



e-Stamp Serial Number : 202425000002713435

Verification Code : 162330105V

Govt. Reference No.(GRN) : KL042640197202425E
Purpose : Bond
Amount of Stamp Paper Purchased in Numeral : ₹ 100
Amount of Stamp Paper Purchased in Words : Rupees One Hundred
Stamp Paper Purchased on : 28/03/2025
First Party Name : Adv SUNIL V MOHAMMED
First Party Address : NIXI, Delhi
Second Party Name : LEGAL
Second Party Address : NIXI, DELHI
Vendor Code & Name : 11112470 - M.R.Padmanabhan
Treasury Code & Name : 1111 - STAMP DEPOT, Eranakulam

Please write or type below this line

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

Adv. SUNIL V. MOHAMMED BA., LL.B.
(Sole Arbitrator)

AWARD

Dated 31st March, 2025

Venue: New Delhi, India



This can be verified by
https://www.estamp.treasury.kerala.gov.in/index.php/estamp_search using e-Stamp
Serial Number and Verification Code.



Page 1 of 19

M. R. PADMANABHAN
High Court Stamp Vendor
ERNAKULAM

**In the matter of Arbitration under the .In Domain Name Dispute
Resolution Policy; the INDRP Rules and Procedure and
The Arbitration and Conciliation Act, 1996**

INDRP CASE No. 1952

Between

Complainant

HACHETTE FILIPACCHI PRESSE,
2 Rue Des Cevennes,
75015 Paris, France

And

Respondent

Mr. ANKUR JHA,
Chennai, Tamil Nadu, India, Elle Kids Ill'
Velachery House, New Secretariat Colony,
Gangai Nagar, Velachery,
Chennai, Tamil Nadu, India

Disputed Domain Name : *"ellekids.in"*

Seat of Arbitration : Office of the NIXI at Delhi, India.

**Date of commencement
of Arbitration Proceeding** : 31st January, 2025



TABLE OF CONTENTS

| Sl. No. | Description | Page No. |
|----------------|---|-----------------|
| 1. | PARTIES TO THE ARBITRATION | 4 |
| 2. | APPLICABLE LAW AND JURISDICTION | 4 |
| 3. | THE DOMAIN NAME AND REGISTRAR | 5 |
| 4. | PROCEDURAL HISTORY | 5 - 6 |
| 5. | GROUND S URGED FOR THE ADMINISTRATIVE PROCEEDINGS | 6 - 7 |
| 6. | COMPLAINANT'S CONTENTIONS | 7 - 11 |
| 7. | RESPONDENT'S CONTENTIONS | 11 - 12 |
| 8. | DISCUSSIONS AND FINDINGS | 12 - 18 |
| 9. | DISPOSITIONS | 18 |
| 10. | LIST OF ANNEXURES | 19 |



Adv. SUNIL V. MOHAMMED BA., LL.B.
(Sole Arbitrator)

1. The Parties to the Arbitration:

1.1 The Complainant in the Arbitration Proceedings is **HACHETTE FILIPACCHI PRESSE**, 2 Rue Des Cevennes, 75015 Paris, France. The Complainant is represented in these proceedings by its authorized representatives through its Counsels Remfry and Sagar, Remfry House at Millennium Plaza, Sector-27, Gurugram-122009 (e-mail: *remfry-sagar@remfry.com*, *gaurav.mukerjee@remfry.com*, *amol.dixit@remfry.com*, *saumya.tripathi@remfry.com*) as per **Annexure-P** Authorization.

1.2 The Respondent in the proceedings is **Mr. ANKUR JHA**, Chennai, Tamil Nadu, India, Elle Kids 111, Velachery House, New Secretariat Colony, Gangai Nagar, Velachery, Chennai, Tamil Nadu, India (e-mail: *forteam47@gmail.com*), as mentioned on **Annexure-O** website "*www.ellekids.in*" and from the contact details publicly available in **Annexure-N** WHOIS data.

