loyalty Engagement Index, and a study titled Luxury Insights Report Volume 1: Stewardship of Iconic and Historic Buildings, published by Fairmont Hotels in 2016

## **II) Complainant's Claim of Statutory Rights:**

5.8 Fairmont Hotels as of today has over 80 hotels and resorts under the trademark 'FAIRMONT'. can be made from jurisdictions around the world through travel Complainant's website, and in many jurisdictions through dedicated phone listings, including in India..

Trademark	Class	Registration No.	Date of Registration	Renewed Up
THE FAIRMONT	42	1240803	01/10/2003	01/10/2023



FAIRMONT Multi-class 1658125            26/02/2008            26/02/2028  
in classes=35, 36, 39,41 and 42

Due to the impeccable reputation of the Complainant around the world, the word “FAIRMONT” is associated solely with the Complainant and no one else. Moreover, the Complainant’s prior registered the domain FAIRMONT.com which features extensive information about the products and services offered by the Complainant.

5.9 The Complainant’s residential component by the name ‘FAIRMONT HERITAGE PLACE’ which enables people to purchase fractional ownership properties in destinations across the globe that are managed by and named FAIRMONT, and has also launched FAIRMONT RESIDENCES for luxury residential properties. Current FAIRMONT HERITAGE PLACE and FAIRMONT RESIDENCES property locations include, among others, Canada, the United States, Mexico, Morocco, UAE, Saudi Arabia, Turkey, and China,. The marketing of FAIRMONT HERITAGE PLACE and FAIRMONT RESIDENCES through various mediums, including on the [www.fairmont.com](http://www.fairmont.com) and <https://accorresidences.com/brand/fairmont/> websites, has also contributed considerably in increasing awareness and reputation of the trademark/ trade name ‘FAIRMONT’ including in India, in relation to accommodations of all kinds, including luxury residential properties

5.10 In India, the bookings at the Complainant’s Fairmont Jaipur Hotel can be done either through the dedicated phone listing for customers located in



India, the website of the Complainant at [www.fairmont.com](http://www.fairmont.com), or through various third-party online travel websites such as [www.markemytrip.com](http://www.markemytrip.com) and [www.goibibo.com](http://www.goibibo.com)...

5.11 The Complainant is a prior adopter, of its trade name / mark FAIRMONT and is identified by the purchasing public exclusively with the Complainant as such it has acquired an enormous goodwill in several countries across the globe including India. On account of the high degree of inherent and acquired distinctiveness, which the mark FAIRMONT is possessed of, the use of this mark or any other identical or deceptively similar mark, by any person other than the Complainant, would result in immense confusion and deception in the trade leading to infringement, passing off.

***The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.***

5.12 The Complainant is Prior adopter and user and proprietor of the trademark FAIRMONT by virtue of priority in adoption, long, continuous and extensive use and advertising and the reputation consequently running thereto in the course of trade. The Complainant is the registered proprietor of the FAIRMONT In addition to the Indian registrations, the Complainant, also owns registrations for FAIRMONT trademarks in India has exclusively used FAIRMONT as a trademark, so that it is uniformly perceived as indicative of the source of the its services emanating from the Complainant and its associated companies.



5.13 That the impugned domain name <*www.fairmontinn.in*> is visually and phonetically identical and/or confusingly similar to the Complainant's trademark FAIRMONT in which the complainant has statutory as well as common law rights. The Respondent has registered the domain name <*www.fairmontinn.in*> that solely incorporates in its entirety the Complainant's reputed trademark FAIRMONT to just to cause confusion and deception in the minds of the public.

5.14 In addition to the common law rights that have accrued to the Complainant in the trademark FAIRMONT by virtue of the aforesaid laws, the Complainant is also the registered proprietor of the trademark FAIRMONT in many classes under the Trade Marks Act, 1999 in India. The Complainant is registrants of various domain names containing its trade/service mark containing FAIRMONT.

5.15 The Respondent has copied the entire registered mark of the Complainant i.e., FAIRMONT and is using the same for providing identical services. The said use of the trademark FAIRMONT by the Registrant as part of the impugned domain name is an infringement of the Complainant's registered trademark FAIRMONT and also amounts to passing off the Respondent's services. The said trademark registrations as solely exist in favour of the Complainant around the world. The Complainant, its group of companies, its subsidiaries are the proprietors of the trademark FAIRMONT. By virtue of the said registrations, the Complainant has the exclusive right to use the trademark FAIRMONT in relation thereunder and to obtain relief in respect of the infringement of its registered trademarks.



