



सत्यमेव जयते

INDIA NON JUDICIAL

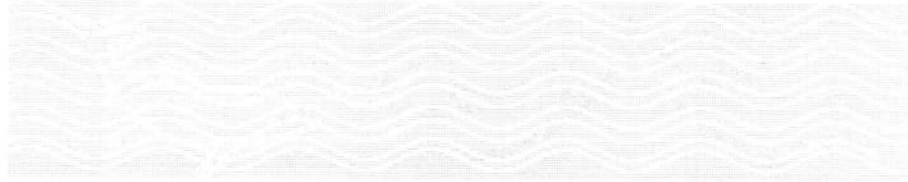
Government of National Capital Territory of Delhi

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 Account Reference : IMPACC (IV)/ dl859003/ DELHI/ DL-DLH
 Unique Doc. Reference : SUBIN-DL85900341999021591380U
 Purchased by : ROBIN R DAVID
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : ROBIN R DAVID
 Second Party : Not Applicable
 Stamp Duty Paid By : ROBIN R DAVID
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

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BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1624

IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996

FINAL AWARD

Robin R David

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BEFORE THE .IN REGISTRY OF INDIA
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IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN
NAME DISPUTE RESOLUTION POLICY
THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996

IN THE MATTER OF:

Trent Hypermarket Private Limited
Taj Building, 2nd Floor
210, Dr. D.N. Road Fort,
Mumbai – 400 001

...Complainant

Versus

Craxx Mart
Silver business hub
Sarhana jakatnaka, Surat
Gujarat – 395006

...Respondent

AND

IN THE MATTER OF

A DISPUTE RELATING TO THE DOMAIN NAME STARSBAZAR.IN

FINAL AWARD

Dated: 19th December 2022

Venue: New Delhi, India


ROBIN RATNAKAR DAVID
SOLE ARBITRATOR

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant is Trent Hypermarket Private Limited having its registered business at Taj Building, 2nd Floor, 210, Dr. D.N. Road, Fort, Mumbai – 400001 represented by Ms. Smriti Yadav, Khaitan & Co., One World Center (earlier One Indiabulls Centre), 10th and 13th Floor, Tower 1 C, 841 Senapati Bapat Marg, Prabhadevi, Mumbai 400013, Maharashtra, India.

2. The Respondent

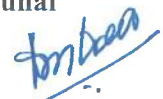
The Respondent is Craxx Mart having registered business at Silver business hub, Sarthana jakatnaka, Surat, Gujarat – 395006.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name Doodarshindia.co.in with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted 2020 (the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

Filing of the Complaint and Constitution of the Arbitral Tribunal



2. The Complainant filed the Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking transfer of the Domain Name starsbazar.in to the Complainant. On 19th October 2022, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under 5 (a) of the Rules, to act as Arbitrator in the said matter. On 26th October 2022, Mr. David gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator in compliance with the Arbitration and Conciliation Act, 1996.
3. On 26th October 2022, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator was constituted under 5(b) of the Rules in respect of the Complaint filed by Trent Hypermarket Private Limited against Craxx Mart, the Respondent.
4. On 27th October 2022, the Arbitral Tribunal issued the Notice of Arbitration under 5(c) of the Rules.
5. The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

- Domain ID: ROID- D647CAA915D714327AF2836C7FB3547C1-IN
- Creation Date: 2022-05-23T09:34:39Z
- Expiration Date: 2023-05-23T09:34:39Z
- Registrar Name: GoDaddy.com, LLC
- Registrant Name: CRAXX MART
- Registrant Address: Silver Business Hub, Sarthana Jakatnaka, Surat, Gujarat – 395006
- Registrant Phone: (+91)9999999999

- Registrant Email: craxxmart@gmail.com
- Registrant ID: Registrant Client ID- CR556531087
Registrant ROID-
CBA82BFB5C2734DD1A70CD4434D2960E6-IN
Registry Admin ID-
C422A78E9AB644500BC8F6C4CED16278B-IN
Registry Tech ID-
C25CD2EB9ABE34E389C154F602D04132FIN

