

AND IN THE MATTER OF:-

Dispute relating to the domain name <www.wakefit.in>

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WAKEFIT INNOVATIONS PVT LTD.

Umiya Emporium 97-99, 3rd Floor, Aduodi,
Tavarekere, Opp. Forum Mall,
Hosur Road, Bengaluru, 560029

.....Complainant

Versus

Nikhilgoyal689@gmail.com

.....Respondent

AWARD

28.02.2025

1. The present arbitration proceedings are initiated under and in accordance with the INDRP which was adopted by the National Internet Exchange of India (NIXI) which governs the dispute in connection with .IN or .Bharat domain name and the INDRP Rules of Procedure.
2. The Registrant/Respondent has registered the <www.wakefit.in> (hereinafter 'impugned domain name') with the domain name Registrar duly accredited with the NIXI.

Procedural history

3. The consent of the Arbitrator was sought for in the present matter by the NIXI vide email dated 08.01.2025 and the Arbitrator gave his consent along with his statement of acceptance and declaration of impartiality vide his email dated 08.01.2025.
4. Thereafter, I was appointed as an Arbitrator by the NIXI in the present matter vide their email dated 14.01.2025, which

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email containing the complaint and all relevant documents was marked to the Respondent as well. Pursuant to the notice dated 15.01.2025 issued under Rule 5(c) of INDRP Rules of Procedure, the Respondent was directed to file its reply till 31.01.2025. The said notice issued by the present Arbitrator which was marked via email to the Complainant and to the Respondent. The Respondent did not provide its complete address/details while registering the impugned domain name and the same is apparent from the WHOIS record. The WHOIS record discloses only the Respondent's email address and Delhi location. The address and identity of the Respondent is not complete and accurate in the WHOIS record. The Respondent has violated Paragraph 3(a) of the INDRP as at the time of registration of the impugned domain name the Registrant/Respondent failed to furnish its complete and accurate credentials. Therefore, there is no other option for the Complainant and the present Arbitrator to serve the Respondent on the only available address i.e. email of the Respondent as mentioned above. The present Arbitrator had sent its notice dated 15.01.2025 issued under Rule 5(c) of INDRP Rules of Procedure on the said email address, however, the email bounced back. Furthermore, the Complainant had vide email dated 21.02.2025 had sent an email which was marked to the Respondent as well, wherein the Complainant rightfully expressed its inability to serve the Respondent through courier as the physical address of the Respondent was not known. The Respondent's failure to provide its identity and address during the registration of the impugned domain name result in the applicable legal consequences. Therefore, in view of foregoing, I hold that the

Respondent stands served with the complaint and documents thereto.

5. Rule 5(d) of the INDRP Rules of Procedure states that the date of commencement of the arbitration proceeding shall be the date on which the arbitrator issues notice to the Respondent. Therefore, the date of commencement of arbitration in the present case is 15.01.2025. Rule 5(e) of the INDRP Rules of Procedure states that an Arbitrator shall pass an award within a period of 60 days from the date of commencement of the arbitration proceeding.

Issues for consideration

6. Paragraph 4 of the INDRP provides the grounds on which a Complaint can be filed by the aggrieved Complainant who considers that a registered domain name conflicts with his/her legitimate rights or interests on the following grounds:
 - (a) 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; and
 - (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
 - (c) the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

Contention of the Parties

7. The Complainant has contended that it is the proprietor of the trade mark 'WAKEFIT' along with its stylized representations. The Complainant to show that it is the registered proprietor of the trade mark 'WAKEFIT' and other

stylized representations thereof has filed the registration certificates elucidating the registration of the said trade marks. Complainant mentioned its revenue figures to show its presence in the market. The Complainant has stated that it is selling its products on e-commerce platforms. The Complainant has relied upon the third-party media articles to show the goodwill and reputation of the Complainant. Furthermore, the Complainant has mentioned that it is the owner of various domain names including <www.wakefit.co> wherein the word 'wakefit' finds its prominent presence.

8. The Respondent has not filed any response to the Complaint filed by the Complainant.

Analysis and findings

9. The Complainant states that it is in the business of providing sleep solutions, home solutions furniture, etc.
10. The Complainant has filed the registration certificate for the following trade marks to demonstrate that it is the registered proprietor of the trade mark 'WAKEFIT' and stylized version thereof:-

Trade Mark	Application No.	Class
WAKEFIT	4240219	10
	4240220	20
	4240221	24
	5548765	11, 14, 16, 18, 22, 23, 26, 28, 37, 43
	5548768	21
	5548770	27
	5968568	6

	5968569	8
wakefit	5548766	11, 14, 16, 18, 22, 23, 26, 28,
	5548769	21
	4240214	24
	4240215	20
wakefit	4240216	24
	4240217	10
	4240218	20
wakefit	3105561	24

11. The Complainant has filed extracts from its website www.wakefit.co which shows that several awards are bestowed upon it. The reports of the third party media articles are filed to show the goodwill and reputation of the Complainant's trade mark 'WAKEFIT' in the market. The Complainant has filed revenue figures without filing any invoice for its product or certificate from chartered accountant to buttress the revenue figures. There is no document filed by the Complainant to demonstrate that the trade mark 'WAKEFIT' was in use since the year 2015. However, presence of the trade mark 'WAKEFIT' in the media articles, reports of the media houses w.r.t trade mark 'WAKEFIT', the usage of the trade mark 'WAKEFIT' in the Complainant's website www.wakefit.co, and the registration certificates establishes that the Complainant is the registered proprietor of the trade mark 'WAKEFIT' and is using the said trade mark in its business.