5.16 The Complainant the Complainant, through its advocate, addressed a Cease and Desist letter dated January 13, 2021 to the Respondent. Subsequently, the Respondent through its advocate sent a response letter dated March 10, 2021 claiming that their domain name differs from the Complainant's domain name and thus, constituted a bona fide use. The Complainant's advocate responded via their letter dated April 07, 2021 reiterating the similarity between the Complainant's mark and the Respondent's impugned domain name. However, no response has been received by the Respondent or from their counsel.

5.17 The Complainant is the registered proprietor of the many marks world over having word per se FAIRMONT. The Complainant submits that as the domain name is <www.fairmontinn.in> is clearly identical / confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest As a result of the continuous and extensive use of the Complainant's trademark FAIRMONT over a long period spanning a wide geographical area coupled with extensive advertising publicity, the said trademark enjoys an unparalleled reputation and goodwill

5.18 The disputed domain name is confusingly and deceptively similar to the Complainant's FAIRMONT trademarks and its trade name, which have been extensively and continually used in numerous countries including India for many years. The Respondent has registered the domain name which comprises, the significant part of the Complainant's trademark FAIRMONT.

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In *M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. (2004 (5) SC 541)*, it was held that “Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain name also. In modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol.”

In *LEGO Juris A/S v. Robert Martin, INDRP/125 (2010)*: “It is well-recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant’s registered mark.”

In *Starbucks Corporation vs. Mohanraj, INDRP/118 (2009)*: “Domain name wholly incorporating a complainant’s registered trademark may be sufficient to establish identity or confusing similarity, despite addition of other words to such marks.”

In *FAIRMONT v. Zahir Khan, Palki Event Inc. [Case No. D2017-1124]*, the Panel observed that “the Complainant is well known in the electrical infrastructure and power generation industry”. Thus, it is inconceivable that the Respondent was unaware of the globally well-known FAIRMONT.

Further in *FAIRMONT v. Ahmed El Shaweesh, DnArab.com [Case No. D2019-1796]*, the Panel observed that “The extension “.com” is considered as a technical element and has consequently no distinguishing effect.



”Likewise, in this scenario, the disputed domain “FAIRMONTgroup.co.in” not only consists of the Complainant’s

The Complaint also relies on **Aditya Birla Management Corporation v. Chinmay INDRP/1197** wherein the tribunal observed that the Registrant is involved in cyber-squatting by registering domain name containing the well-known trade mark of the complainant and thereby gaining illegal benefits

**II) The Respondent has no rights or legitimate interests in respect of the disputed domain name**

5.21 The Complainant is the sole proprietor of the FAIRMONT trademarks and provides products and services under the mark FAIRMONT globally, including India. Consequently, the Complainant has garnered immense goodwill and reputation under the FAIRMONT trademark and the same is distinctive to the Complainant. Moreover, the disputed domain name is confusingly identical to the FAIRMONT trademarks in which the Complainant enjoys substantial reputation and goodwill.. Hence, the Respondent has no right or legitimate interest with respect to its use of the disputed domain name.

5.22 The Complainant further submits that any person or entity using the mark FAIRMONT as a domain name that too with related keyword referring to its corporate name FAIRMONT is bound to lead customers and users to infer that its product or service has an association or nexus with the



Complainant and lead to confusion and deception. It is indeed extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. [*Daniel C. Marino, Jr. v. Video Images Productions, WIPO-D2000-0598*].

5.23 The Respondent / Registrant was never authorised by the Complainant to register the impugned domain name <*www.fairmontinn.in*> hold the domain name or make use of its FAIRMONT Trademark in any manner. The Domain Name registered by the Respondent / registrant is clearly intended to “pass off” and have a free ride on its reputation and goodwill..

5.24 The Respondent has merely squatted on the domain with an intention to take unfair advantage of the Complainant’s global reputation and goodwill. Furthermore, the disputed domain name is deceptively and confusingly similar to the FAIRMONT trademarks, in which the Complainant enjoys substantial reputation and goodwill. Thus, the Respondent clearly can have no legitimate interest in the disputed domain name, which is nothing but a mere duplication of the Complainant’s prior, registered and well-recognized FAIRMONT trademarks.

5.25 The Complainant is required to make a prima facie case that the Respondent lacks rights or legitimate interest in the domain name at issue. When the complainant establishes a prima facie case that the Respondent lacks rights or legitimate interest in a domain name, then total burden

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shifts to Respondent to rebut Complainant's contentions. If Respondent fails to do so, Complainant is deemed to have satisfied the second element. In the present case, the Respondent cannot demonstrate or establish any rights or legitimate interest in the infringing domain name.