IV. PROCEDURAL HISTORY

1. On 27th October 2022, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent by email with the Complaint and Annexures enclosed. The Respondent was given an opportunity to file a response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 15th November 2022. The Complaint (including annexures) was sent to the email address of the Respondent shown in the WHOIS details, accordingly, the service on the Respondent was done in accordance with Rule 2(a) of the Rules.
2. The Respondent did not respond to the notice issued on 27th October 2022. Accordingly, a further notice was issued to the Respondent on 16th November to file a response in writing to the Complaint on or before 28th November, in the interest of justice.
3. Service of the Notice of Arbitration was effected by the Counsel for the Complainant on 28th October and 16th November 2022. The same was intimated to the Tribunal by Mr. Rajeev Kumar Nambiar of Khaitan and Co. Accordingly, the Complaint (with annexures) was sent to the email address of the Respondent shown in the WHOIS details consequently, the service of the Notice of Arbitration on the Respondent was done in accordance with Rule 2(a) of the Rules.



4. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as NIXI.

V. PARTIES' CONTENTIONS

COMPLAINANT

1. The Complainant, Trent Hypermarket Private Limited states that it is the owner of the registered trademarks STAR BAZAAR and STAR with Bazaar written below and others such as STAR (with A in the word STAR) being , STAR (with star symbol after the word STAR and A in the word STAR being the STAR symbol), STAR (India bazaar), (collectively referenced as the "STAR BAZAAR Marks"). The Complainant requests that the Tribunal issues a decision that the disputed domain name registration be transferred to the Complainant and heavy cost be imposed on the Respondent as a deterrent to future bad faith registration by the said party.
2. The Complainant claims that the Disputed Domain Name <starsbazar.in> is identical or confusingly similar to Complainant's registered and distinctive trademark as the disputed domain name was adopted long after the STAR BAZAAR Marks became well known and reputed among users.
3. The Complainant avers that the addition of the country code ".in" (INDIA) to the Complainant's trademark making it confusingly and identically similar to its registered trademark/service mark and domain name. Relying on *The Hershey Company v/ Rimi Sen* (INDRP/289) which states that the addition of the country top level domain "co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Trade mark.
4. The Complainant relies with WIPO Panel's decision of *eAuto LLC Triple S Auto Parts*, D2000-0047 to assert that if a domain name incorporates, in its entirety, a distinctive mark which creates sufficient similarity between the mark and the domain name to render it confusingly similar.

5. The Complainant avers that the Respondent had unauthorizedly copied and used the impugned label mark “STARS BAZAR” and the impugned website www.starsbazar.in and also the unauthorised reproduction of and use of impugned label mark by the Respondent amounting to infringement of copyrights subsisting in the Complainant’s Trade mark.
6. The Complainant avers that the purpose of registering disputed domain name was to misappropriate the reputation associated with the Complainant’s Trademark and the illegal use of the disputed domain name to cause irreparable loss and damage to the reputation and goodwill of the Complainant and its Trademark. The use of the same to be used for unlawful receiving of orders/money from unwary customers and not delivering the products/fulfilling the orders placed by the customers such as to cheat the customers into believing them to have bought products from the Complainant’s website and to tarnish the reputation and goodwill of the Complainant.
7. The Complainant claims that the trademark “STAR BAZAAR” is highly distinctive of the said Goods and Services and that the Respondent has no business or commerce under the name or no bonafide intention or legitimate purpose to use the disputed domain name in relation to offering of goods or services. The Respondent seemed to had intentionally registered the disputed domain name which reproduced the Complainant’s well-known trademark and in order to capitalize / profit from goodwill associated with the mark. Thereby the Respondent’s not having legitimate rights or interests in the impugned domain name and indicating the Respondent’s bad faith and malicious intention in registering the disputed domain.
8. The Complainant states that on a simple search of the word STAR BAZAAR on Google shows that the name is owned by the Complainant. The Respondent not a licensee of the Complainant nor was authorized by the Complainant to use the trademark or to register the disputed domain name “starsbazar.in”.