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Impugned domain name similar to Complainant's trade mark

12. The impugned domain name i.e. <www.wakefit.in> comprised of the registered trade mark 'WAKEFIT' of the Complainant. The Respondent has copied the entire trade mark of the Complainant in the impugned domain name. There arises no doubt that the impugned domain name is confusingly similar to the:-

- a. registered trade mark 'WAKEFIT' of the Complainant;
- b. the domain name <www.wakefit.co> of the Complainant; and
- c. the trade name of the Complainant.

13. Furthermore, section 28 of the Trade marks Act, 1999 confers rights to the Complainant by registration of the trade mark 'WAKEFIT' including the right to exclusive use the said trade mark.

14. The impugned domain name contains the registered trade mark 'WAKEFIT' of the Complainant in its entirety. The addition of the Top-Level Domain Name '.in' is irrelevant in determining whether the impugned domain name is confusingly similar to the Complaint's mark. It is well established that the specific top-level domain such as '.com', '.net', '.net'. 'in' etc does not affect the domain name for the purpose of determining whether it is identical or confusingly similar (Relevant decision:- *Rollerblade, Inc. v. Chris McCrady*¹)

¹ Case No. D2000-0429

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15. In view of foregoing, I hold that the impugned domain name i.e. <www.wakefit.in> is similar to the registered trade mark 'WAKEFIT' of the Complainant, domain name <www.wakefit.co> of the Complainant, and trade name of the Complainant. The impugned domain name violates the rights of the Complainant in the registered trade mark 'WAKEFIT' of the Complainant. Therefore, I hold that the registration of the impugned domain name is contrary to the paragraph 4(a) of the INDRP.

Respondent has no right in the impugned domain name and it is registered/used in bad faith

16. When one visits the impugned domain name (as the author of this award has visited), the webpage that comes to fore does not indicate any relation of the impugned domain name with any business of the Respondent. The usage of the impugned domain name does not relate to any goods or services rendered by the Respondent. The impugned domain name of the Respondent is being used to divert the internet users to some other webpages. The impugned domain name does not lead to any active website. There is nothing to show that the Respondent has done any preparation to use the impugned domain name to sell its goods or services. The fact is that the impugned domain name leads to a parking page which further leads to links of various other websites. Furthermore, the Respondent does not sell any goods or service under the said impugned domain name. Therefore, I can safely hold that the Respondent/Registrant has no rights or legitimate interests in respect of the impugned domain

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name, and as such the registration of the impugned domain name is contrary to the paragraph 4(b) of the INDRP.

17. Furthermore, in addition to the foregoing, the impugned domain name leads to a parked page and when the tabs therein are clicked the page leads to links of various other websites and this reasonably suggest that the Respondent's impugned domain name is acting as a parked page comprising pay-per click links. Furthermore, the Respondent registered the impugned disputed domain name in a bad faith attempt to confuse internet users as to a possible association between the impugned domain name and the Complainant. [*Relevant decisions SGII, Inc. V. New ventures Services, Corp.*² and *Facebook, Inc. Vs. S Demir Cilingir*³, *Ferring B.V V. Domain Administrator, Fundacion Privacy Services Ltd*⁴ and *Vorwerk International AG V. Host Master, Transure Enterprise Ltd*⁵]. Therefore, the usage of the impugned domain name is in bad faith. The Respondent's concealment of personal details strongly suggests an awareness of the illegal and bad-faith nature of their activities.
18. The use and registration of the impugned domain name is in bad faith because Respondent is seeking commercial gain from its use of the impugned domain name by establishing a parked page with pay-per-click advertisements that compete with Complainant's services. *See Sodexo V Domain Privacy, Above.com Domain Privacy*⁶ . Therefore, I hold that the

² WIPO Case No. D2019-2748

³ WIPO Case No. D2018-2746

⁴ WIPO Case No. D2021-0784

⁵ WIPO Case No. D2022-4237

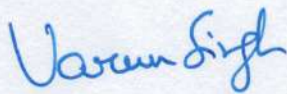
⁶ WIPO Case No. D2021-0592

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registration of the impugned domain name is in bad faith and is contrary to paragraph 4(c) of the INDRP.

Decision

19. In view of foregoing, it is ordered that the impugned domain name <www.wakefit.in> be transferred to the Complainant. Parties are ordered to bear the cost of the present proceedings.



(Varun Singh)

Sole Arbitrator

Dated: 28.02.2025

Advocate-on Record

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