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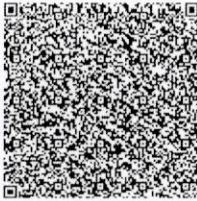
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ARBITRATION AWARD

BEFORE THE SOLE ARBITRATOR, DR. KARNIKA SETH

IN INDRP CASE NO. 1680

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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1680

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN Domain Name Dispute Resolution Policy (INDRP)

IN INDRP Case No. 1680

Disputed Domain Name: www.salesforce.in

Dated: 06th June, 2023

IN THE MATTER OF:

Salesforce, Inc.

Salesforce Tower, 415 Mission Street,

3rd Floor San Francisco, California 94105,

United States of America

..... Complainant

Vs.

Doublefist Limited

Wisconsin, US

..... Respondent

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1. Parties

- 1.1 The Complainant in the arbitration proceeding is SALESFORCE, INC having its address at 415 Mission Street, 3rd Floor, San Francisco, California 94105, United States of America. The Complainant's authorized representative is Mr. Sumit Prasad.
- 1.2 The Respondent in this administrative proceeding as per the 'WHOIS' database is DOUBLEFIST LIMITED, having its address at Wisconsin, US. E-mail id of registrant is ymgroupp@msn.com. (As per the WHOIS report – **EXHIBIT - A** of the complaint). Registrant has registered the disputed domain name with "**GoDaddy.com. LLC**".

2. **The Dispute** - The domain name in dispute is www.salesforce.in, registered by the Respondent on 29th July, 2012. According to the .IN 'WHOIS' search, the Registrar of the disputed domain name is "**Godaddy.com, LLC**".

3. Important Dates

S. No.	Particulars	Dates (All Communication done in electronic mode)
1.	Date on which NIXI's email was received seeking consent for appointment as Arbitrator.	23 March, 2023
2.	Date on which consent was given to act as an Arbitrator in the case.	23 March, 2023
3.	Date of Appointment as Arbitrator.	23 March, 2023

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4.	Soft Copy of complaint and annexures were received from NIXI through email.	23 March, 2023
5.	Date on which notice was issued to the Respondent	29 March, 2023
6.	Date on which Award passed	6 th June, 2023

4. Procedural History

- 4.1 This is 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) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.
- 4.4 The Arbitrator issued notice to the Respondent on 29 March, 2023 at the email address ymgroup@msn.com calling upon the Respondent

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to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email.

- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant Salesforce, Inc. is an American cloud-based software company headquartered in San Francisco, California. The Complainant provides customer relationship management (CRM) software as a service and other enterprise applications, including those for customer service, marketing automation, analytics, data analytics, and application development. More specifically, the Complainant provides services designed to allow companies to connect with their customers through existing and emerging technologies, including cloud, mobile, social, Internet of Things ("IoT") and Artificial Intelligence ("AI"), and to grow their business and improve productivity.
- 5.2 The Complainant alleges it is the world leader in its field. For example, in 2021, the Complainant was the leading vendor in the customer relationship management (CRM) applications market worldwide with a market share of 23.8%, more than the next top four competitors (SAP, Microsoft, Oracle, and Adobe) combined. (The Complainant has filed **EXHIBIT – B** to support its claim).
- 5.3 The Complainant claims to have more than 75,000 employees across over 50 office locations in 28 countries. In India, the Complainant has offices in 4 major metropolitan cities: Bangalore, Gurgaon, Hyderabad and Mumbai.

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- 5.4 The Complainant's Indian subsidiary salesforce.com India Private Limited, CIN U72200KA2005PTC037330, has been registered with the Registrar of Companies, Ministry of Corporate Affairs, since as early as 2005. The registered office of the Complainant in India is located at Torrey Pines, 3rd Floor, Embassy Golf links Software Business Park Bangalore, Bangalore, Karnataka 560071, India.
- 5.5 The Complainant has adopted and used branding and trademarks that have become famous in the US and a number of other countries worldwide. Complainant's marks include, among others, the Salesforce name and all of its trademarks are collectively referred to as SALESFORCE Marks hereinafter.
- 5.6 In India, the Complainant's SALESFORCE Marks are registered under the Trade Marks Act, 1999 (Exhibit F filed with the Complaint) conferring on it the exclusive right to use the SALESFORCE Marks and has the right to prevent any unauthorized use of the same by third parties.
- 5.7 Illustrative examples of Complainant's broad customer base in India include well-known names as Tata Trusts, HCL, Snapdeal, United Breweries, Mindtree, Cleartrip, Godrej, Urban Ladder, Teach for India, Bharat Petroleum, Pidilite, Puma, Toyota, Panasonic, Rupeek, Hubilo, Gemini Power Hydraulics, Razorpay, Janalakshmi Financial Services, and InMobi, among numerous others. (The Complainant has filed **EXHIBIT – E** to support its claim).

6. Parties Contention

6.1. Complainant's Submissions

- 6.1.1. The Complainant has been using its "SALESFORCE" mark extensively and continuously for cloud based software services since 1998. Due to its established reputation across various other

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countries and in India, the word "SALESFORCE" has been exclusively associated with the Complainant and no one else.

- 6.1.2. The Complainant has acquired statutory rights in the SALESFORCE marks in India in 2007 and it is the registered proprietor of various trademarks (as per para 2(iii) of the Complaint). The Complainant has also attached supporting documents of such registrations. (The Complainant has filed **EXHIBIT – F** to support its claim).
- 6.1.3. The Complainant is also the owner of an extensive portfolio of domain names incorporating the term SALESFORCE, under both the generic top-level domain (TLD) '.com' and under the respective country code top-level domains in countries all over the world. The Complainant's website www.salesforce.com was registered on 02nd December 1998, and Complainant began using it as a website to promote the Complainant's goods and services.
- 6.1.4. As a result of Complainant's business efforts, consistent trademark use, and vibrant social media presence, Complainant has created and maintains one of the most well-recognized and valuable brands in the world with global revenues in excess of \$21 billion dollars in fiscal year 2021. (The Complainant has filed **EXHIBIT – H** to support its claim).
- 6.1.5. The Complainant submits that the SALESFORCE brand and trademarks are famous in many countries and jurisdictions, and this has been confirmed by various Courts and Trademark Offices across the world. Specifically, the Complainant has been able to seek favourable decisions in domain name disputes worldwide. (The Complainant has filed **EXHIBIT – J** to support its claim).
- 6.1.6. The Complainant submits that the Respondent has adopted the impugned domain name, which is identical and/ or deceptively

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similar to the Complainant's well-known, registered and earlier SALESFORCE Mark, wholly including the SALESFORCE trademark and trade name.

- 6.1.7. The Complainant submits that the adoption and/or use of the impugned mark by the Respondent as its domain name or in any other manner amounts to the blatant infringement of the Complainant's statutory rights in its well-known, registered and earlier SALESFORCE Marks.
- 6.1.8. The Complainant submits that the Complainant asserts that the Respondent does not have rights or legitimate interests in the impugned domain name and has not registered it as a trademark, service mark or company name anywhere in the world. The Respondent had offered the impugned domain name for sale which easily establishes that the impugned domain name was purchased with the sole malafide intention of offering it for sale and the Respondent has no legitimate interests in the impugned domain name whatsoever. (The Complainant has filed **EXHIBIT – K** to support its claim).
- 6.1.9. The Complainant submits that the Respondent has been party to multiple Domain Name Dispute Cases wherein the Ld. Arbitrators have held the matters against the Respondent and arbitral awards have been issued in the favour of other third-party Complainants. (The Complainant has filed **EXHIBIT – L** to support its claim).
- 6.1.10. The Complainant submits that the Respondent has registered the impugned domain name in bad faith to make unlawful gains out of the transactions. The Respondent is hoarding the domain name and the Website on impugned domain name mentions the same is offered for sale. (The Complainant has filed **EXHIBIT – M** to support its claim).

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6.1.11. The Complainant submits that WIPO has also acknowledged and affirmed that the complainant has established rights in the name SALESFORCE., such as the following case:

Salesforce.com, Inc. v. Registration Private, Domains By Proxy LLC/ Richard Marvin Case No. D2021-1399. (The Complainant has filed **EXHIBIT – J** to support its claim).

The Complainant submits that if the disputed domain name continues to register in the name of Respondent, it will cause irreparable loss to the Complainant.

6.2. Respondent's Defence

6.2.1. Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2. The INDRP Rules of Procedure require under Rule 13(b) that the Arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 13(b) reads as follows:

"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

6.2.3. Further, the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 17 reads as follows:

"In the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance with law."

6.2.4. In present arbitration, despite due service, the Respondent has failed to file any reply to the Complaint and has not sought any further time

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to answer the Complainant's assertions, contentions or evidence in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 17 of the INDRP rules and decided on merits ex-parte.

7. Discussions and Finding

- 7.1.** The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -
- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right, and
 - b) The Respondent has no rights or legitimate interest in the domain name, and
 - c) The Respondent's domain name has been registered or is being used in bad faith.

7.2. The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Para 4(a))

The Complainant has filed documents of its registered trademarks in India and other countries to prove its rights in the trademark "SALESFORCE". The Trademark "SALESFORCE" (word) is registered in India vide Application no.1593089 in class 35 and 42 wef 21-8-2007 and device mark under Application no.2208035 wef 20-09-2011 in class 9,35,41,42,45 and application no.2728211 dated 30-4-2014 in class 9,42. The Complainant has filed supporting proof of registration of "SALESFORCE" trademark in India (annexed as **EXHIBIT - F** of the Complaint). The Complainant has filed

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sufficient proof to substantiate that the Trademark "SALESFORCE" is registered in India. Therefore, it is established that the Complainant has statutory protection for the trademark "SALESFORCE" in India. The Arbitrator finds that the disputed name www.salesforce.in is clearly identical and deceptively similar to the Complainant's trademark in which the Complainant has exclusive trademark rights.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for purposes of UDRP standing. (*Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. D2008-0923, *Tesco Stores Limited v. Mat Feakins*, WIPO Case No. DCO2013-0017, *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. D2014-1747, *Dell Inc. v George Dell & Dell Net solutions*, case no. D2004-0512 (WIPO Aug 24, 2004), *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000).