5.26 The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark **VELCRO**, in order to capitalize / profit from the goodwill associated with the famous mark. *Similarly in the INDRP matter of Velcro Industries B.V. v. Velcro Technologies [INDRP/858; Velcro Technologies.in]: "There is no showing that 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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but has been parked with the Domain Registrar, Go Daddy LLC only. It has been held that merely registering the domain name is not sufficient to establish rights or legitimate interests. [Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO-D2000-1244].*

5.27 The Respondent's act of registering the impugned domain **www.FAIRMONT.in** of which the Complainant's trade / service mark FAIRMONT forms a conspicuous part, is an infringement of the Complainant common law and statutory rights as it is vested in its registered and well-known mark FAIRMONT. There can be no plausible



explanation for the use of the mark FAIRMONT by the Respondent as the said trade service mark of the Complainant is not coined and invented term.

5.28 The Respondent using illegally the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*].

5.29 There can be no plausible explanation for the registration and use of the impugned domain name <www.fairmontinn.in> by the Respondent as the trademark /service mark **FAIRMONT** of the Complainant, which is exclusively used by the complainant, its group companies, subsidiaries. As previously stated.

Hence, it is likely that the Respondent was interested in obtaining the disputed domain name only because it is identical to a name in which the Complainant has rights and interest to extort the Complainant. Such use of a domain name does not provide a legitimate interest under the Policy.



*In L'OREAL vs Jack Sun INDRP/343 (2012)*, the learned Arbitrator observed that although the disputed domain name belonged to the Respondent, the simple use of the L'OREAL trademark in the disputed name did not confer rights or legitimate interest to the Respondent in the same. Accordingly, and for all the reasons above, the Respondent has no rights or legitimate interest in the disputed domain name as per INDRP Policy, para 6 (ii); INDRP Rules, para 4 (b) (vi) (2).

**III) The Respondent's disputed domain name has been registered or is being used in bad faith.**

5.30 The circumstances detailed above indicate that the Registrant has registered or acquired the impugned domain name with dishonest intention to mislead and divert the consumers and to tarnish the well-known trademark/ corporate name/ domain name FAIRMONT and FAIRMONT.COM of the Complainant and former use of the infringing domain name as a parking page with PPC links for financial gain, does not constitute a bona fide offering of goods or services or a legitimate non-commercial fair use. The use is neither legitimate nor fair and does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

5.31 The Complainant states in his complaint that the Respondent's act of registering the impugned domain name incorporating: the trademark of the Complainant **FAIRMONT** is a mala-fide attempt on the Respondent's part to squat over the impugned domain name and make illegal economic gains



and profits by misusing and free-riding on the unprecedented goodwill and reputation associated with the registered and well-own trademark **FAIRMONT** of the Complainant.

5.32 The Respondent knowingly chose to register and use the disputed domain name <*www.fairmontinn.in*> to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others but, given the above facts, Respondent is thus guilty of wilful suppression, concealment and misrepresentation by providing inaccurate / incorrect information to the Registry as well.

5.33 The Complainant submits that that the said act of the Respondent appears to be motivated by its nefarious intention of coercing the Complainant to purchase the impugned domain from the Respondent at an exorbitant price. In other words, this is also a clear case of domain name squatting by the Respondent. The factum of argument is that the Respondent has deliberately acquired a confusingly similar name and domain name in which the Complainant has substantial interest being its registered trade/service mark. The Respondent was very well aware of the commercial value and its significance of the various domains owned by the complainant of which the word FAIRMONT forms a conspicuous part of its mark.



In **Google Inc. Sunil K. Support Solution Aditi Sawant, Support Solution Rohit Sharma/ Vineet Sharma Deep Sunil K, FA1501001599162 (National Arbitration Forum, February 19, 2015)** the Panel held that *“Respondent’s use of the contested domain name is an attempt to capitalize on the likelihood that Internet users will be confused as to the possibility of Complainant’s association with the contested domain name and its website. Under Policy 4 (b) (iv), this stands as evidence of Respondent’s bad faith in the registration and use of the domain name. “*

In **LEGO Juris A/S v. Martin, INDRP/125 (2008)**: *“Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration.”*

In **Google Inc. vs. Chen Zhaoyang, INDRP/23 (2007)** the Panel held that *“The Respondent has taken deliberate steps to ensure to take benefit of identity and reputation of the Complainant. The Respondent also provided web services which were similar to those of the Complainant. All these factors indicated that the disputed domain name was registered and used by the Respondent in bad faith in respect of the general commercial activities.”*

#### **Contention of the Complainant:**

5.34 Firstly the Complainant submits that the Respondent has used the

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Complainant's registered well-known trademark 'FAIRMONT' as part of the impugned domain name <*www.fairmontinn.in*> in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amounting to a infringement of the complainant's rights as are vested in the trade/service: **mark 'FAIRMONT'**

5.35 Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's trade and service mark FAIRMONT, which insures and continue to insure its legitimate right to Complainant only.

