

INDRP ARBITRATION CASE NO.1625
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

BRITANNIA INDUSTRIES LTD.

Vs.

AMIT SINGH

DISPUTED DOMAIN NAME: "BRITANNIACARE.IN"

Ajay

INDRP ARBITRATION CASE NO.1625
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
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BRITANNIA INDUSTRIES LIMITED
Prestige Shantiniketan, Tower C
The Business Precinct, 16th & 17th Floor
Whitefield Main Road, Bangalore-560 048. ...Complainant

VERSUS

AMIT SINGH
JL Road, Nehru Road
Kolkata-700071 [WEST BENGAL]. ... Respondent

Disputed Domain Name: "BRITANNIACARE.IN"

Ajay

1. The Parties

1.1 The Complainant **BRITANNIA INDUSTRIES LTD.** in this arbitration proceeding is a leading food company in India, and its contact address is: Prestige Shanti Niketan, Tower C, The Business Precinct, 16th and 17th Floor, Whitefield Main Road, Bangalore-560 048.

1.2 The Complainant's authorized representative in this administrative proceeding is/are Awanika Anand, Omar Waziri & Bhavna V. Address : Prestige Shantiniketan, Tower C, The Business Precinct, 16th and 17th Floor, Whitefield Main Road, Bangalore - 560 048 - Telephone: +91-80-30787495 - Fax: N.A. - E-mail : awanika@britindia.com; omarwaziri@britindia.com; bhavnav@britindia.com.

1.3 In this arbitration proceeding, Amit Singh, JL Road, Nehru Road, Kolkata-700071 [WEST BENGAL] is the Respondent :

1.4 As per the details given 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 is "BRITANNIACARE.IN" and the Registrar with which the disputed domain name is registered is Endurance Digital Domain Technology LLP

3. Procedural History [Arbitration Proceedings]

3.1 This arbitration proceeding is 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. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes under the .IN Dispute Resolution Policy and Rules framed thereunder.



- 3.2 The history of this proceeding is as follows:
- 3.2.1 In accordance with Rules 2(a) and 4(a), NIXI on 26.10.2022 formally notified the Respondent of the complaint along with a copy of the complaint & annexures, and appointed Ajay Gupta 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 Resolution Policy and the Rules framed thereunder. That the Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence Dated 27.10.2022 to NIXI.
- 3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 27.10.2022 was emailed to the Respondent on 27.10.2022 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days.
- 3.2.3 This panel vide its mail dated 27.10.2022 had directed the Complainant to update the domain complaint with the registrant's missing details and send the same to all including the respondent. The Complainant in compliance with this panel's directions vide its mail dated 27.10.2022 filed the amended complaint before this panel and also emailed the same to the Respondent and others.
- 3.2.4 This panel vide its Arbitration Notice dated 27.10.2022 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice and therefore respondent was supposed to file the reply of the complaint by 05.11.2022.
- 3.2.5 However, since the Respondent failed to file the reply of Complaint, if any, within time i.e. by 05.11.2022 as directed by this panel, this panel again in the interest of justice vide its mail dated 06.11.2022 granted a further period of 05 days i.e. by 10.11.2022 to the respondent to file the reply of the complaint.



The Respondent, despite the receipt of Notice Dated 27.10.2022 and reminder dated 06.11.2022 neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 11.11.2022 the respondent proceeded ex parte.

4. The Respondent's Default

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that 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 proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "britanniacare.in".

4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads 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."

4.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 states, "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 to the law." In the circumstances, the panel's



decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. Background of the Complainant & its Submissions about the trademark " BRITANNIA ", its statutory and common law rights Adoption :

5.1 The Complainant, in the present arbitration proceedings to support their case, has relied and placed on records documents as Annexures and made the following submissions :

5.1.1 The Complainant submits that The Complainant 'Britannia Industries Limited' is a leading food company in India with a 100 year legacy and a presence in more than 79 countries across the globe. The Complainant has been serving food and beverage products since 1918 and its products are available across the country and the world in close to 5 million retail outlets and reach over to more than half the Indian population. The Complainant's name, earlier known as Britannia Biscuit Company, was changed to the current 'Britannia Industries Limited' in 1979. By virtue of such long, continuous and uninterrupted use for several decades, excellent quality, voluminous sales, extensive promotion and distinctive packaging, the products being manufactured under the House Mark 'BRITANNIA' have acquired distinctiveness and are associated solely with the Complainant.