The disputed domain name consists of "SALESFORCE", the Complainant's trademark in entirety and adding the ccTLD ".co.in" will not distinguish it from Complainant's website and is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125 (2010))

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As the Respondent's disputed domain name is exactly same as Complainant's registered trademark "SALESFORCE", and the Respondent failed to file any reply to rebut the contentions of the Complainant, the Arbitrator finds that the Respondent's domain name is identical to Complainant's registered trademark and is likely to deceive the customers.

7.3. The Registrant has no rights or legitimate interests in respect of the domain name (Para 4(b))

Under paragraph 6 of the policy, a Respondent or a Registrant can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to the "SALESFORCE" trademark, in which Complainant enjoys substantial reputation and goodwill including web shots of its website and registration of trademark in India (annexed as **EXHIBIT - F** to the complaint). The Complainant has filed documents of its registered trademarks in India and other countries to prove its rights in the trademark "SALESFORCE". The Trademark "SALESFORCE" (word) is registered in India vide Application no.1593089 in class 35 and 42 wef 21-8-2007 and device mark under Application no.2208035 wef 20-09-2011 in class 9,35,41,42,45 and application no.2728211 dated 30-4-2014 in class 9,42. The Complainant has filed supporting proof of registration of "SALESFORCE" trademark in India (annexed as **EXHIBIT - F** of the Complaint).

The Respondent has failed to submit its reply to prove any rights or legitimate interests in the disputed domain name/trademark "SALESFORCE". The same is also identical to the Complainant's

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registered trademark, "SALESFORCE" in use in India since 2007. Complainant has also submitted that it has not authorized Respondent to use its SALESFORCE mark and Respondent has failed to rebut the same. The burden of proof thus shifts to Respondent to demonstrate the rights or legitimate interests it holds in the mark as per WIPO Overview 3.0, section 2.1. Despite notice, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show its interest or right in the disputed domain name. Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name.

Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. The fact that the disputed domain name has not been put to legitimate non-commercial fair use or commercial/business use shows Respondent holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy 4(b).

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence (registered wef 2007 in India) and extensively used when disputed domain was registered by the Respondent (registered on 29-12-2012, the Respondent has to prove whether he discharged this responsibility at the time of purchase of

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disputed domain name. However, despite notice Respondent failed to reply and also failed to discharge this onus.

In view of the aforesaid facts, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4. The Registrant's domain name has been registered or is being used in bad faith (Para 4 (c))

For the purposes of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name or proof of its honest adoption and legitimate active use. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.salesforce.in and is hoarding the domain name and actively using it to offer domain name for sale (Exhibit M to the Complaint) and post third party links which run an identical competing business to that of Complainant, thereby diverting customers which amounts to bad faith registration. The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case No. D2012-2395 and *Carige Vita Nuova S.P.A. v. Vita Nuova Public Organisation*, Domain Management / Whois Privacy Services by Domain Protect LLC, WIPO Case No. D2010-1304, *Veuve Cliquot Ponsardin, Maison*

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Fondee en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163; *Pepsico, Inc. v. Zhavoronkov*, WIPO Case No. D20220-0562; *Pepsico, Inc. v. Domain Admin*, WIPO Case No. D2006-0435).

Further, the Complainant provided sufficient evidence showing widespread use, goodwill and trademark registrations of the “SALESFORCE” mark in India and other countries which long predates Respondent’s registration of the disputed domain name which incorporates completely the registered trademark SALESFORCE of the Complainant.

WIPO overview 3.0 notes in section 3.14 “*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith*”. The same principle is relied on in *Adobe Inc. v. Amin Mohammadsalehi, Uranos*, Case No. DIR2020-0006, June 30, 2020).

Despite notice, Respondent failed to submit its response and evidence to claim bonafide registration of disputed domain name in respect of its offering of goods/services which was only registered on 29-12-2012.

Thus, Arbitrator finds that Respondent’s adoption of mark identical with Complainant’s Trademark and its active use on disputed website to post links to third parties that run a competing business is

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likely to mislead the consumers by creating a likelihood of confusion with the Complainant's name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). It is a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).

For the aforesaid reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395, *Atos IT Services UK Limited v Above.com Domain Privacy/Nish Patel* WIPO case No. D2013-0655, *Michael Patrick Lynch v. Steve Nicol (Stephen Joel Nicol)*, WIPO Case No. D2015-0933).

For the aforesaid reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

8. DECISION

On the basis of the above said findings the Sole Arbitrator finds that:

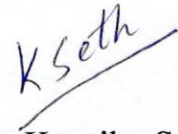
- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.salesforce.in to the Complainant.

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The Award is passed on this 6th June, 2023

Place: Noida

A handwritten signature in blue ink, appearing to read 'K Seth', with a long horizontal stroke extending from the end.

Dr. Karnika Seth

Sole Arbitrator