5.36 The Complainant has a long and well-established reputation in the Complainant's mark. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [*Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)*].

5.37 The registration of the disputed domain name bearing the registered as a trade/service mark of the complainant is nothing but an opportunistic bad faith registration on the part of the Respondent.



5.38 It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

a) *Complainant's name was famous at the time of registration: Cho Yong Pil v. Sinwoo Yoon, WIPO-D2000-0310.*

b) *Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

c) *The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

d) *Thus, the Respondent is guilty of registering and using the disputed domain name <www.fairmontinn.in> in bad faith in terms of Para 7 of the INDRP.*

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## **B. Contention of the Respondent:**

5.39 The Respondent had not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

## **5. Discussion and Findings:**

6.1 It is evident that the Respondent knowingly chose to register and use the disputed domain name <*www.fairmontinn.in*> to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

6.2 It is further clear the Respondent / registrant redacted private policy to conceal their identity. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.



6.3 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

**[a] The Respondent's Default:**

6.4 As per INDRP Rules of Procedure, it require as defined under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) be read as follows:

*"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."*

6.5 Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:

*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*



6.6 The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint

6.7 As previously indicated; the Respondent had failed to file any reply to the Complaint and has not sought to answer nor presented its assertions, evidence or contentions in any manner against complaint. The undersigned as being arbitrator opined that the Respondent has been given a fair opportunity to present his case, thus non submission of the reply by the Respondent to the Arbitrator, entail the sole arbitrator to proceed on the Complaint in accordance to its merit.

6.8 The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

**[b] The issues involved in the dispute:**

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As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

**"Brief of Disputes:**

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

6.9 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

6.10 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.



**I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

6.11 The mark **FAIRMONT** has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

***Paragraph 3 of the INDRP is reproduced below:***

*"The Respondent's Representations:*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

*It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*



6.12 The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <*www.fairmontinn.in*> is identity theft, identical with or deceptively similar to the Complainants' <**FAIRMONT**> mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

**II. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

6.13 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

6.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.



6.15 The Respondent has failed to submit reply thus not rebutted the contentions of the Complainant and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name.

Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name *<www.fairmontinn.in>*

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

**The disputed domain name has been registered or is being used in bad faith.**

6.16 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith: *"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise*

*transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant,*

*for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent 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 Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

6.18 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and It has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.

6.19 Moreover, use of similar disputed domain name by the Respondent / Registrant would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant as disputed domain name **<www.fairmontinn.in>** , is associated exclusively with the complainant, by the trade and public in India and all over the world.

6.20 Further the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark FAIRMONT from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark FAIRMONT. Moreover, the Respondent / Registrant have redacted private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.

Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

## **6. DECISION**

7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein

7.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide. The Respondent / Registrant have clearly registered the disputed domain name in order to prevent the Complainant who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.



7.3 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

*[Relevant WIPO decisions:*

*Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thagem Global Marketing Limited v. Sanchai Aree D2002-0358; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-06611*

7.4 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. Some notable cases reaffirming this proposition are INDRP decision in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and WIPO decisions in *Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve Clicquot Ponsardin, Maison Fortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163* and *Adidas-Solomon AG v. Domain Locations Case No D 2003 04*



7.5 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent.

Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Thus it is very much clear that the Respondent / Registrant is using the disputed domain name in bad faith and 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.

***[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupo d.d. v. WACHEM d.o.o. D2004-01101***

7.6 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

7.7 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly

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incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

*FAIRMONT Sons Ltd v. mmt admin / Ok FAIRMONT byebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304*

7.8 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <*americaneagle.co.in*> by the Respondent, it was held that

*"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier.*

*A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. "*



7.9 It was observed that ***“it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights”*** and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. In the present dispute as well, the Respondent, in registering the disputed domain name, has done so in clear violation of the exclusive rights of the Complainant in the FAIRMONT name and mark. ***In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)***

The WIPO Administrative Panel in ***Veuve Clicquot Ponsardin, Maison Fondee en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163*** has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

7.10 The Registrant / Respondent's registration and use of the Domain Name is abusive and in bad faith. The Registrant / Respondent have no rights or legitimate interests in respect of the domain name.

In my considered view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <***www.fairmontinn.in***> be



transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



**SANJEEV KUMAR CHASWAL  
SOLE ARBITRATOR  
INDRP ARBITRATION NIXI**

**NEW DELHI**

**DATE 6<sup>th</sup> Nov 2022**