5.1.2 The Complainant further submits that the Complainant is the registered proprietor of the trademark **BRITANNIA**. The Complainant has also submitted on record copies of the registration certificates and renewal certificates of the registrations of the Complainant's Trademark **BRITANNIA** in support of its submissions.

5.1.3 The Complainant, based on its long-standing registrations and use of the trademark **BRITANNIA** in India and various countries



abroad, submits that it is the sole proprietor of and has sole and exclusive rights to use, the said trademark.

6. Submissions of Complainant about the Respondent and its use of the domain name.

6.1 The Complainant submits that the disputed domain www.britanniacare.in registered by the Respondent, comprises the Complainant's registered trademark BRITANNIA and the Respondent is not using the disputed domain for bonafide offering of services and not making legitimate, non-commercial and fair use of the Complainant's trademark as per the policy. The Complainant submits that it has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trademark & trade name, as a part of an email server or register domain name(s) comprising its trademark(s). It is further submitted by the Complainant that the Respondent has registered and is using the disputed domain name in bad faith to earn profit.

7. The issues involved in the dispute

7.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

“Types 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:-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.”

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

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

7.4 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.

8. Parties Contentions

8.1 The Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights :

8.2 Complainant

8.2.1 The Complainant submits that the disputed domain www.britanniacare.in registered by the Respondent, comprises the Complainant's registered trademark BRITANNIA.

8.2.2 The Complainant submits that the complainant and its subsidiaries worldwide have registered and operate globally a number of websites using its trademark 'Britannia' with top level domain names such as: - www.britannia.co.in, www.britanniamystartup.com, www.britannia-world.com, www.britanniaexports.com to list a few.

8.2.3 The Complainant submits that without prejudice that irrespective of the inclusion of the country-code second-level domain (ccSLD), the fact that the disputed domain comprises the Complainant's trademark "BRITANNIA" in its entirety, has the potential to cause consumer confusion. The Complainant is a well-known entity and consumers are aware and well versed with its trademarks. Consumer recall behind the Complainant's trademarks is such that if any person comes across the disputed domain, they will automatically associate the same with the Complainant only and none other.

8.2.4 The Complainant has relied upon *Nike Inc. v. Nike Innovative CV Zhaxia (Case No. INDRP/804)*; *Metropolitan Trading Company v. Chandan Chandan (Case No. INDRP/811)*; *Lego Juris A/s v. Robert Martin (Case No. INDRP/125)*, where it was held that if a disputed domain name completely incorporates the trade mark / service mark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's disputed domain name.

8.2.5 The Complainant further submits that in several UDRP decisions as well, various panels have found that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy. The Complainant has relied upon the cases of *Oki Data Americas, Inc. v. the ASD, Inc.* (WIPO Case No. D2001-0903), *Go Daddy.com, Inc. v. Shoneye's Enterprise* (WIPO Case No. D2007-1090), *Qalo, LLC v. Chen Jinjun and Magnum* (WIPO Case No. D2018-2215) *Piering Inc v. The Mudjacks* (WIPO Case No. D2000-1525). in support of its aforesaid submissions.

8.2.6 The Complainant submits that the Sole Arbitrator appointed in the matter of *Google Inc. v. Mr. Gulshan Khatri* (Case No. INDRP-189 May 06, 2011), in relation to the domain *googlee.in*, held that the act of registering a domain name similar to or identical with or famous trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the trademark to either increase traffic to the domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. As such, the same principle is applicable in this case, since the disputed domain incorporates the Complainant's trademark 'BRITANNIA' in its entirety. In relation to the above proposition the Complainant has also relied on the WIPO panel's finding in *Verimatrix, Inc. v. Ying Xiang Hu, Jiang Men Shi Hua Ji Ri Yong Pin You Xian Gong Si* [Case No. D2021-0560]

8.3 Respondent

The Respondent has not replied to Complainant's contentions.

8.4 Panel Observations

8.4.1 This Panel on pursuing the pleadings, documents and records submitted by Complainant observes that Complainant 'Britannia



Industries Limited' is a leading food company in India with presence globally. This panel further observe that by virtue of long, continuous and uninterrupted use for several decades, extensive promotion and distinctive packaging, the products being manufactured under the House Mark 'BRITANNIA' have acquired distinctiveness and are associated solely with the Complainant.

8.4.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark "BRITANNIA". It is also observed by this panel that the Complainant has successfully secured registration for the BRITANNIA marks. The Complainant has proved that it has trademark rights and other rights in the mark "BRITANNIA" by submitting substantial information and documents in support of it.

8.4.3 It is further observed by this panel that the trademark that the Disputed domain "britanniacare.in" comprises the Complainant's trademarks "BRITANNIA" in their entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

8.4.4 This panel, therefore, is of opinion that the disputed domain name "britanniacare.in" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "BRITANNIA" of the Complainant.



8.4.5 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 and the respondent has miserably failed in following this condition.

8.4.6 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.

9. The Respondent has no rights or legitimate interests in respect of the domain name:

9.1 Complainant

9.1.1 The Complainant submits that under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:

- Before any notice to it of the dispute, the Respondent'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; or
- The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

9.2.2 The Complainant submits that it has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trademark & tradename, as a part of an email server or register domain name(s) comprising its



trademark(s). The Complainant further submitted that as already held by previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. In the present case, the Respondent is not commonly known by the disputed domain.

9.2.3 The Complainant submits that it has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the disputed domain incorporating the Complainant's trademarks is strong evidence that Respondent has no rights or legitimate interest in the disputed domain name.

9.2.4 The Complainant submits that in the words of the Sole Arbitrator in *Kraft Foods Global Brands, LLC v. Jet Stream Enterprises Limited, Jet Stream (Case No. D2009-0547)* "...while the overall burden of proof rests with the Complainant, 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. If the Respondent fails to do so, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. The Complainant has relied upon the cases of *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110." It is submitted by the Complainant that the said threshold has been satisfied in the present instance.

9.2.5 The Complainant submits that the Respondent is not using the disputed domain for bonafide offering of services and not

making legitimate, non-commercial and fair use of the Complainant's trademark as per the policy

9.3 Respondent

The Respondent has not replied to Complainant's contentions.

9.4 Panel Observations

9.4.1 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

9.4.2 This panel observes that the Complainant by placing documents/ records and evidence in the form of annexures along with the complaint has been able to prove that the Complainant is trading and doing its business under the mark 'BRITANNIA'. The Complainant by virtue of its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'BRITANNIA' mark in respect of its goods and services.

9.4.3 It is observed by this panel that the Respondent has failed to rebut the allegations of the complainant that the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trademark & trade name, as a part of an email server or register domain name(s) comprising its trademark(s).

9.4.4 This panel observes that the Respondent has failed to rebut the allegations of the Complainant that it has not authorized or licensed the Respondent to use any of its trademarks in any way, and such unlicensed, unauthorized use of the disputed domain incorporating the Complainant's trademarks is strong evidence that Respondent has no rights or legitimate interest in the disputed domain name.



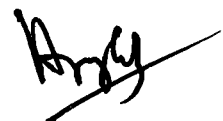
9.4.5 It is also observed by this panel that given the fact that the Domain name and the corporate name of its company BRITANNIA INDUSTRIES LIMITED predates the Respondent's registration of the impugned domain name and the burden is on Respondent to establish its rights or legitimate interests in the infringing domain name. However, the respondent has failed to establish it.

9.4.6 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 burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

9.4.7 It is further observed by this panel that para 6 of the .IN Domain Name Dispute Resolution Policy (INDRP) states :

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

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.



9.4.8 This panel observe that the respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name "BRITANNIACARE.IN".

10. The domain name was registered and is being used in bad faith.

10.1 Complainant

10.1.1 The Complainant submits that the disputed domain name has been registered in bad faith and the Respondent's malafide is apparent on account of the Following :

"It is submitted by the Complainant that the Respondent's bad faith is established by the fact that the Respondent has used the Complainant's trademark without being authorized/ licensed to do so by the Complainant. Given the distinctiveness and reputation of Complainant's trademark 'BRITANNIA', the only conclusion that can be drawn is that the Respondent registered the domain name in bad faith and held it for profit until the complainant brought to their notice that they are aware of the misuse and that such act is in bad faith. The Complainant has relied on HSBC Holdings PLC Vs. Hooman Esmail Zadeh [INDRP Case No. 032] where it was held that non-use and passive holding of a domain are also evidence of bad faith registration."

10.1.2 The Complainant submits that several UDRP panels have consistently found that it ought to be presumed that the Respondent had constructive notice of the Complainant's trademark and its goods and services if it is shown by the complainant to be well known or in wide use on the Internet or otherwise. Such knowledge of the Respondent is an indicator of bad faith on its part in having registered the disputed domain name. The Complainant has relied upon Motion Limited v. Privacy Locked LLC/Nat Collicot, WIPO Case No. D2009-0320



and *The Gap, Inc. v. Deng Youqian*, WIPO Case No.D2009-0113. Based on the foregoing, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith.

10.2 Respondent

10.2.1 The Respondent has not replied to Complainant's contentions.

10.3 Panel Observation

10.3.1 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Respondent registered the disputed domain name in November 2021, by which time the Complainant has been using the mark BRITANNIA mark for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark BRITANNIA and is also using the mark BRITANNIA on the internet, in other domain names, and as a trading name prior to registration of disputed domain name. It is observed by this panel that in view of the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark BRITANNIA.

10.3.2 This panel observe that the Respondent has failed to rebut the contentions of the Complainant that the Respondent's bad faith is established by the fact that the Respondent has used the Complainant's trademark for profit without being authorized/licensed to do so by the Complainant.

10.3.3 This panel observe that the Respondent had constructive notice of the Complainant's trademark BRITANNIA its goods and services, its wide use on the Internet or otherwise. The Respondent's knowledge in this regard is an indicator of bad

faith on its part in having registered the disputed domain name BRITANNICARE.IN.

10.3.4 According to Paragraph 7 of the INDRP the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

“(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration over the Registrar’s documented out of pocket costs directly related to the domain name; or

(b) the Respondent has registered the domain name 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

(c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online 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 a product or services on its website or location.”

10.3.5 The complainant has rightly established that the respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in clause 7(c) of the INDRP Policy. The Respondent’s domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore the Panel concludes that the registration by Respondent is in bad faith. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/registered the domain name www.britanniacare.in its favor in bad faith.



10.4 Remedies Requested

10.4.1 The Complainant has prayed to this Administrative Panel :

- (i) That the .IN Registry of NIXI be directed to transfer the domain name/ URL of the Respondent 'www.britanniacare.in' to the Complainant;
- (ii) That the costs of the present proceedings be granted to the Complainant;
- (iii) That any other order, in the facts and circumstances of the case and in the interest of justice, may be passed in present case.

11. Decision

The following circumstances are material to the issue in the present case :

- 11.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "BRITANNIA "is a well-established name in India and other countries. The complainant has established that the Britannia, is popularly known exclusively concerning the Complainant. The Complainant has also established that the trademark BRITANNIA is inherently distinctive of the products, services, and business of the Complainant and has secured trademark protection for BRITANNIA by registering trademarks.
- 11.2 The Respondent despite repeated opportunities given, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.
- 11.3 The Complainant has rather has been able to establish by its contentions and records in the form of annexures, that the Respondent has attempted to attract Internet users for profit

which is evidence of bad faith. It is therefore established by the complainant that the domain name by itself is being used for attracting internet users rather than any bona fide offering of goods/services thereunder. This panel while considering the complaint and records in the form of Annexures submitted by the complainant, has concluded that there exist circumstances as stated in para 7(C) of INDRP Policy.

- 11.4 Taking into account the nature of the disputed domain name and in particular, the “.in” extension alongside the Complainant’s mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant’s group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.
- 11.5 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else’s rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.
- 11.6 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent’s registration and use of the domain name [www.britanniacare.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.



RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name [britanniacare.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated : November 14,2022


AJAY GUPTA
Sole Arbitrator