



INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL21553236363177U
Certificate Issued Date : 21-Apr-2022 07:45 AM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference : SUBIN-DL DL-SELF30179143870739U
Purchased by : SANJEEV CHASWAL
Description of Document : Article 12 Award - Movable
Property Description : ARBITRATION AWARD FOR DOMAIN NAME INTERTRUSTGROUP.IN
Consideration Price (Rs.) : 0
(Zero)
First Party : SANJEEV CHASWAL
Second Party : NA
Stamp Duty Paid By : SANJEEV CHASWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



SELF PRINTED CERTIFICATE TO BE
VERIFIED BY THE RECIPIENT AT
WWW.SHCILESTAMP.COM

IN-DL21553236363177U

Please write or type below this line

IN THE MATTER OF CASE NO
1530
ARBITRATION REFERENCE IN
THE DOMAIN INTERTRUSTGROUP.IN.

Statutory Alert

1. The authenticity of this Stamp certificate should be verified at www.shcilestamp.com or using e Stamp Mobile App of Stock Holding Corporation of India Limited.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.

**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
"INTERTRUSTGROUP.IN"

and in the matter of INDRP case no : 1530

**Intertrust Group B.V.
Prins Bernhardplein 200
1097 JB AMSTERDAM
The Netherland** **Complainant**

Vs.

**Alice Collier
4682 Haven Lane
Lansing MI 48933
United States of America
Email: domainstorepro@gmail.com** **Respondent**

ARBITRATION AWARD



Disputed Domain Name: <intertrustgroup.in>

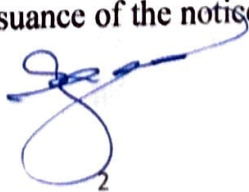
That NIXI have appointed the undersigned as sole arbitrator pursuant to the complaint filed by the complainant M/s. Intertrust Group B.V. Prins Bernhardplein 200 1097 JB AMSTERDAM, The Netherland a limited liability company incorporated and existing under the laws of The Netherlands, represented through Merkenbureau Knijff & Partners B.V., by invoking this administrative domain arbitration proceedings through its

authorized signatory, in respect of domain name < **intertrustgroup.in** > against the Registrant / Respondent M/s. Alice Collier , 682 Haven Lane, Lansing MI 48933 United States of America, Email: domainstorepro@gmail.com by invoking this administrative domain arbitration proceedings through it authorized signatory, in respect of domain name against the Registrant / Respondent as stated herein.

The Registrant / Respondent, who has registered domain name < **intertrustgroup.in** > through the IN. registry registrar M/s. Dynadot LLC E-mail: abuse@dynadot.com, as the office address and other details of the Registrant / Respondent are withheld by registrar through invoking "REDACTED FOR PRIVACY POLICY" 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. Intertrust Group B.V has filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent.

The Complainant herein has filed this arbitral complaint 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 < **intertrustgroup.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.



2

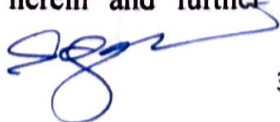
That after entering upon as sole arbitrator in the above said arbitral reference, as such, the undersigned had issued the 1st notice by way of directions to the complainant and the Registrant / Respondent herein on 31st of March 2022 to comply issued directions as stated herein in the time bound manner, as prescribed under the INDRP ARBITRATION rules and Procedures.

1. The Parties:

1.1 The Complainant in this arbitration proceeding is M/s. Intertrust Group B.V., Prins Bernhardplein 200 1097 JB AMSTERDAM, The Netherlands a limited liability company incorporated and existing under the laws of The Netherlands, represented through Merkenbureau Knijff & Partners B.V., who has invoked this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name < *intertrustgroup.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 < *intertrustgroup.in* > is registered by the IN. registry registrar M/s. Dynadot LLC, and on invoking privacy request of "REDACTED FOR PRIVACY POLICY" 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. Intertrust Group B.V., 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 identified as M/s. Alice Collier , 682 Haven Lane, Lansing MI 48933 United States of America, Email: domainstorepro@gmail.com

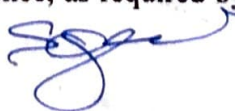
3. Arbitration Proceedings Procedural History:

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 31st of March 2022 by issuing of 1st 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 complaint within 15 (fifteen) days from the date of this Notice or by 15th April 2022, failing which the Complaint shall be decided on the basis of the merits.

3.5 The respondent / registrant namely having M/s. Alice Collier , 682 Haven Lane, Lansing MI 48933 United States of America, Email: domainstorepro@gmail.com had failed to submit reply, or any detail statement in the above arbitral reference even after receipt of notice of 31st of March 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 15th of April 2022.

3.6 As per available email record placed before the sole arbitrator, 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 15th of April 2022.

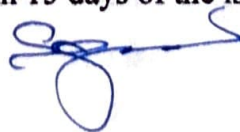
- 3.7 It clearly proves that the respondent / registrant was not interested in pursuing the present arbitration proceedings, as such the sole arbitrator had on vide its order dated 17th of March 2022 foreclosed the right of the respondent / registrant of filing of reply or statement granted to the respondent / registrant and proceeded with deciding of this domain dispute complaint < intertrustgroup.in > on merits.

4. Factual Background:

- 4.1 The Complainant in these administrative proceedings is M/s. Intertrust Group B.V., Prins Bernhardplein 200 1097 JB AMSTERDAM, The Netherland a limited liability company incorporated and existing under the laws of The Netherlands, represented through Merkenbureau Knijff & Partners B.V., by invoking this administrative domain arbitration proceeding through it authorized signatory, in respect of domain name < *intertrustgroup.in* > against the Registrant / Respondent.

5. Parties Contentions:

- 5.1 The complainant has submitted many submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name < *intertrustgroup.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



the Respondent 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 < *intertrustgroup.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 publicly traded international trust and corporate management company based in Amsterdam, The Netherlands. The company is known for its fiduciary services, which includes tax, trust, business management and outsourcing processes. It is the largest trust office in The Netherlands. Complainant's origins date back to the incorporation of NV Trust Corporation Pierson, Heldring & Pierson in 1952.



5.5 The Complainant has business in many locations worldwide, amongst others in India. The company is listed on Euronext Amsterdam Stock Exchange. Attached are copies of the Complainant's website illustrating an office in India and information on the company's activities known worldwide.

5.6 The infringing domain name INTERTRUSTGROUP.IN is confusingly similar to the trademark INTERTRUST. The descriptive term GROUP in the infringing domain name does not differentiate the infringing domain name from Complainant's INTERTRUST marks.

II) Complainant's Claim of Statutory Rights:

5.7 The Complainant considers their trademark INTERTRUST is a basis for its use, registration, and ownership of the INTERTRUST mark, as well as the INTERTRUSTGROUP.COM domain name and corresponding website and services. The mark INTERTRUST is protected by means of – amongst others – the following registrations: as important and extremely valuable asset and thus in order to protect the same, have secured trade mark registration for the mark “INTERTRUST” & other formative marks in India as well as globally. The trade mark registrations obtained in India and other jurisdictions are duly valid and subsisting as of this date.

5.8 The Complainant is also the registered proprietor of the trademark “INTERTRUST” as a word mark International registration no. 1561640 INTERTRUST (figurative) applied for on 19 August 2020 for services in classes 35, 36 and 45, designating amongst others India;
- National registration in India no. 2617781 INTERTRUST (figurative) applied for on 14 October 2013 for services in class 35;



- National registration in India no. 2617782 INTERTRUST (figurative) applied for on 24 October 2013 for services in class 36;
- National registration in India no. 2617780 INTERTRUST (figurative) applied for on 24 October 2013 for services in class 45

5.9 The Complainant is a prior adopter, of its trade name / mark 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 "INTERTRUST" 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 passing off.

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

5.10 The was the first in the world to have conceived and adopted the mark INTERTRUST in respect of services covered under many classes. The Complainant is a registered proprietor of the trademark INTERTRUST in many countries around the world including India and has been continuously and exclusively using the same in relation to its business for many years

5.11 That the impugned domain name <intertrustgroup.in> is visually and phonetically identical and/or confusingly similar to the Complainant's trademark INTERTRUST in which the complainant has statutory as well as common law rights. The Respondent has registered the domain name <intertrustgroup.in> that solely incorporates in its entirety the



Complainant's reputed trademark **INTERTRUST** to just to cause confusion and deception in the minds of the public.

The numerous panels have held in so many decisions - *CEC Entertainment Concepts, L.P. v. Samir Vasaya [Domain: chuckecheese.in; INDRP/1154]; Havells India Limited v. Whois Foundation WIPO D2016-1775]* that a domain name which wholly incorporates a Complainant's registered mark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks.

5.12 The Complainant is the registered proprietor of the many marks world over having word per se **INTERTRUST**. The Complainant submits that as the domain name is **< intertrustgroup.in >** is clearly identical / confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

5.13 The Complainant inclusion of the ccTLD ".IN" in the infringing domain name does not change the conclusion that the infringing domain name is confusingly similar to Complainant's trademarks the ccTLD ".in" is necessary for India-specific top level domains on the Internet and is not taken into consideration, while comparing the disputed domain name with the Complainant's well-known trademark. Thus, the disputed domain name is identical / confusingly similar to the Complainant's registered marks.

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

5.14 The Complainant further submits that any person or entity using the mark **INTERTRUST** as a domain name that too with related keyword referring

to its corporate name 'INTERTRUST GROUP' 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]*.

5.15 The Respondent / Registrant was never authorised by the Complainant to register the impugned domain name < **intertrustgroup.in** > hold the domain name or make use of its **INTERTRUST** 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. Undoubtedly, the Respondent is deliberately trying to portray a connection between the disputed domain name and the Complainant, through the parked page at the domain name.

5.16 The Complainant is required to make a prima facie case that the Respondent lacks rights or legitimate interest in the domain name at issue. Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interest in a domain name, the burden 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.

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, GoDaddy 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].

5.17 The Respondent does not use the infringing domain name for bona fide offering of goods or services or for making a legitimate non-commercial or fair use of the infringing domain name. Even though the infringing domain name is currently not used, the infringing domain name resolved to a parking page with pay-per-click links (PPC) to financial services for a period of time. Attached please find a printout of the website content dated 11 January 2022 disGROUPing links to financial services, such as ‘online facturen maken’ (online invoice creation), ‘facturen maken zzp’. The services that were offered through these links are in direct competition with the services of the Complainant.

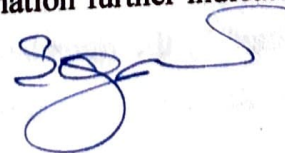
5.18 The Respondent using illegally the long and widespread reputation of the Complainant’s trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant’s widely known and distinctive trade

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*].

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

5.19 The Registrant/Respondent's 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. Panels have found that the use of a domain name to host a parked page comprising PPC links 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..

5.20 It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith. It is further submitted that the WHOIS information further indicates the knowledge on the part of the Respondent.



5.21 The Respondent knowingly chose to register and use the disputed domain name < **intertrustgroup.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.

5.22 The Complainant finds it highly unlikely that the Respondent had no knowledge of their rights to the trademark INTERTRUST at the time of registration of the infringing domain name, especially because Complainant is a well-known firm in the financial market. A quick Google search after the word "INTERTRUST", reveals that the first result shown are the Complainant's website, followed by a LinkedIn and Wikipedia page on the Complainant's business. Besides that, the Complainant is the owner of the domain name INTERTRUSTGROUP.COM since 22 October 1998, and of various trademark registrations valid in India dating back to 24 October 2013, while the infringing domain name INTERTRUSTGROUP.IN was only registered by the Respondent on 29 November 2021.

B. Contention of the Complainant:

5.23 It is further submitted by the Complainant that the Respondent offered the domain name for sale through the website of Sedo. Complainant has tried to acquire the domain name in order to avoid time and money consuming

procedures, and offered to pay an amount of USD 200,-. The Respondent replied with a counteroffer of USD 8.500,-. After Complainant offered compensations in the amount of USD 500,- and USD 600,-, the final counteroffer of the Respondent was USD 5.999,-. The Respondent's desired compensation is undoubtedly disproportionate compared to the Respondent's out-of-pocket costs directly related to registration and maintenance of the infringing domain name, which affirms that it benefits the Respondent financially in bad faith. Following Sedo's intervention in selling the infringing domain name, an abuse claim was submitted by the Complainant. Sedo however notified the Complainant that they do not have the authority to decide who should legally own a domain name and suggested to look into the UDRP procedure.

5.24 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)***].

5.25 The present respondent appears to be a regular offender it is not to be the first time that the Respondent has been involved in UDRP cases. The Respondent have been regularly registering other known mark as their own registered domain name that contained a registered trademark of a well-known brand. Many trademark owners have brought UDRP proceedings

against the present respondent and the domain names were transferred to the Complainants in the following cases.

5.26 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 < intertrustgroup.in > in bad faith in terms of Para 7 of the INDRP.

C. Contention of the Respondent:



5.27 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.

6. Discussion and Findings:

- 6.1 It is evident that the Respondent knowingly chose to register and use the disputed domain name < intertrustgroup.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."

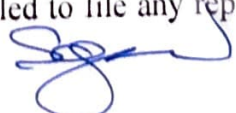
- 6.5 Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

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:

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 **INTERTRUST** 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 < *intertrustgroup.in* > is identity theft, identical with or deceptively similar to the Complainants' < **INTERTRUST** > 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.

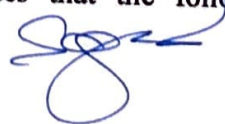
- 6.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests 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 < *intertrustgroup.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 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 and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, as disputed domain name < *intertrustgroup.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 **INTERTRUST** 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 **INTERTRUST** as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the Respondent / Registrant has redacted private policy to conceal its actual identity details and has 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.

7. 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



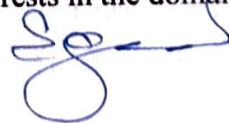
7.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide. The Respondent / Registrant had no previous connection with the disputed domain name and has clearly registered 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.

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; *Thaigem 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 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

7.5 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.

7.6 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

INTERTRUST Sons Ltd v. mmt admin / OkINTERTRUSTbyebye.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

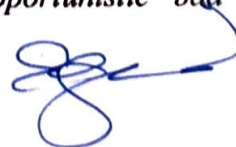
7.7 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been

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.”

- 7.8 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 INTERTRUST name and mark. ***In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)***

The WIPO Administrative Panel in ***Veuve Clicquot Ponsardin, Maison Fondée 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.



7.9 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 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 < *intertrustgroup.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 21-04-2022