

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL65930357645537U
Certificate Issued Date	: 27-Jul-2022 12:15 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1714134493288209U
Purchased by	: DEEPALI GUPTA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DEEPALI GUPTA
Second Party	: Not Applicable
Stamp Duty Paid By	: DEEPALI GUPTA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

DEEPA GUPTA
SOLE ARBITRATOR

.IN Registry - National Internet Exchange of India
INDRP Case No: 1556

In the matter of Arbitration Between:

L'OREAL

.....Complainant

Versus

DOMAIN ADMINISTRATOR

.....Respondent

Disputed Domain Name : <MATRIXPROFESSIONA.IN>

[Handwritten signature]

Statutory Alert:

Statutory Alert: The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding
1 Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2 The onus of checking the legitimacy is on the users of the certificate
3 In case of any discrepancy please inform the Competent Authority

DEEPALI GUPTA
SOLE ARBITRATOR

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1556

In the matter of:

L'OREAL,
14 RUE ROYALE,
75008 PARIS,
FRANCE

Through it's authorized representative:
DREYFUS & ASSOCIES
78, AVENUE RAYMOND POINCARE,
75116 PARIS
FRANCE

e.mail:contact@dreyfus.fr

PHONE:+33(0)1 44 70 07 04

+ 33 (0) 1 40 06 99 64

.....Complainant

Versus

DOMAIN ADMINISTRATOR,
4 AKANBI DANMOLE STREET OFF RIBADU ROAD,
IKOYI 101233
LAGOS
NIGERIA

e.mail: sugarcane@mm.st

PHONE:(+234)7060647844

(Registrant)

.....Respondent

Disputed Domain Name : <**MATRIXPROFESSIONA.IN**>

ARBITRATION AWARD

DATED AUGUST 8, 2022.

1) The Parties:

The Complainant in the present arbitration proceedings is L'OREAL, 14 RUE ROYALE, 75008 PARIS, FRANCE. The Complainant is represented by it's



Authorised Representative DREYFUS & ASSOCIES 78, AVENUE RAYMOND POINCARE, 75116 PARIS, FRANCE.

The Respondent in the present case, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI), is DOMAIN ADMINISTRATOR, 4 AKANBI DANMOLE STREET OFF RIBADU ROAD, IKOYI 101233, LAGOS, NIGERIA. (e.mail: sugarcane@mm.st)

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <MATRIXPROFESSIONA.IN. >

The Registrar is GoDaddy.com, LLC.

The Registrant is Domain Administrator, 4 Akanbi Danmole Street off Ribadu Road, Ikoyi 101233, Lagos, Nigeria. (e.mail: sugarcane@mm.st) and as per the previous WHOIS database dated July 29, 2021 identified as 'Sugarcane Internet Nigeria Limited'.

3) Procedural History:

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 pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

That the Amended Complaint with the complete details was received on on 2nd June, 2022 from the Complainant through email.



The notice was issued to the Respondent on 6th June 2022, at his e.mail address 'sugarcane@mm.st' and 'postmaster@matrixprofessiona.in' communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <[MATRIXPROFESSIONA.IN](https://www.matrixprofessional.in)> in its favour. The Respondent was called upon to submit their response within twelve (12) days of the receipt of the Arbitrators email i.e. on or before 18th of June, 2022.

That automated response was received from respondent / sugarcane@mm.st via forward4-smtp.messagingengine.com stating that 'Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us'.

The Arbitrator received no other response from the respondent within the said timeline. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case. Complainant, L'Oréal, is a French industrial group specialized in the field of cosmetics and beauty. Created in 1909 by a French chemist, L'Oréal is today one of the world's largest groups in the cosmetics business. It has a portfolio of 36 brands, employs 86,000 employees, and is present in 150 countries. MATRIX, a leading professional haircare and hair colour company in the United States, is part of L'Oreal USA's Professional Products Division. It is well known around the world, including India whose products are promoted on the official website <https://www.matrixprofessional.in>.

Complainant is the owner of the following trademark registrations:

- Indian trademark MATRIX no. 534128 dated July 26, 1990, duly renewed and covering goods in class 3;
- Indian trademark MATRIX WAVE SENSATION no. 2232311 dated November 11, 2011, duly renewed and covering goods in class 3;



- International trademark MATRIX no. 776942 dated February 20, 2002, duly renewed, designating *inter alia* Australia, China, Singapore, Tajikistan, covering goods in class 3.