9. The Complainant avers that one of the its customers was deceived by the impugned domain name and made enquiry with the Complainant about the authenticity/ genuineness of offers/ advertisements made by the Respondent under the disputed domain name/ impugned label mark.
10. The Complainant states that the disputed domain name starsbazar.in incorporates marks of the Complainant and that the Respondent having knowledge of the Complainant's Trade Mark and reputation at the time and its identical/confusingly similar domain name. Accordingly, the Complainant states that this conduct indicates the Respondent's bad faith and fraudulent intention in registering the domain along with imitation of the Complainant's well-known trademark and copyright subsisting therein.
11. The Complainant avers that the Respondent had intentionally attempted to attract the internet users to other on-line location by creating a likelihood of confusion with the well-known Trade Mark of the Complainant as to the source, sponsorship, affiliation or endorsement of the Respondent's website.
12. The Complainant states that the Respondent has registered the disputed domain name and is using it in absolute bad faith. The Complainant requests the transfer of the disputed domain name

VI. PARTIES' CONTENTIONS

1. The Respondent has not filed any response to the Notice of Arbitration dated 27th October 2022. The Respondent did not respond to the directions second and final notice of arbitration of the Tribunal dated 16th November 2022. The Respondent has not replied to the contentions of the Complainant even though the Respondent has been served as required by the Rules. The emails of service sent to the Respondent were not returned undelivered. However, the Respondent's default would not automatically result in a decision in favour of the Complainant.



2. The Supreme Court of India in Sudha Agrawal v Xth Additional District Judge and others (1996)6SCC332 held that even in an uncontested matter the petitioner's case must stand on its own legs and it cannot derive any advantage by the absence of the defendants. Therefore, the Complainant must still establish each of the three elements required by Paragraph 4 of the Policy. (The Respondent's side has sent a mail but response not adequate, can order to file a detailed response at a particular date)

VII. DISCUSSIONS AND FINDINGS

1. Paragraph 4 of the Policy requires that in order to obtain the transfer of the disputed domain name, the Complainant will have to prove that the Respondent's domain name is identical or confusingly similar to a name or trademark in which the Complainant has rights; the Respondent has no rights in respect of the domain name; and the Respondents' domain name has been registered and is being used in bad faith.
2. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy namely:
 - a) The Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.
 - b) The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c) The Respondent's domain name has been registered or is being used in bad faith.
3. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:
 - a) Whether the Respondent's domain name "starsbazar.in" is identical and/or deceptively similar to domain name and trademarks of the Complainant?



- (i) The Complainant provided evidence to establish that the Disputed Domain name is identical or confusingly similar to the Complainant's registered and distinctive trademark since the disputed domain name by the Respondent was acquired long after the Star Bazaar Marks were recognised.
 - (ii) The Complainant holds 'STAR BAZAAR' trademark registrations in India. Because of the extensive use and promotion of the STAR BAZAAR Marks, the brand has gained recognition. A perusal of the trademark registration certificates and WHOIS records shows Complainant is the owner of several trademark registrations in India.
 - (iii) The Arbitral Tribunal notes the decision of *The Hershey Company v Rimi Sen (INDRP/289)* which stated that the addition of the country top level domain "co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Trade mark. Thereby with the addition of the country code ".in" (INDIA) to the Complainant's trademark makes it confusingly and identically similar.
 - (iv) The Arbitral Tribunal notes the decision of WIPO Panel's decision of *eAuto LLC v Triple S Auto Parts, D2000-0047* where if a domain name incorporates, in its entirety, a distinctive mark which creates sufficient similarity between the mark and the domain name to render it confusingly similar to the mark.
 - (v) After taking into consideration the facts of the present case and the settled law on the issue, it can be said that the disputed domain name registered by the Respondent establishes a likelihood of confusion with the Complainant's trademarks and this would mislead the internet users as it is confusingly identical. Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy Paragraph 4(a) is the domain name is confusingly similar to Complainant's registered and distinctive STAR BAZAAR Mark.
- b) Whether the Respondent has no rights or legitimate interests in respect of the domain name?



(i) To pass muster under Paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights to and legitimate interests in the disputed domain name under Paragraph 6 of the Policy.

(ii) The Respondent is not affiliated with Complainant in any way and has never been authorised or licenced by Complainant to use or register its trademarks, or to seek registration of any domain name incorporating the trademark in question. Furthermore, the Respondent is not commonly known by the Disputed Domain Name or the name "STAR BAZAAR" nor does the Respondent operate a legitimate business or other organization under the STAR BAZAAR Mark. Additionally, the STAR BAZAAR marks were registered years before the disputed domain name was registered.

