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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1582 OF 2022

DISPUTED DOMAIN NAME: < ELITEMATRIMONYBUREAU.IN >

JD 0006923538

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Mr. Rakesh Tripathi, Proprietor, M/s Elite Matrimony, Bureau, AB-1,
Kamal Cinema Complex, Safdarjung Enclave, New Delhi 110029
Through its Authorised Signatory

...Complainant

Versus

S.K. Arora, 18/20, WEA, Karol Bagh, Delhi 110005, India

...Respondent No. 1

And

ELITE MATRIMONYBUREAU Private Limited, Plot No. 133, Ground
Floor, Pocket B-1, Sector 36, Rohini, North Delhi 110042 India

...Respondent No. 2

A. INTRODUCTION:

The Complainant in the present case is Mr. Rakesh Tripathi, proprietor of M.s Elite Matrimony Bureau alongwith his affiliates and predecessors (Collectively "Complainant") and he has submitted the present complaint against Elite Matrimony Bureau Private, to arbitration for decision in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) and the INDRP Rules of Procedure which has been entrusted to undersigned.

B. THE PARTIES:

I) Complainant

As per the Complaint, Complainant is the proprietor of the firm Elite Matrimony Bureau, which is engaged in the business of providing matrimonial and match making services. Complainant has an interest in the name/marks Elite Matrimony Bureau/Elite

Matrimonial and upon information and belief, complainant has been and will continue to be damaged by Respondent's bad faith registration and use of the domain name <EliteMatrimonyBureau.in>.

II) **Respondent**

According to the .IN Registry WHOIS database, the contact details of the Registrant are redacted. However, the complainant has submitted that it had previously filed a complaint under the INDRP for the disputed domain name <ELITEMATRIMONYBUREAU.IN> vide INDRP Case No. 1429. However, the said complaint was rejected by the Ld. Arbitrator vide award dated October 12, 2021, on technical grounds, specifically on the ground that the proper Respondent was not made party to the proceedings, which during the course of proceedings, was revealed to be a company named ELITE Matrimony BUREAU Private Limited.

Accordingly, Elite Matrimonybureau Private Limited, being the registrant of the disputed domain name <Elitematrimonybureau.in> has been impleaded as Respondent in the present INDRP case. As per the information provided in the said INDRP Case No. 1429, the email ID of the Respondent is mdluxuryindiasolutions@gmail.com, and the postal address as well as the registered address of the Respondent (company) is Plot No. 133, Ground Floor, Pocket B-1, Sector 36, Rohini North Delhi DL 110042 IN. the Complainant has submitted that now proper parties has been arrayed as Respondents.

III) **The Domain Name and Registrar**

This dispute concerns the domain name identified below (as mentioned earlier):

<ELITEMATRIONYBUREAU.IN>

IV) The Registrar with whom the domain name is registered is:

Registrar: GoDaddy.com, LLC

Address: 14455, North Hayden Road, Suite 219, Scottsdale, AZ 85260, United States of America.

Email: abuse@godaddy.com, trademarkclaims@godaddy.com

C. PRELIMINARY SUBMISSIONS OF THE COMPLAINANT

- i) That as the As the disputed domain name <EliteMatrimonyBureau.in> incorporates the Complainant's name/marks Elite Matrimonial/EliteMatrimony Bureau and is also phonetically, visually, conceptually, deceptively and confusingly similar to its much domain names/Website EliteMatrimonial.com and EliteMatrimonyBureaue.com, Complainant sent a cease & Desist letter to the Respondent on July 22, 2021 inter alia putting them upon notice of Complainant's rights in the abovementioned marks and the domain EliteMatrimonyBureau.com and further apprising them of the objectionable nature of use of the domain name <EliteMatrimonyBureau.in> by them. However, the Complainant did not receive any response from the Respondent in this regard.
- ii) That the Complainant had also notified the Domain Registrar of the disputed domain name, about the infringing nature of the domain name and the infringing contest being hosted therein, on July 21, 2021. This reflects the complainant's pro-activeness and

bonafide intention towards safeguarding its rights in the mark Elite Matrimonial/Elite Matrimony Bureau.

- iii) That in view of the aforesaid, given that the disputed domain name, <EliteMatrimonyBureau.in> is being held without any authorization, license or permission by the Respondent, and their non response in the face of intimation about the Complainant's superior rights thereto, the Complainant was constrained to file a domain complaint under the INDRP in September 2021 (INDRP No. 1429), which, already mentioned in the present complaint, was dismissed, and the Ld. Arbitrator had specifically held that the said decision was not passed on merits. The said previous complaint was not adjudicated on merits, for the reason that the proper Respondent was not impleaded in the proceedings.
- iv) In the said previous INDRP complaint vide INDRP case No. 1429, the Respondent was made out as 'Archana Verma' of the address D-24, 1st Floor, Defense Colony, New Delhi 110024, with the phone number and email address being 9990010370 and info@elitematrimonybureau.in respectively, and as was noted by the Complainant in its previous complaint, while the Respondent herein (i.e. ELITE Matrimonybureau Private Limited) was known to be the registrant of the disputed domain name, a person by the name of 'Archana Verma' had contacted the Complainant regarding the Domain Name in April 2019, and thus was impleaded as the Respondent therein (in the previous complaint). The Complainant has mentioned the details of the events led to the filing of the earlier complaint and its dismissal and also have placed on record copy of the complaint as well as the order of the

Ld. Arbitrator as Annexure C-1 to C-3 which have been perused by the undersigned.

- v) Also, a copy of the WHOIS details for the domain <EliteMatrimonyBureau.in> as provided by NIXI prior to filing the present domain complaint, as per which the Respondent is named as "SK Arora" has been annexed herewith and marked as Annexure C-4. Thus, the Registrant as per the WHOIS records provided by NIXI is impleaded herein as Respondent No. 1, and Elite Matrimony Bureau Private Limited is impleaded as Respondent No. 2, as per the details provided in the Complaint.

D. BRIEF BACKGROUND ABOUT THE COMPLAINANT

1. As per the averments made in the complaint, the Complainant first established their matrimonial services business under the name Elite Matrimonial in the year 2012 and conducted business primarily through its website at www.EliteMatrimonial.com, the domain being registered over a decade ago, on January 12, 2012. Considering the ever increasing demand for the Complainant's services, the Complainant established a proprietorship firm under the name M/S Elite Matrimony Bureau in the year 2018, which is now among India's leading matrimonial services providers.
2. The Complainant, over the years has worked diligently to create a rich and enormous database of high profile clients in India wherein their match making experts are well-versed in the dynamics of the Indian marriage system. As a primary mode of their business, the Complainant, besides conducting its business via its 2012 website www.EliteMatrimonial.com, also established

another interactive website at www.EliteMatrimonyBureau.com in 2018, where their clients have easy access to the dedicated teams for matrimony services that cater to the client specific requirements.

3. As noted above, the Complainant registered the top-level domain names and in the years 2012 and 2018 respectively, which they have been using continuously and exclusively in relation to their business ever since. The said websites showcases information about the Complainant and its business under the name/marks Elite Matrimonial/ Elite Matrimony Bureau, the variety of services which can be availed as well as numerous testimonials of their clients. The said websites are accessible globally and can be viewed by persons all over the world. Snapshots of the website pages of the Complainant prominently displaying the name/ mark Elite Matrimonial/ Elite Matrimony Bureau / has been pasted by the Complainant in the Complaint.
4. The WHOIS records of the Complainant's domain names <EliteMatrimonial.com> and <EliteMatrimonyBureau.com> are annexed and marked as Annexure C-5 with the complaint. Further, Complainant has also placed on record some excerpts from the Complainant's aforementioned websites as Annexure C-6. In addition to its domain registration, the Complainant has also filed trademark applications for its name/marks Elite Matrimonial/ Elite Matrimony Bureau in India.
5. According to the Complainant, the Complainant's goodwill and reputation in the name/marks Elite Matrimonial/ Elite Matrimony Bureau and variations thereof, have not only come from providing services to their clients or their testimonials of their success stories but also because an extensive amount of money

has been spent by promoting their services under the said brand(s) via advertisements in print and electronic media namely Hindustan Times, Just dial, Google SEO words etc. Receipts showing extensive amount being spent on advertising/promotional material accessible to the audience is annexed as Annexure C-7 with the Complaint.

6. As per the Complaint, the Complainant and its services under the name/marks Elite Matrimonial/ Elite Matrimony Bureau have gained immense popularity among consumers. The Complainant is also present on and connects with its customers through various popular social networking websites such as Facebook, Instagram and Twitter. Details of the Complainant's social media accounts under the name Elite Matrimonial/ Elite Matrimony Bureau have been mentioned in the Complaint. Also, Copies of relevant pages from the Complainant's social media websites are annexed with Complaint as Annexure C- 8. Therefore, according to the Complainant, as a result of the above-described extensive use and promotion, Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau have become distinctive and has enjoyed distinctiveness, goodwill and reputation long prior to the date on which Respondent registered the domain name.
9. It has been further submitted in the Complaint that it had come to the Complainant's attention that a domain name, namely <EliteMatrimonyBureau.in>, was registered on April 04, 2019 by the Respondent. The Complainant further observed that the Respondent was using the domain name with respect to various matrimonial / match-making services, similar/identical to those offered by the Complainant. A screenshot of the website hosted on the disputed domain name has been shown in the Complaint.

E. FACTUAL AND LEGAL GROUNDS TAKEN BY THE COMPLAINANT

i) **The disputed domain name <EliteMatrimonyBureau.in> is confusingly similar to a trade mark in which Complainant has rights (para 4(a) of the INDRP Policy).**

- a) It is the case of the Complainant that Complainant had established their matrimonial services business under the name Elite Matrimonial way back in the year 2012 and registered the corresponding domain name <EliteMatrimonyBureau.com> (which is similar/nearly identical to the disputed domain name <EliteMatrimonyBureau.in>) on January 12, 2012 and have been continuously and exclusively using the same in relation to its business for many years. As mentioned in the Complaint, the Complainant eventually expanded their business and established proprietorship firm under the name M/S Elite Matrimony Bureau and registered its other domain name, i.e. <EliteMatrimonyBureau.com> in the year 2018 i.e. is almost a year prior to the date on which Respondent registered the disputed domain name <EliteMatrimonyBureau.in>. By virtue of long standing use (since 2012), Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau have garnered immense reputation and goodwill.
- b) Further, according to the Complainant, the disputed domain name <EliteMatrimonyBureau.in> is identical to the Complainant's prior registered top-level domain name

<EliteMatrimonyBureau.com> as well as the name/marks Elite Matrimonial/ Elite Matrimony Bureau, especially the much prior adopted trade mark Elite Matrimonial and the corresponding domain name <EliteMatrimonial.com>, which was registered way back in 2012.

- c) Complainant states that given the identity of the disputed domain name <EliteMatrimonyBureau.in> with the Complainant's prior registered domain name <EliteMatrimonyBureau.com> and its name/marks Elite Matrimonial/ Elite Matrimony Bureau, the same is bound to cause confusion and deception in the minds of the public that the Respondent has some connection, association or affiliation with the Complainant, when it is not so. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as Kenneth Cole Productions v. Viswas Infomedia INDRP/093 <kennethcole.in>, Inter-Continental Hotels Corporation vs. Jaswinder Singh (INDRP/278) <hotelintercontinental.in>, Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148) <gingerhotels.co.in>, Carrier Corporation, USA v. Prakash K.R. (INDRP/238) <carrier.net.in>, M/s Merck KGaA v. Zeng Wei (INDRP/323) <Merckchemicals.in>, Colgate-Palmolive Company & Anr. v. Zhaxia (INDRP/887) <Colgate.in> and The Singer Company Limited v. Novation In Limited (INDRP/905) <singer.co.in>.

The Complainant has further submitted that this well-established principal has also been upheld by various

UDRP panels, including but not limited to in Oki Data Americas, Inc. v. ASD, Inc. (WIPO Case No. D2001-0903) <okidataparts.com>, Go Daddy.com, Inc. v. Shoneye's Enterprise (WIPO Case No. D2007-1090) <domainnamedaddy.com>, Qalo, LLC v. Chen Jinjun and Magnum Piercing Inc. v. The Mudjackers (WIPO Case No. D2000-1525) <magnumpiercing.com> <magnumpiercinginc.com> <magnumpiercing.net> <magnumpiercinginc.net> <magnumpier.net> <magnumpiers.com> <magnumpiers.net> <magnum-piercing.com> <magnum-piering.net> <magnumpier.com> <magnum-pier.net> <magnumpier.com> <magnumpiers.com> <magnumpiers.net>.

- d) The Complainant further states that a TLD/ccTLD such as ".in" is an essential part of domain name, thus it cannot be said to distinguish the disputed domain name <EliteMatrimonyBureau.in> from the Complainant's domain <EliteMatrimonyBureau.com> or its trade name and trade mark Elite Matrimony Bureau (or the domain name EliteMatrimonial.com). This has been held by prior panels in numerous cases, for instance in Dell Inc. v. Mani, Soniya (INDRP/753) , Patagonia Inc. v Doublefist Ltd. (INDRP/1185) <patagonia.co.in> and Humor Rainbow, Inc. v. Yin Jun, China (INDRP/1153) <okcupid.in>.
- e) The Complainant also placed reliance on a prior decision of the INDRP 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 before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent wherein 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 a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."*

- f) The Complainant further submits that in the present dispute as well, the Complainant has acquired rights in the trade mark Elite Matrimonial/ Elite Matrimony Bureau by way of domain name registrations much prior to the date on which the Respondent created the disputed domain name <EliteMatrimonyBureau.in>. Also, most importantly the identity between the Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau and domain names <EliteMatrimonyBureau.com> and <EliteMatrimonial.com> with the disputed domain name <EliteMatrimonyBureau.in> is grossly exacerbated by the fact that the Respondent is using the domain for identical services i.e. matrimonial services which is the nature of services provided by the Complainant as well.
- g) In addition to the above, Complainant submits that Paragraph 3 of the INDRP states that, "it is the Registrant's responsibility to determine whether the Registrant's domain

name registration infringes or violates someone else's rights." As held by the panel in Lockheed Martin Corporation v. Aslam Nadia (INDRP/947) <lockheedengineering>, since the Respondent failed to discharge such responsibility, the panel concluded that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. In the present dispute as well, the Respondent, at the time of registering the impugned domain name, has clearly failed to make the determination that the name/ mark Elite Matrimonial / Elite Matrimony Bureau and the rights subsisting therein vest exclusively with the Complainant.

Therefore, according to the Complainant he has fulfilled the conditions under the INDRP Paragraph 4(a) and stand suitably established.

II. **The Respondent has no rights or legitimate interests in respect of the domain name (Para 4(b) and Para 6 of the INDRP Policy).**

- a) The Complainant states that the Respondent has no right or legitimate interest in the domain name <EliteMatrimonyBureau.in>. Complainant has not authorized the Respondent at any point of time to register the impugned domain name, or use the names Elite Matrimonial/ Elite Matrimony Bureau, in any form whatsoever. According to Complainant, while the Respondent might have incorporated a company under the name Elite Matrimony Bureau Private Limited, the same was in the year 2020 and hence subsequent to the Complainant's trademarks and domain names, as

established in the preceding paragraphs, thus, the same is no basis to claim legitimate interest, as the said company name in itself is malafide and in bad faith, and is liable to be changed. The Complainant further submits that the said registration by the Respondent is only with the motive to deceive the general public into believing that they are somehow associated with or endorsed by the Complainant, and further with an intention to ride on the goodwill and reputation associated with the Complainant to unjustly enrich from the same.

- b) Further, it is submitted by the Complainant that in the previously filed complaint (INDRP Case No. 1429), which was not adjudicated on merits due to the Ld. Arbitrator's observation that the Respondent had not been properly impleaded, a reply was tendered by Mr. Sonu Arora, one of the directors of the company Elite Matrimony Bureau Private Limited which is the Respondent herein (i.e. Elite Matrimony Bureau Private Limited) to the complaint as filed, wherein he had inter alia stated that they are using some names/marks which comprise of the word "ELITE", such as EliteSwayamvar.com and EliteJodi.com, which are subject of trademark registrations. Mr. Sonu Arora @ Mr. S.K. Arora, Respondent no. 1 herein, on behalf of the Respondent no. 2, also submitted that they had incorporated a company under the name Elite Marriage Bureau Private Limited in 2019 and had also filed a trademark application for a mark ELITEMARRIAGEBUREAU on February 02, 2018. With such assertions, the Respondent therein attempted to

allege that the Complainant's trade name and trade mark Elite Matrimony Bureau is copied from their name/mark, and claimed to be the prior adopter of the name/ mark Elite Matrimony Bureau.

However, according to the Complaint, Complainant is claiming prior rights over its specific name/mark Elite Matrimonial which was adopted way back in 2012 and its derivative Elite Matrimony Bureau, and not on the solo word "ELITE". With this, it is submitted that the Complainant is indisputably the prior adopter and user of the above claimed marks, and thus the Respondent has no rights and legitimate interests herein. For ease of reference, a table of comparison outlining the rights of the Complainant against those of the Respondent (including facts as claimed by the Respondent in the previous INDRP case in 2021) has been mentioned in para 19 of the Complaint.

On the basis of above, Complainant submits that the Complainant's rights over the names/marks Elite Matrimonial and its subsequent iteration/ derivative Elite Matrimony Bureau date back to 2012. Respondent clearly has no legitimate rights or interests in the disputed domain name <EliteMatrionyBureau.in>. While they had filed applications in bad faith for the identical marks (application no. 5026508) and Elitematrimonybureau (application no. 4424137), which are by far subsequent to the Complainant's prior rights over the name/marks Elite Matrimonial/ Elite Matrimony Bureau, the Complainant has proactively taken action the said malafide applications, filed

in bad faith, by filing opposition against the same upon their advertisement in the Trade Marks Journal. Thus, such malafide applications filed in bad faith by the Respondent, does not give any legitimate rights or interests to the Respondent over the disputed domain name <EliteMatrimonyBureau.in>. The Respondent, while seemingly having rights over names/marks such as ELITESWAYAMVAR.COM and ELITEJODI.COM, have absolutely no legitimate rights or interests over the name/marks Elite Matrimonial/ Elite Matrimony Bureau and certainly not over the disputed domain name <EliteMatrimonyBureau.in>.

- c) In addition to above submissions, Complainant further submits that Respondent is clearly not making a legitimate, non-commercial fair use of the domain name. Therefore, it appears that Respondent has deliberately chosen to use the domain name <EliteMatrimonyBureau.in>, which is identical to the Complainant's domain names/ websites <EliteMatrimonial.com> and <EliteMatrimonyBureau.com> as well as its trade marks Elite Matrimonial/ Elite Matrimony Bureau, so as to suggest a direct connection or affiliation with the Complainant and its business when in fact there is none.
- d) Further, according to the Complainant, Respondent does not have any right or legitimate interest in the name Elite Matrimony Bureau (or Elite Matrimonial which is similar/identical to Elite Matrimony Bureau) within the meaning of Paragraph 6(c) of the Policy. The Respondent is not making a legitimate, non-commercial or fair use of

the domain name. It appears that the Respondent has deliberately chosen to use the domain name <EliteMatrimonyBureau.in> , which is phonetically, conceptually, deceptively and confusingly identical/ similar to the Complainant's trademarks and prior domain names so as to suggest a direct connection or affiliation with the Complainant's name/marks and business and to create a direct affiliation with Complainant and its business when in fact there is none.

- e) Further, according to the Complainant, such confusion is greatly aggravated by the fact that the Respondent is using the domain <EliteMatrimonyBureau.in> with respect to matrimonial services which is identical/ overlapping to the Complainant's area of business under the name/ marks Elite Matrimonial/ Elite Matrimony Bureau. Accordingly, the Respondent cannot assert that they are currently making a legitimate, non-commercial or fair use of the domain name, in accordance with Paragraph 6(c) of the Policy. In fact, any use of the domain name <EliteMatrimonyBureau.in> by the Respondent in relation to identical services is likely to create a false association and affiliation with the Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau and its official websites at EliteMatrimonial.com and EliteMatrimonyBureau.com. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate, non-commercial or fair use of the domain name in accordance with Paragraph 6(c) of the Policy.

- f) Finally, in order to prove its case, Complainant submitted that Respondent herein registered the impugned domain <EliteMatrimonyBureau.in> almost 10 years after the Complainant adopted the trade mark Elite Matrimonial in relation to their business. Further, Respondent is presently using the identical domain with respect to identical services i.e. matrimonial services. In the circumstances of this case the Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 6(c) of the Policy since there is no apparent legitimate justification for the Respondent's registration of the <EliteMatrimonyBureau.in> domain name that is phonetically, conceptually, deceptively and confusingly identical/ similar to the Complainants' trade name/mark Elite Matrimonial/ Elite Matrimony Bureau.
- g) Further, it is also the contention of the Complainant that the continued ownership of the disputed domain name <Elite MatrimonyBureau.in> by the Respondent, prevents the Complainant from reflecting their trademark in the subject domain name. Complainant relied upon the judgment in the case of Motorola, Inc. vs New Gate Internet, Inc. (WIPO Case D2000-0079), wherein, it was held that use of the trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.
- h) At the end, Complainant submits that it is not possible to conceive of any plausible use of the domain name <EliteMatrimonyBureau.in> by Respondent that would not

be illegitimate, as it would inevitably create a false association and affiliation with Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau and its domain names/ websites <EliteMatrimonyBureau.com> and <EliteMatrimonial.com>. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name.

III. **The domain name was registered or is being used in bad faith (Para 4(c) and Para 7 of the INDRP Policy).**

- a) In Order to prove the above ingredient, the Complainant submitted that as per paragraph 7(c) of the Policy, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the Respondent has registered and was previously using the domain name to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location. The fact that the Respondent registered a domain name so inextricably intertwined and connected with the Complainant and its name/marks and business, and is using the same for similar/identical services, thus, in this context, clearly indicate bad faith as per the INDR Policy.
- b) Furthermore, according to the Complainant, the fact that the Respondent had registered the disputed domain name

<EliteMatrimonyBureau.in> subsequent to the complainant's prior registered domain names/ websites further aggravates the Respondent's bad faith, in as much as, the Respondent is using the identical name with respect to the impugned domain name <EliteMatrimonyBureau.in>, and appears to be offering similar/identical services on the disputed domain name. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <EliteMatrimonyBureau.in> which incorporates the Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau and provides matrimonial services which is the primary service of the Complainant under the said name/marks. In light of the continuous and extensive use of the name/marks mark Elite Matrimonial/ Elite Matrimony Bureau by the Complainant including as part of their trade name/ trade marks /domain names, the same is an exclusive identifier for the Complainant. Reliance has been placed by the Complainant on a prior decision in the case of M/s Merck KGaA v Zeng Wei INDRP/323, wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

Hence, according to the complainant, the Respondent had no reason to adopt an identical name/ mark Elite Matrimony Bureau with respect to the impugned domain name except to create a deliberate and false impression in

the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly enrich from the same. Therefore, according to the Complainant the facts and contentions enumerated above establish that Respondent's domain name registration for <EliteMatrimonyBureau.in> is clearly contrary to the provisions of paragraph 4(c) of the INDRP.

- c) Finally to sum up its contentions as made out in the Complaint, the Complainant has submitted that in consideration of the Complainant's longstanding reputation, and the ubiquitous presence of the Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau on the Internet, Respondent was, or should have been, aware of the Complainant's trade marks and the domain <Elite MatrimonyBureau.in> long prior to registering the domain name, especially considering the fact that the Complainant's adoption of the name Elite Matrimonial, from which its variant/derivative Elite Matrimony Bureau is derived, date back to 2012. The Respondent's intent appears reflective of a blatant attempt to ride on the association and goodwill of the Complainant's brand as acquired among the consuming public and thereby drive traffic towards the Respondent's domain and website by misleading, confusing and deceiving Complainant's customers and the general lay public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name and website as hosted thereon.

- d) At the end, Complainant contended that it has established that the name/marks Elite Matrimonial/ Elite Matrimony Bureau are distinctive and it is evident that the Respondent had prior knowledge of Complainant's name/marks prior to registering the disputed domain name. Owing to the fame attached to Complainant's name/marks Elite Matrimonial/ Elite Matrimony Bureau, which is a result of extensive use and promotion in relation to its matrimonial services, it is implausible that the disputed domain name <EliteMatrimonyBureau.in> can be affiliated/ associated with anyone else except the Complainant herein.

F. RELIEF SOUGHT:

On the basis of the averments made in the Complaint as well as documents annexed, the Complainant, in accordance with Paragraph 10 of the INDRP Policy, requested that the domain name <ELITEMATRIMONYBUREAU.IN> may kindly be cancelled and/or be transferred to the Complainant.

G. FINDINGS:

After going through unrebutted and uncontroverted averments and submissions made in the Complaint as well as the documents annexed and also the crux of the decisions/judgements relied upon by the complainant, the undersigned is of the view that the Complainant has been able to prove the ingredients of sub paras/sub clauses (a) to (c) of Clause 4 of the INDRP dispute Resolution Policy read with Paragraph 6 and 7 of the said policy wherever applicable. From the

contents and grounds mentioned in the complaint, it has been proved on record that the Disputed Domain Name is not only identical but so also is confusingly similar to the Trademark in which the complainant has rights. It has also been proved that the Respondent Registrant has no rights or legitimate interest in respect of the Domain name and also that the Domain name has been registered by the Respondent and is being used in bad faith. The Complainant has been able to prove its case in terms of clause 4 of the INDRP Dispute Resolution Policy and also falls within the ambit of Clause 6 and 7 of the said policy. Since, the Respondent has not chosen to contest the present case, therefore, this Tribunal has no other alternative but to consider the unrebutted contentions of the Complainant to the effect that the registration of Trademark Elite Matrimonial/Elite Matrimony Bureau was prior to the registration of the same by the Respondent.

H. CONCLUSION:

As evident from the findings above, since, the Complainant has established and proven its case as required under the INDRP Dispute Resolution Policy, therefore, the Complaint is allowed with cost and the following award is being passed in favour of the complainant and against the Respondent.

I. AWARD:

In view of above, it is awarded that the disputed domain name <ELITEMATRIMONYBUREAU.IN> is transferred to the complainant, Sh. Rakesh Tirpathi, M/s Elite Matrimony Bureau. Accordingly, the registry is directed to transfer the said domain name in favour of the

Complainant. It is further ordered that the Respondent is barred from using the mark <ELITEMATRIMONYBUREAU.IN> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

J. **COST:**

There is no Award as to the Cost.



(Sajal Koser)
Arbitrator
20.09.2022