2. Applicable Law and Jurisdiction:

2.1 The present Dispute Resolution Process is in accordance with Policy No. 5 of the .IN Domain Name Dispute Resolution Policy (hereinafter referred to as the **.IN Policy**) and .IN Domain Name Dispute Resolution Rules of Procedure (hereinafter referred to as the **INDRP Rules of Procedure**), based on the Arbitration and Conciliation Act, 1996 as amended from time to time, adopted by the NIXI and sets forth the legal framework for resolution of disputes between a Domain Name Registrant and a Complainant arising out of the registration and use of an .IN Domain Name.

2.2 By registering the disputed Domain Name with the National Internet Exchange of India (hereinafter referred to as **NIXI**) accredited Registrar, the Respondent has agreed to the resolution of disputes under the Policy and Rules framed there under (See Policy No. 15 and 16 of the .IN Policy and Rule 13 (a) INDRP Rules of Procedure).



SOLE ARBITRATOR
Date: 5/1/05

3. The Domain Name and Registrar:

3.1 The disputed Domain Name is "*ellekids.in*", which is registered on 8th October, 2024 with GoDaddy.com, LLC, by the Respondent registrant.

3.2 The particulars of the registration of Domain Name as found in the WHOIS records are as follows:



| | |
|-----------------------|---|
| DNS Form | ellekids.in |
| User Form | ellekids.in |
| ROID | D489C3ACAAAF7B4F889650E8E32F9028E0-IN |
| Registrar Name | GoDaddy.com, LLC |
| IANA ID | 146 |
| Create Date | 2024-10-08T13:14:40Z |
| Expiry Date | 2025-10-08T13:14:40Z |
| Last updated Date | 2024-10-13T13:14:41Z |
| EPP Status | clientDeleteProhibited clientUpdateProhibited clientRenewProhibited clientTransferProhibited serverTransferProhibited |
| Domain State | Registered |
| Assigned Name servers | ns78.domaincontrol.com ns77.domaincontrol.com |

4. Procedural History

4.1 The Sole Arbitrator, Adv. Sunil V. Mohammed was appointed on 20th January, 2025, in the above INDRP case to resolve the domain dispute raised in the Complaint dated 20th November, 2024, in accordance with Rule 2(a) and 4(a) of the INDRP Rules of Procedure.

4.2 After obtaining the Statement of Acceptance and Declaration of Impartiality of Independence of the Sole Arbitrator, the NIXI has forwarded the amended complaint along with Annexures A to Q through e-mail dated 28th January, 2025.

4.3 On 31st January, 2025, the Tribunal issued Notice under Rule 5(c) of the INDRP Rules of Procedure to the Respondent through e-mail and the Complainant was directed to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent registrant at the address provided in the WHOIS details

of the domain, in compliance of Rule 2 and 3(d) of the INDRP Rules of Procedure and to furnish proof of such service and delivery. In the said Notice, the Respondent was directed to file Reply to the Domain Complaint within 15 days.

4.4 The Complainant forwarded the soft copies of the Complaint and Annexures to the known e-mail ID's of the Respondent viz., *forteam47@gmail.com* as well through courier and speed post. The Complainant as per e-mail dated 31st January, 2025 and 5th February, 2025 has informed the Tribunal about the same with proof of service in compliance of Rule 3(d) of the INDRP Rules of Procedure. Accordingly, the complainant has affected the service of the Complaint and Annexures on the Respondent under Rule 2(d) (iii) of the INDRP Rules of Procedure.

4.5 Since the Respondent failed to submit reply/response to the Domain Complaint within the time limit as mandated in the Notice dated 31st January, 2025 of the Tribunal and as the said time period had expired on 15th February, 2025, the Tribunal as per e-mail dated 17th February, 2025 granted the Respondent with another opportunity under Rule 13 of the INDRP Rules of Procedure to submit reply to the domain complaint within a further period of 10 days. But the Respondent did not submit any reply/response and the said time period had also expired on 27th February, 2025.

4.6 Accordingly, as per e-mail dated 4th March, 2025, the Tribunal set the Respondent *ex-parte* and decided to proceed under Rule 17 of the INDRP Rules of Procedure. Since the said proceedings of the Tribunal was not communicated to the Respondent in the e-mail *forteam47@gmail.com*, fresh intimation was issued as to the proceedings dated 4th March, 2025 to the Respondent vide e-mail dated 18th March, 2025. Despite that, the Respondent hasn't appeared in the matter. So, the Tribunal adjourned the matter for passing Award under Rule 5(e) of the INDRP Rules of Procedure.

5. Grounds urged for the Administrative Proceedings:

5.1 The disputed domain name is confusingly similar to Complainant's.

5.2 The Registrant has no rights or legitimate interests in respect of the domain name.



5.3 The Registrant's domain name has been registered or is being used in bad faith.

6. Complainant's Contentions:

6.1 The Complainant would contend that it is a globally recognized media company **headquartered in France** and a member of the **Lagardère Group of Companies**, which is one of the most renowned media groups in the world and a global leader in content publishing, production, broadcasting and distribution, whose powerful brands leverage its virtual and physical networks to attract and enjoy qualified audiences.

6.2 According to the Complainant, **its flagship publication is the magazine ELLE**, which was **launched in the year 1945** and is celebrating its 79th anniversary and that the magazine under the **title/trade/service mark/name 'ELLE'** is the earliest title in its current group of publications with 50 editions across the world and a global readership running into millions, making it the **world's leading fashion and lifestyle magazine**.

6.3 The Complainant would point out that as part of its publication under the trade/service mark/name 'ELLE', it merchandises various products/services worldwide and across the industry including, but not limited to the fashion industry and that since its launch in 1945 as evident from **Annexure-A** first cover page, 'ELLE' has evolved into an international concept, recognized for its universal appeal.

6.4 It is the contention of the Complainant that it **began its international expansion in the 1980's** and to prove the international expansion, the Complainant has produced **Annexure-B** chronological representation. The Complainant would contend further that 'ELLE' now boasts 50 editions globally, making it the only magazine published on this scale. According to the Complainant, its annual worldwide revenue generated under the trademark 'ELLE' between 1999 to 2008 is as follows:

| Year | Millions of Euros |
|------|-------------------|
| 1999 | 349 |
| 2000 | 405 |
| 2001 | 409 |



| | |
|------|-----|
| 2002 | 385 |
| 2003 | 367 |
| 2004 | 340 |
| 2005 | 353 |
| 2006 | 361 |
| 2007 | 374 |
| 2008 | 406 |

6.5 It is the case of the Complainant that, as shown in **Annexure-C** printouts of press clippings, 'ELLE' magazine **made its entry into the Indian market in the year 1996**, where it was hailed by the Hindustan Times as the 'Number One fashion magazine in the world' and since then, **Ogaan Publications Private Limited has been the authorized licensee of the mark in India**, maintaining this partnership for 28 years as evident from **Annexure-D** licence agreements.

6.6 The Complainant would content that **in 2000, 'ELLE' introduced 'ELLE DÉCOR' to the Indian market, a magazine dedicated to interior decoration** and to prove the same **Annexure-E** newspaper clippings of the launch in the Indian press has been produced. According to the Complainant, over the years, it has further expanded through strategic partnerships and licensing agreements, such as collaborations with Trident Limited, Trend Sutra Client Services Private Limited, Mont Blanc Ventures Private Limited etc. introduced ELLE-branded multi-brand outlets to the Indian market and the statistics below shows the monthly circulation of the Indian edition of the magazine under the 'ELLE' trade mark since 1999 to 2008:

| Year | Copies per month in thousands |
|------|-------------------------------|
| 1999 | 36 |
| 2000 | 21 |
| 2001 | 19 |
| 2002 | 19 |
| 2003 | 18 |
| 2004 | 21 |
| 2005 | 21 |
| 2006 | 24 |
| 2007 | 23 |
| 2008 | 16 |



6.7 The Complainant placing reliance on **Annexure-F** photographs of newsstand advertisements would contend that ELLE Magazine continues to be widely circulated and promoted.

6.8 The Complainant would further contend that 'ELLE' brand has maintained a robust online presence since 1995 through domains such as '**ELLE.FR**', '**ELLE.COM**' and that it has registered many additional ELLE domain names, both under the generic top-level domain (TLD) **".com"** and under the respective country-code-top-level domains (CCTLDs) to be able to access on-line publishing of its 45 editions as shown in **Annexure-G**. According to the Complainant, the said websites operating under its various domains are accessible from India and attract a significant number of visitors therefrom.

6.9 The Complainant would indicate that in India, through its licensee Ogaan, operates a number of websites incorporating the mark 'ELLE', in particular *www.elle.in*, *www.ellenow.com* and *www.elledecor.in*, which has substantial hits per month from 2004 to 2009 and that the magazine 'ELLE DÉCOR' launched in 2000 in India, has a readership of over 3,74,000 as per the publisher's statement in 2019 and further with a bi-monthly publication, the magazine had circulation of nearly 75,000 copies. The Complainant would add that the website *www.elledecor.in* launched in 2015, had over 92,906 unique viewers as well as 274,000 page views as per Google analytics from December 2017. In order to prove the said facts, the Complainant would rely on extracts in **Annexure-H**.

6.10 With the aid of the screenshot from **ANNEXURE-I** social media pages, the Complainant would contend that in India, 'ELLE' has a significant social media presence that mirrors its strong global following in 2013 and has 90 Facebook pages and 56 Twitter accounts worldwide, with combined reach of 2.86 million fans on Facebook and 1.3 million followers on Twitter and then India Twitter account has 1.2 million followers, the Facebook page has over 900,000 followers and the Instagram page has 1.1 million followers. It is further contended that it is a globally recognized brand that extends into a broad range of licensed goods, which include clothing, bags, home décor, jewellery,





luggage, perfumes, cosmetics, spa facilities, and eyewear and that by 2014, the 'ELLE' trademark was licensed to approximately 140 entities, with around 1,000 ELLE-branded stores worldwide, including 10 in India commanding a revenue from ELLE merchandise sales than from the magazine itself through the illustration of the sales value between 2004 to 2022 given in the Compliant.

6.11 As per the Complainant, its trademarks 'ELLE' being its extremely valuable intellectual property are registered and/or pending registration in numerous jurisdictions of the world, which are sought to be established through **ANNEXURE-J** registration certificates issued in jurisdictions globally. According to the Complainant, **its earliest registration for its trademark 'ELLE' in India dates back to the year 1987** and all the registrations are valid and subsisting before the TM Registry, the details of which are as follows:

| Regn. No. | Trademark | Dated | Class |
|-----------|-----------|--------------------|------------|
| 472237 | ELLE | May 14, 1987 | 16 |
| 645371 | ELLE | November 11, 1994 | 25 |
| 645373 | ELLE | November 11, 1994 | 14 |
| 645372 | ELLE | November 11, 1994 | 18 |
| 1257224 | ELLE | December 24, 2003 | 36 |
| 1240296 | ELLE | September 29, 2003 | 35, 38, 41 |
| 770068 | EDECOR | September 27, 1997 | 16 |
| 2624208 | ELLE | November 7, 2013 | 14, 35 |
| 3066382 | ELLE | September 29, 2015 | 38, 41 |

In support of the above, the Complainant has relied on **Annexure-K** printouts of the online status and registration certificates from the TM Registry.

6.12 Based on the aforesaid contentions, the Complainant would conclude that the trade/service mark/name 'ELLE' has, through extensive and continuous use and trademark registrations, become exclusively associated with the Complainant and its business and consequently, it has all the characteristics of a 'well-known mark' and, due to the Complainant's global presence, it has acquired significant goodwill and reputation in this mark and that the rights in the 'ELLE' trademark have been upheld by various tribunals and courts worldwide in the Complainant's favour as evident from **Annexure-L**.

6.13 The Complainant would point out since, December, 2020, it has received multiple complaints about the unauthorized child modeling services and auditions misusing the 'ELLE' mark from infringing websites viz., *www.ellemodels.in* (2020), *www.elleindia.in* (2021), *www.ellekids.in* (2021) and *www.ellekidz.com* (2021) all of which stands suspended after **Annexure-M** Cease and Desist notices and complaints. The Complainant would submit further that in September, 2024, it became aware of another domain name covered by **Annexure-M** WHOIS record, which was registered and promoted in a manner identical to the above infringing websites and the Cease and Desist notice dated 27th September, 2024 issued was returned unserved. The Complainant by relying on **Annexure-O** would contend that "*www.ellekids.in*" blatantly uses 'ELLE' in respect of a field wherein it enjoys significant goodwill and reputation.

6.14 Accordingly, the Complainant sought to transfer the Respondent's domain name under the .IN Policy to protect its rights and legitimate business and for cost of the proceedings.

7. Respondent's Contentions:

7.1 Despite service of Notice dated 31st January, 2025 to the Respondent's e-mail *forteam47@gmail.com* and even after the extended time period, the Respondent failed to submit reply/response to Domain Complaint. Accordingly, the Tribunal proceeded further in the matter by setting the Respondent set ex-parte.

7.2 Rule 13(b) of the INDRP Rules of Procedure provides that the Arbitrator shall ensure that at all time treat the parties with equality and provide each one of them a fair opportunity to present their case. Further, Rule 17 of the said Rules of Procedure empowers the Arbitrator to proceed with an ex-parte Award in case any party breaches the provisions of the INDRP Rules of Procedure or directions of the Arbitrator.

7.3 Infact, the Respondent was given notice under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint. As stated above, the Respondent failed to file any reply to the Complaint and never answered the




Complainant's assertions, evidence or contentions in any manner. Therefore, it is clear that despite the Respondent been given a fair opportunity to present its case, the Respondent does not comply with the direction of the Tribunal.

7.4 Further, as per Rule 18(a) of the INDRP Rules of Procedure, the Arbitrator shall decide the Complaint based on the pleadings submitted in accordance with the Arbitration and Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2019, the .IN Policy, INDRP Rules of Procedure and any law that the Arbitrator deems to be applicable. Therefore, the Tribunal is justified in drawing inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint.

8. Discussions and Findings:

8.1 Accordingly, the Tribunal framed the following issues for consideration:

- (i) Whether the Respondent's Domain name is identical and/or deceptively similar to domain name and trademarks of the Complainant?*
- (ii) Whether the Respondent has any rights or legitimate interests in respect of the domain name?*
- (iii) Whether the Respondent's domain name was registered or is being used in absolute bad faith?*
- (iv) Reliefs and cost.*

8.2 The Complainant has produced Annexure-A2 to Annexure-Q to substantiate its contentions. As per Rule 13(d) of the INDRP Rules of Procedure, the Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence placed for consideration in the proceedings while deciding the Complaint.

8.3 The entire case of the Complainant is that as per Policy No. 4 of the .IN Policy, **the registered domain name of the Respondent conflicts with its legitimate right and interest being the same identical/confusingly similar to the Complainant's trade mark, that the registrant has no rights or**




legitimate interests in respect of the domain name and that the registrant's domain name has been registered/being used in bad faith.

8.4 To substantiate **Issue No. 1**, the Complainant would content that as per Policy No. 3(b) of the .IN Policy, the Respondent Registrant is to ensure that to its knowledge the registration of the domain name will not infringe upon or otherwise violate the rights of any third party and further that in this case, **the Respondent's domain name is identical to the trademark of the Complainant in accordance with Policy No. 4(a) of the .IN Policy**. To prove the same the Complainant has produced sufficient documents and would submit that the Respondent has registered the domain name "**ellekids.in**" with malifide intention to gain leverage from it and make illicit gains by adopting the Complainant's well known trade/service mark/name 'ELLE' in its entirety. According to the Complainant, the Respondent has registered the disputed domain name with full knowledge of the Complainant, its business activities and IPR Rights. It is clear from the WHOIS records that the domain name "**ellekids.in**" was registered on 8th October, 2024, which is much after the registration of the Complainant's domain name "**elle.in**" on 14th February, 2005. Further, the documents produced by the Complainant would show that its trade/service mark 'ELLE' is also registered under the Madrid System (WIPO), designating various countries, including Bahrain, Denmark, Finland, the UK, Greece, Ireland, Iceland, Japan, Lithuania, Norway, Oman, Sweden, Türkiye, the USA, Austria, Bosnia and Herzegovina, Bulgaria, the Benelux Office for Intellectual Property, Belarus, Switzerland, China, Cyprus, the Czech Republic, Germany, Algeria, Egypt, Spain, Croatia, Hungary, Italy, Kazakhstan, Liechtenstein, Latvia, Morocco, Monaco, Montenegro, North Macedonia, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, San Marino, Ukraine and Vietnam, dating from 1964. In *F Hoffman-La Roche AG Vs. Relish Enterprises (WIPO) D2007-1629* it was held that "*If the Complainant owns a registered trademark, then it satisfies the threshold requirement of having the trademark rights and the domain name is confusingly similar to Complainant's trademark because the disputed domain name looks and reads like Complainant's trademark*". Moreover, in the decisions in *Kenneth Cole Productions Vs. Viswas Infomedia INDRP/093*, *Inter-Continental Hotels Corporation Vs. Jaswinder Singh (INDRP/278)*, *Starbucks Corporation Vs.*



Mohanraj (INDRP/118) and *Raddison Hospitality Belgium BV/SRL Vs. Najim (INDRP/1818)* deceptive similarity is answered in similar lines. Thus, it is clear that the Respondent's domain name is identical to the trademark of the Complainant. Accordingly, Issue No. 1 is answered in favour of the Complainant.

8.5 It is the contention of the Complainant that the Respondent has no rights or legitimate interests in respect of the Domain Name as the Respondent has not established one or more of the circumstances enumerated in Policy No. 6 of the .IN Policy. The Complainant's specific case is that the Respondent's adoption of the disputed domain name, its dishonest use and confusing similarity would not constitute a bonafide offering of goods or services and that intentional ignorance of the Respondent while registering the domain name is malafide. Policy No. 3(d) of the .IN Policy provides that the registrant while applying to register a domain name must represent that the registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations and infringing or violating someone else's rights. In this context, it is relevant to note that nothing is brought on record to show that prior to any notice of this dispute, the Respondent was using, or had made demonstrable preparations to use the Domain Name in connection with a bonafide offering of goods or services in accordance with Policy No. 6(a) of the .IN Policy. Further, there is nothing to show that the Complainant has authorised, licensed or otherwise allowed the Respondent to make any use of its domain name. In *Wacom Co. Ltd. v. Liheng, INDRP/634 (<wacom.in>)* it was held that no legitimate interest is made out where "the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name".

8.6 Mere technical requirement of the addition of the TLD and CCTLDs does not grant any distinction to the Respondent (See the decisions of the INDRP Panel in *Urban Outfitters Inc. Vs. Hua An Holdings (H.K.) Limited (INDRP/601)*, *Starbucks Corporation Vs. Aditya Khanna (INDRP/614)* and *Sudhir Kumar Segar Vs. John Doe (INDRP/1645)*). Infact, a generic TLD/CCTLD such as ".in" is a standard registration requirement and therefore cannot be said to distinguish the Respondent's domain name from the



Complainant's registered trademark or its domain name as held in *Equifax Inc. v. Nikhlesh Kunwar (INDRP/1038)* and *Walmart Stores, Inc. v. Richard MacLead (WIPO Case No. D2000-0662)*. Therefore, when the disputed domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name, it is to be considered identical or confusingly similar for the purposes of the Policy as held by the Hon'ble Supreme Court of India in *Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt. Ltd., [2004 Supp. (2) SCR 465]* that the domain name has acquired the characteristic of being a business identifier when it identifies the subject trade or service that an entity seeks to provide to its potential customers (See the decisions in *Dell Inc. Vs. Mani, Soniya (INDRP/753)*, *Patagonia Inc. Vs. Doublefist Ltd. (INDRP/1185)*, *Factory Mutual Insurance Company Vs. Rhianna Leatherwood (WIPO Case No. D 2009)* and *Avanti Feeds Limited Vs. Pradeep Chaturvedi (INDRP/1388)* that followed the dictum of the Hon'ble Supreme Court). Further, in *Zippo Manufacturing Company Inc. Vs. Zhaxia (INDRP/840)* it has been observed that "*the Respondent has picked up the mark without changing even a single letter and when a domain name wholly incorporates a complainant's registered mark that is sufficient to establish identity or similarity for purpose of the Policy.*" In view of the above discussion, the **Respondent herein cannot legitimately claim that it is commonly known by the Domain Name in accordance with Policy No. 6(b) of the .IN Policy.** Moreover, in light of the nature of the domain name, comprising the Complainant's 'ELLE' trademark, preceded by the term "*kids.in*", it can be concluded that **the Domain Name carries with it an implied risk of affiliation with the Complainant, which cannot constitute fair use.** Therefore, it is found that **the Respondent has no rights or legitimate interests in the Domain Name, in accordance with Policy No. 4(b) of the .IN Policy and Issue No. 2 is answered in favour of the Complainant.**

8.7 As regarding **Issue No. 3**, the Complainant would point out that 'Bad faith' is a legal term which the Black's Law Dictionary (Seventh Edition) defines as "*dishonesty of belief or purpose. Also termed as mala fide*". It is an established fact that the Complainant's domain was registered much prior to the registration of the disputed domain name of the Respondent. Moreover, the




evident identity between Respondent's domain name and Complainant's marks, domain name incorporating **ELLE** is likely to mislead, confuse and deceive Complainant's customers as well as the general lay public as to the source, sponsorship, affiliation or endorsement of Respondent's domain name. The documents produced by the Complainant would show that the disputed domain name is identical and confusingly similar to that of the name and mark of the Complainant. The said fact remains unopposed as well. Actual knowledge of a well-known trade mark at the time of registration of a domain name constitutes evidence of bad faith. In **QRG Enterprises Limited & Havells India Limited Vs. Zhang Mi, INDRP/852**, it was held that "*Such registration of a domain name based on awareness of a trade mark is indicative of bad faith registration under the Policy.*" Further in **Amazon Technologies Inc. Vs. Mr. Alex Parker, INDRP/1166** it was held that "*The Respondent's registration of the domain name <amazonemi.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.*" Moreover, the Respondent's failure to respond to either the cease and desist letter is further evidence of the Respondent's bad faith as held in **WhatsApp Inc. Vs. Warrick Mulder, INDRP/1233**. The Tribunal is also of the view that case of the Complainant is well supported by the decision in **M/s. Merck KGa Vs. Zeng Wei (INDRP/323)**, wherein it was held 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.*" In that view of the matter, it is to be presumed that the Respondent has adopted identical name as opportunistic bad faith as held in **Mozilla Foundation and Mozilla Corporation Vs. LINA Double fist Limited (INDRP/934)**. In the decision dated 5th April, 2008 in **ITC Ltd Vs. Travel India (Case No, L-2/5/R4 OF 2008-NIXI)**, it has been held that "*Registration of domain name which is identical to trademark, with actual knowledge of the trademark holder's rights is strong evidence that the domain name was registered in bad faith*". Therefore, **it is be concluded that the Respondent's use of the Domain Name, is an intentional attempt to attract Internet users**



to online locations by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website, in accordance with Rule 4(c) of the INDRP Rules of Procedure and Policy No. 7(c) of the .IN Policy. Accordingly, Issue No. 3 is also answered in favour of the Complainant.

8.8 As per Policy No. 4 of the .IN Policy, class of disputes are catergorised on 3 premises. In the light of the above discussions and on an analysis of the documents produced and on the facts and circumstances of this case, the Tribunal is of the firm view that the Complainant has succeeded in establishing that the registration of the disputed domain prima facie conflicts with its legitimate rights and interests, that the registration is in bad faith, that the Respondent did not produce evidence to rebut the Complainant's case, that in the absence of such evidence, the Complainant is deemed to have satisfied the requirements of Policy No. 4(b) of the .IN Policy, that the Complainant has also succeeded in establishing that the disputed Domain Name is identical and confusingly similar to the inherently distinctive and well known name and trade mark of the Complainant throughout the world (Policy No. 4(a) of the .IN Policy), that it was registered or is being used in bad faith (Policy No. 4(c) and 7 of the .IN Policy), that the Respondent by all means is presumed to have knowledge of the Complainant's name/marks when it registered the Domain Name and therefore the registration of the domain name constitutes evidence of bad faith, that through the Respondent's use of the Domain Name, it has intentionally attempted to attract Internet users by creating a likelihood of confusion with the Complainant's trademarks/name as to the source, sponsorship, affiliation or endorsement of the website, in accordance with Policy No. 7(c) of the .IN Policy and that the Respondent ultimately derives commercial advantage from the Respondent's unauthorized use of the Complainant's domain name and marks, which is covered by Policy No. 7(d) of the .IN Policy. As regarding, award of cost of the proceedings, the Complainant has succeeded in persuading the Tribunal to allow the same.

8.9 Therefore, on the basis of the aforementioned findings, the Tribunal is pleased to order as follows:



Decision

- i). *The disputed domain name is confusingly similar to Complainant's name/trademarks.*
- ii) *The Registrant has no rights or legitimate interests in respect of the domain name.*
- iii) *The Registrant's domain name has been registered or is being used in bad faith.*
- iv) *The NIXI is to transfer the registration of the Domain Name in dispute "ellekids.in" to the Complainant, as prayed for, within a week of receipt of this decision. The Complainant shall also be at liberty to contact NIXI for implementation of this decision.*
- v) *The Respondent shall pay a cost of Rs. 25,000/- to the Complainant.*

9. Dispositions:

9.1 The complainant has given sufficient material evidence to prove extensive trademark rights over the dispute domain name and the Respondent's adoption and registration of the impugned domain name is dishonest and malafide.

9.2 The various Panels have recognized that the Complainant if makes out a prima facie case that the Respondent lacks rights or legitimate interest, it is sufficient that the case put forward by the Complainant is to be accepted. In this case, the Complainant has proved a prima facie case that the Respondent is using the disputed domain name in bad faith.

9.3 The Respondent has no rights or legitimate interests in respect of the domain name in accordance with .IN Policy and INDRP Rules of Procedure and the Tribunal directs that the disputed domain name be transferred from the Respondent to the Complainant with a request to NIXI to monitor the transfer.

Dated this the 31st March, 2025

Adv. **SUNIL V. MOHAMMED**
Sole Arbitrator



List of Annexures

- Annexure-A:** Cover page of the first issue of the ELLE magazine dated November 1945.
- Annexure-B:** Chronological presentation of the international expansion of the brand ELLE.
- Annexure-C:** Printouts of press clippings of the launch of ELLE magazine.
- Annexure-D:** Copy of license agreements with Ogaan Publications Private Limited.
- Annexure-E:** Copies of the newspaper clippings from the launch of ELLE DÉCOR.
- Annexure-F:** Photographs of newsstand advertisements featuring the magazine under the trade mark ELLE.
- Annexure-G:** List of the Complainant's ELLE domain names/websites.
- Annexure-H:** Extracts corroborating the facts about the use of ELLE.
- Annexure-I:** Screenshots from the social media pages of ELLE.
- Annexure-J:** Registration certificates issued in the favour of the Complainant for the mark ELLE globally.
- Annexure-K:** Printouts of the online status and registration certificates from the Indian Trade Marks Registry in respect of the mark ELLE.
- Annexure-L:** Orders by various tribunals and courts worldwide upholding Complainant's rights in the mark ELLE.
- Annexure-M:** Copies of the notices addressed to the other side.
- Annexure-N:** Details of the domain name 'ellekids.in' as available on the Whois records.
- Annexure-O:** Printout of the website <https://ellekids.in>.



Adv. SUNIL V. MOHAMMED
Sole Arbitrator