In addition, Complainant operates among others, the following domain names reflecting its trademark in order to promote its services:

- <matrix.com> registered on April 13, 1990;
- <matrixprofessional.in> registered on March 24, 2016;
- <matrixprofessional.com> registered on June 29, 2012.

Complainant and its trademark 'MATRIX' enjoys a worldwide reputation. Complainant owns numerous 'MATRIX' trademark registrations around the world, as well as in India.

5) **Summary of Complainant's contentions:**

The Complainant's contentions are divided into three parts as follows:

A. Firstly:

- (i) The disputed domain name <matrixprofessiona.in> is virtually identical or at least confusingly similar to Complainant's prior trademarks 'MATRIX' and the official domain name <matrixprofessional.in>. as the domain name <matrixprofessiona.in> reproduces Complainant's trademark 'MATRIX' in its entirety. That the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered trademark.
- (ii) Complainant has submitted that the Complainant, L'Oréal, is a French industrial group specialized in the field of cosmetics and beauty and is the first cosmetics group worldwide. L'Oréal is richly endowed with a portfolio of international brands that is unique in the world and that covers all the lines of cosmetics: hair care, colouring, skin care, make-up and perfume. MATRIX, a leading professional haircare and hair colour company in the United States, is part of L'Oreal USA's Professional Products Division. It is well known around the world, including India whose products are promoted on the official website <https://www.matrixprofessional.in>.
- (iii) It has further been submitted that the Complainant's attention was drawn by the registration of the domain name <matrixprofessiona.in> which entirely



reproduces its trademark 'MATRIX' and associates it with the misspelled generic term "professiona", which does not prevent any likelihood of confusion. On the contrary, this term along with the extension ".in" increases the likelihood of confusion since it targets directly Complainant's field of activity. Therefore, Internet users may be led into believing that the domain name is endorsed by Complainant or that it will direct them to an official website displaying Complainant's products intended for the Indian market. The disputed domain name redirects Internet users towards a parking page displaying sponsored links related to hair products, directly targeting Complainant's field of activity.

- (iv) Hence the Complainant asserts that the disputed domain name is substantially and confusingly similar to the Complainants registered trademarks and that the disputed domain name <**matrixprofessiona.in**> is almost identical to Complainant's domain name <matrixprofessional.in> differing only in one letter.

B. Secondly:

- (i) It is submitted that the Respondent has no rights or legitimate interests in respect of the domain name. It is submitted that the Respondent is neither affiliated with Complainant in any way nor has he been authorised or licensed by Complainant to use and register its trademarks, or to seek registration of any domain name incorporating the previously mentioned trademark. In addition, Respondent is not known by the name of MATRIX. Respondent has no prior rights or legitimate interests in the disputed domain name. The registration of the 'MATRIX' trademarks preceded the registration of the disputed domain name for years.
- (ii) It is submitted that in the present case, the composition of the domain name constitutes clear evidence that the Respondent wishes to give an overall impression that the disputed domain name is related to Complainant and misleadingly divert consumers for fraud or commercial gain, therefore, such composition cannot constitute fair use, further demonstrating a lack of legitimate interests regarding said domain name. That the Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name resolves to a parking page

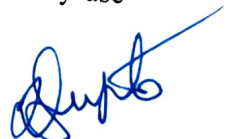


displaying commercial links relating to cosmetic products directly targeting Complainant's field of activity. That the domain name in dispute directs Internet users to a parking page with pay-per-clicks which are likely to generate revenues. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name.

- (iii) It is further submitted that given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark and virtually identical to the official domain name, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.
- (iv) That the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name nor is he using the disputed domain name in connection with a bona fide offering of goods or services.
- (v) Hence, the Complainant asserts that Respondent has no rights or legitimate interests in respect to the domain name in dispute.

C. Thirdly:

- (i) It is submitted that the disputed domain name has been registered or is being used in bad faith. It has been submitted by the Complainant that it is impossible that Respondent was not aware of Complainant's trademarks and activities at the time of the registration of the disputed domain name. Considering the fact that the disputed domain name is virtually identical to Complainant's official domain name <matrixprofessional.in> differing only in one letter, which makes potential typing error by Internet users more likely to happen, and as result diverting the traffic from Complainant's site to the Respondent's. This difference does not significantly affect the appearance or pronunciation of the domain name. This practice is commonly referred to as "typosquatting" and creates virtually identical and/or confusingly similar marks to the Complainant's trademark
- (ii) It is submitted that Bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use



by someone with no connection to the trademark suggests opportunistic bad faith. Thus, given the reputation of the 'MATRIX' trademarks, registration in bad faith can be inferred. In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of Complainant and its trademarks, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademarks at the time of registration of the disputed domain name. It has been held in previous cases that knowledge of a corresponding trademark at the time of registration of the domain name suggests bad faith.

- (iii) That there is little doubt that Respondent was not aware that 'MATRIX' enjoyed a substantial reputation worldwide. In light of this knowledge, Respondent used the disputed domain name <matrixprofessiona.in> to direct Internet users and generate more traffic to a parking page displaying commercial links targeting Complainant's field of activity, that are likely to generate revenues. Respondent thus intentionally attempted to attract Internet users to the its website for commercial gain by creating likelihood of confusion with the Complainant's mark and official domain name as to the affiliation or endorsement of either the Respondent or its website. Respondent is taking undue advantage of Complainant's trademark to generate profits. The use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy.
- (iv) It has been submitted that an email server has been configured on the disputed domain name and thus, there might be a risk that Respondent is engaged in a phishing scheme. Therefore, the use of an email address with the disputed domain name presents a significant risk where Respondent could aim at stealing valuable information such as credit cards from Complainant's clients or employees.
- (v) It has further been submitted that the initial Respondent, Sugarcane Internet Nigeria Limited, most likely to be the current owner of the disputed domain name, is a well-known cyber-squatter that has been the subject of a number of UDRP proceedings.



- (vi) Hence, the Complainant asserts that the disputed domain name has been registered by the respondent in bad faith.

6. RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

7. DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

It is found that the Complainant has the right in the 'MATRIX' trademark. The disputed domain name includes the Complainant's 'MATRIX' trademark. Such inclusion is by itself enough to consider the disputed domain name confusingly similar to the Complainant's Matrix trademark. The addition of the term "professiona" in the disputed domain name does not prevent a finding of confusing similarity. Further the disputed domain name <matrixprofessiona.in> is almost identical to Complainant's domain name <matrixprofessional.in> differing only in one letter.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy.

The Complainant has submitted evidence of its trademark registrations for the "MATRIX" mark in India as also in other Jurisdictions and has accordingly

established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be confusingly similar to the trade mark in which Complainant has rights. The requirement provided for in paragraph 4(a) of the Policy is accordingly satisfied.

Rights and Legitimate Interests:

There is no evidence that shows the Respondent is commonly known by the name “MATRIX” or “MATRIXPROFESSIONA,” or that the Respondent is affiliated with the Complainant or authorized or licensed to use the Complainant’s trademark.

It is seen that the disputed domain name resolves to a parking page displaying commercial links relating to cosmetic products directly targeting Complainant’s field of activity. Consequently, Respondent fails to show that the non-commercial intention or the fair use of the disputed domain name. It is plausible that Respondent has no legitimate interest or rights in the disputed domain name. Likewise, the domain name in dispute directs Internet users to a parking page with pay-per-clicks which are likely to generate revenues. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name. Hence apparently the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or for any legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complaint in this proceeding, it is found as per the available record that the Complainant has established an unrebutted prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(b) of the Policy is accordingly satisfied.



Bad faith

The complainant's rights in the Trademark predate the registration of the disputed domain name by almost 30 years. Moreover it is noted that the Complainants global renown dates back many decades before the registration of the disputed Domain Name. Complainant is a large company producing cosmetic products and its 'MATRIX' trademark is well known worldwide. Therefore, it is highly unlikely that the Respondent would not have known of the Complainant's right in the trademark at the time of registration of the disputed domain name.

It is implausible that Respondent was unaware of Complainant's Mark when he registered the disputed domain name. Bad faith can be found where respondent "*knew or should have known*" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interests

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'MATRIX' mark. The disputed domain name has been registered much later. These facts establish the Complainants prior adoption of the 'MATRIX' mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the international recognition and reputation associated with the Matrix mark.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts, circumstances and the evidence indicate that the Respondent has used the Matrix Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'MATRIX' mark by the Respondent is likely



to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4(c) of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <MATRIXPROFESSIONA.IN> be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator
Date: 8th August, 2022.