(iii) Evidence was provided by the Complainant to show that the Respondent's actions are most certainly not a bona fide offering of goods and services under Policy Paragraph 6(a), the domain name impersonates and operates under the guise of providing false franchisee opportunities in the name of the Complainant. Particular reference has been made to the Complainant's website hosting the domain name starbazaarindia.com (at pages 103-105) and Respondent's disputed domain name starbazar.in (at page 106). A careful perusal of the above states that the Respondent's domain name impersonates the Complainant's services and is not bonafide.

(iv) Accordingly, the Arbitral Tribunal finds that the Complainant has made out a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name starbazar.in as Complainant has never assigned, granted, licenced, sold, transferred, or otherwise authorised Respondent to register or use the Disputed Domain Name or the STAR BAZAAR Mark as it was not for making legitimate non-commercial use. Thus, it satisfies the second element under Paragraph 4 (b) of the Policy.



c) Whether the Respondent's domain name was registered or is being used in absolute bad faith?

(i) The Complainant is a well-known multi-format hypermarket and operated 59 stores covering cities in India and provides a range of more than 30,000 items and services of high standard and quality extend to customers on a large scale. The Complainant provided the following reasons to show that the Respondent acquired the disputed domain name in bad faith—

- a. Firstly, the Respondent intentionally used the famous STAR BAZAAR Mark without consent from Complainant.
- b. Secondly, Respondent was aware of Complainant's rights in its well-known Mark as a consequence of Complainant's substantial use of the Mark which long predates before the Respondent acquired the domain name.
- c. It fulfils the requirement to classify as bad faith under Policy Para 7(c) and 7(d) which states that the bad faith may be found where the Respondent by using a domain name, intentionally attempts to attract, commercial gains as It disrupts Complainant's business and seeks to capitalize on confusion with the STAR BAZAAR Mark.
- d. The Respondent impersonated the Complainant's STAR BAZAAR web page at the www.starbazaarindia.com site, which demonstrates its purpose to deceive users for commercial benefit and to harm Complainant's business by redirecting people to the infringing website and also making commercial gains by banking on the hard-earned goodwill and reputation of the Complainant which is in done in bad faith.



- (ii) Considering the findings above, Arbitral Tribunal holds that the Respondent's domain name starsbazar.in has been registered with an opportunistic intention and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

Costs

- (i) The Complainant has prayed for the transfer of the disputed domain name and for "heavy cost to be imposed on the Respondent as a deterrent to future bad faith registrations by the said party."

- (ii) Para 11 of the INDRP Policy states as under

"11. Remedies

The remedies available to a Complainant pursuant to any proceeding before an Arbitrator shall be limited to praying for the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs as may be deemed fit may also be awarded by the Arbitrator. However, the implementation of such award of cost will not be supervised or controlled by .IN Registry."

- (iii) Therefore, this Tribunal is empowered to award costs as may be deemed fit under the INDRP Policy and the Arbitration and Conciliation Act, 1996.

- (iv) Considering that the Respondents' domain name is identical and confusingly similar to STAR BAZAAR and the Respondent has no rights or legitimate interest in the domain name starsbazar.in and the same has been registered in bad faith. This tribunal deems it fit to award costs of Rs. 1,00,000/ (One Lakh Only) to the Complainant under para II of the Policy read with Section 31A of the Arbitration and Conciliation Act, 1996.



VIII. DISPOSITIONS

The Arbitral Tribunal holds that the Respondent's domain name starsbazar.in is identical and confusingly similar to the name, trademark and brand name STAR BAZAAR owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name starsbazar.in and the same has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant. The Arbitral Tribunal further awards cost Rs. 1,00,000 (Rupees One Lakh Only) to the Complainant which will be paid by the Respondent.

The Arbitral Tribunal directs that -

- a) **The disputed domain name starsbazar.in be transferred to the Complainant, Trent Hypermarket Private Limited Taj Building, 2nd Floor, 210, Dr. D.N. Road Fort, Mumbai – 400 001**
- b) **The Complainant is awarded costs of Rs.1,00,000 (Rupees One Lakh Only) which will be paid by the Respondent**

Place of Arbitration: New Delhi, India

Date: 19th December 2022


Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal