



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL92009691195195T
Certificate Issued Date	: 01-Jul-2021 11:40 AM
Account Reference	: IMPACC (IV)/ dl889403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL88940382579822208040T
Purchased by	: SRIDHARAN RAJAN RAMKUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SRIDHARAN RAJAN RAMKUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: SRIDHARAN RAJAN RAMKUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

*P. Kumar*

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

**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY**

**INDRP Case No: 1392**

**IN THE MATTER OF:**

**MakeMyTrip (India) Private Limited,**  
B-36, First Floor, Pusa Road,  
New Delhi-110005

Also at:

19<sup>th</sup> Floor, Tower A, B & C  
Epitome Building No. 5  
DLF Cyber City, Phase- III,  
Gurgaon 122 002, India  
Phone: +919716746496

**Email:** [mohit@simandsan.com](mailto:mohit@simandsan.com)

...Complainant

**VERSUS**

**Ms. Kavita Ganjoo, Satisar Travels,**  
B1-601, Sukhwani Sepia,  
Indira College Road,  
Tathawade, Pune, Maharashtra-411033  
**Phone:** +91 7721998811  
**Email:** [info@satisartravels.com](mailto:info@satisartravels.com) ;  
[kavita.ganjoo@satisartravels.com](mailto:kavita.ganjoo@satisartravels.com)

...Respondent

**AWARD**

**I. THE PARTIES:**

**THE COMPLAINT**



The Complainant **MakeMyTrip (India) Private Limited** is a company registered under the Companies Act, 1956, with its registered office at B-36, First Floor, Pusa Road, New Delhi-110005.

#### THE RESPONDENT

The Respondent is one **M/S Kavita Ganjoo, Satisar Travels**, having its address as B1-601, Sukhwani Sepia, Indira College Road, Tathawade, Pune, Maharashtra-411033

#### **II. THE DOMAIN NAME AND REGISTRAR:**

The disputed domain name: < *lockmytrip.in* >

The domain name registered with **GoDaddy.com, LLC**.

#### **III. PROCEDURAL HISTORY:**

May 21, 2021	Date of Complaint
June 14, 2020	The .IN REGISTRY appointed Sridharan Rajan Ramkumar as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.
June 14, 2021	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.

As the Respondent failed to file its response within the stipulated 15 days' time period intimated to all parties, and in fact addressed an email dated 14<sup>th</sup> June and 19<sup>th</sup> June, 2021 waiving all rights to oppose the reliefs sought in the Complaint. Hence the instant award is being passed.





#### IV. FACTUAL AND LEGAL BACKGROUND:

1. The Complainant **MakeMyTrip (India) Private Limited**, is a company registered under the Companies Act, 1956, with its registered office at B-36, First Floor, Pusa Road, New Delhi-110005, India, hereinafter referred to as the Complainant.
2. The Respondent in the present proceeding as per the information available with .IN Registry is one **M/S Kavita Ganjoo, Satisar Travels** having her address as B1-601, Sukhwani Sepia, Indira College Road, Tathawade, Pune, Maharashtra-411033.
3. A copy of the IN Domain Name Dispute Resolution Policy (INDRP) and the Rules framed thereunder, extract of the .IN Domain Name Dispute Resolution Policy (INDRP) and the INDRP Rules of Procedure was annexed as **Annexure 1**.
4. A copy of the extract taken from WhoIs records from GoDaddy dated 7. 05.2021 was annexed as **Annexure 2**.
5. It was submitted that the Complainant is the first adopter, sole owner, registered proprietor worldwide, including in India, of the trademark MAKEMYTRIP (and several other MAKEMYTRIP formative marks including but not

limited

to

MakeMyTripTimes

make my trip

make my trip  
Dill tak reamng hai

make my trip  
HOTELS UNLIMITED

make my trip  
MEMORIES UNLIMITED

make my trip

and

*S. Kulkarni*



(all of which are hereinafter collectively, singly as well as jointly, referred to as the “*MAKEMYTRIP Marks*”) for which it owns trademark registrations/ has filed applications in numerous countries. A list of the Complainant’s select trademark registrations for the MAKEMYTRIP Marks in India is as follows:

Mark	Registration No.	Class	Date of Registration	Status
MAKEMYTRIP	2149947	39	25 May 2011	Registered
MAKEMYTRIP	2149948	43	25 May 2011	Registered
MAKEMYTRIP	2991097	35	23 June 2015	Registered
MAKEMYTRIP	2991098	09	23 June 2015	Registered
MMT	2991099	39	23 June 2015	Registered
MMT	2991100	43	23 June 2015	Deemed Registered
MakeMy	3869251	09	23 December 2018	Registered

*P. Subramanian*

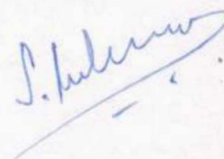
MakeMy	3869255	43	23 December 2018	Registered
MakeMyTrip- Hotels Unlimited	2536201	39, 43	22 May 2013	Registered
	1447892	39	25 April 2006	Registered
	2149949	43	25 May 2011	Registered

6. Copies of Certificates for use in Legal Proceedings for Indian Registrations/ Registration Certificates of the aforementioned trademark registrations were annexed as **Annexure 3 (colly)**.
7. The Complainant is also the owner of domain name <makemytrip.com>. A copy of the printout of the WhoIS records was annexed as **Annexure 4**.
8. It was submitted that the Complainant was incorporated in the year 2000, and having started its business initially with airline ticket bookings alone, is today one of the largest travel companies in India with its presence all across India and in several other countries around the world including in the United States of America, the United Arab Emirates and Mauritius, European Union, Australia, and United Kingdom, amongst others.

*P. Kulkarni*



9. It was submitted that the Complainant was originally incorporated on 13 April 2000, with the trade name 'Travel by Web Private Limited' and subsequently, vide a fresh Certificate of Incorporation, dated 02 August 2000, the Complainant changed its trade name to 'Makemytrip.com Pvt. Ltd'.
10. It was submitted that the Complainant also, on this date, coined the MMT Letter Mark which is an acronym for MakeMyTrip. Thereafter, on 28 June 2002, the Complainant effected another change that remains its current and present name, i.e., 'MakeMyTrip (India) Pvt. Ltd.'. Copies of Certificate of Incorporation and Certificate of Incorporation pursuant to change in name was annexed as **Annexure 5 (colly)**.
11. Being primarily a performance driven entity, it was submitted by the Complainant that it has achieved market leadership solely based on its obsession for quality and excellence. It was submitted that the reputation commanded by the Complainant is amply demonstrated by the fact that it has been associated with numerous prestigious projects from noted celebrities, corporate giants, and other industry leaders. A pioneer of the Indian online travel industry, the Complainant has carved out a niche name for itself within the travel industry over nearly the last 2 decades as one of the most popular one-stop travel websites. Owing to the widespread access of internet and the sustained boom of e-commerce over the past decade, the Complainant has become the most preferred choice of millions of customers not only in India but across the globe, looking to book their travel and tour online.
12. It was submitted that the Complainant stands apart from other travel platforms by combining a diverse range of cost-effective packages of flights, hotels and tour bookings with cutting-edge technology and dedicated customer support. Over the years, the Complainant has expanded its range of products and services beyond online travel bookings. Presently, the Complainant, through its primary website, <[www.makemytrip.com](http://www.makemytrip.com)> and other technology-enhanced platforms including application based mobile platforms, etc., offers an extensive range of travel services and products, both in India and abroad. The said services of the



Complainant include, booking of air tickets, rail tickets, bus tickets, hotel reservations, car hire, domestic and international holiday packages and ancillary travel requirements such as facilitating access to travel insurance, visa assistance, forex exchange, experiences, etc. Few extracts from the Complainant's website was annexed as **Annexure 6(colly)**.

13. It was submitted that after changing its trade name to include the words "MakeMyTrip" on 02 August 2000, the Complainant has continuously and uninterruptedly used the MAKEMYTRIP Marks for all its business activities. The trade marks, MAKEMYTRIP and MMT, are coined and invented marks. It is relevant that the Complainant was the first company to conceptualize and ideate the use of three different words, to form, phonetically, visually and structurally, one word and further use the word MY as a linking/connecting element between the other two words. The trade mark MAKEMYTRIP is an essential feature of all the composite label or logo marks of the Complainant. Moreover, due to their nature of use, "MAKEMY", "MYTRIP" and "MY" are also essential and dominant features of the MAKEMYTRIP Marks. Due to extensive use, now spanning more than twenty (20) years, the MAKEMYTRIP Marks are synonymous with high standards of quality in respect of services provided by the Complainant.

14. It was submitted that the domain <makemytrip.com> was registered way back on 8 May 2000 and stands in the name of the founder of the Complainant Company, namely, Mr. Deep Kalra. The Complainant has been hosting an interactive website on the said domain name, since as early as 2001. Reflecting its global reach, the Complainant is also the owner of numerous domain names consisting of the MAKEMYTRIP trade mark, including, for instance, <makemytrip.ae>, <makemytrip.in>, <makemytrip.net>, <makemytrip.co.in>, <make-my-trip.net.in>, <makemy-trip.in>, <makemytripdeals.com>, <makemytriphotels.com>, <makemytripmails.com>, <makemytrip.sg>, <makemytrip.jp>, <makemytrip.com.sg>, <makemytrip.ph>, <emails-makemytrip.com>, <mails-makemytrip.com>, <makemytripreviews.com>, <makemytripbus.com> <makemytripflights.com>





and <makemytrip.co.in>.

15. It was submitted that the Complainant's MAKEMYTRIP Marks have come to symbolize not only prominence and elegance, but the abundant scope of the Complainant's services too. The services provided by the Complainant under the MAKEMYTRIP Marks clearly elucidate its vision, which is oriented firmly towards customer satisfaction and excellence. The enormous success enjoyed by the Complainant under its MAKEMYTRIP Marks is apparent from the tremendous revenues generated. The sales turnover attributable to the Complainant's MAKEMYTRIP Marks in India alone runs into several crores of Rupees. Illustratively, the value of gross bookings undertaken by the Complainant in the financial year 2019-20 amounts to approximately Rs. 3133.97 Crores. Copy of a Chartered Accountant's Certificate certifying the Complainant's annual turnover was annexed as **Annexure 7**.
  
16. It was submitted that the Complainant, with a view to promote its MAKEMYTRIP Marks, has made and continues to make substantial investment in advertising and promotional activities on a worldwide basis including in India. The same includes promotional activities through not only conventional print and electronic media, but even over digital media over the Internet. Illustratively, the value of advertisement and business promotion undertaken by the Complainant in the financial year 2019-20 amounts to approximately Rs. 1025.10 Crores. Copy of a Chartered Accountant's Certificate certifying the Complainant's advertising and business promotion expenses was annexed as **Annexure 8**.
  
17. It was submitted that the Complainant has also made substantial investments to develop a strong presence online by being active on different social media forums. For instance, MakeMyTrip Facebook page (<https://www.facebook.com/makemytrip/>) currently has more than 2.5 million "likes" and "followers" while Twitterpage ([https://twitter.com/makemytrip?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctw\\_gr%5Eauthor](https://twitter.com/makemytrip?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctw_gr%5Eauthor)) has more than 1 lakh "followers". Similarly, the



Complainant also has an official channel on YouTube

(<https://www.youtube.com/channel/UcKcnjFgbcFwiY5StOdsSMA>) where it posts, *inter alia*, past television commercials for its MAKEMYTRIP Marks. Currently, the Complainant's YouTube channel has over Sixty Thousand "followers" and more than 59 Crore views.

18. It was submitted that the fame of the Complainant's trade mark is also evidenced by the number of cyber squatters who have sought to unfairly and illegally exploit the very significant consumer recognition and goodwill attached to its trade marks. Prior domain name dispute panels have recognized the strength and renown of the Complainant's MAKEMYTRIP Marks, and have ordered infringing respondents to transfer or revoke the disputed domain names to the Complainant, in the following decisions:

(i) MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org, WIPO Case No. D2012-0691 (<makemy-trip.com>);

(ii) MakeMyTrip (India) Pvt. Ltd. v. Vinay Singh, INDRP/303 (<makemytripindia.in>); and

(iii) MakeMyTrip (India) Pvt. Ltd. v. QA Aviations Ltd., INDRP/214 (<makemytrip.net.in>).


19. It was submitted that in addition to its strong presence online, the Complainant has secured ownership of numerous trade mark registrations in the term MAKEMYTRIP in many jurisdictions throughout the world, including in India where the Respondent is based, in connection with instant travel and tourism services, as detailed above.

20. It was submitted that sometime in the month of March 2020, the Complainant acquired knowledge of the existence of the Infringing Word Mark LOCKMYTRIP. This knowledge was acquired through an advertisement of the







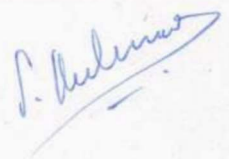
Mark '  in the Indian trademark journal numbered as 1931-0, dated 09 December 2019, wherein one Ms. Kavita Rakesh Ganjoo's trade mark application, numbered 4088154, ("*Impugned Application*"), was published after acceptance for services claimed under Class 39.

21. It was submitted that being aggrieved by the Impugned Application, the Complainant initiated opposition proceedings, numbered 1038989, on 06 April 2020 against the Impugned Application. For completeness, Ms. Kavita Rakesh Ganjoo (The Respondent) has filed counter statement in response to the notice of opposition, wherein the rights of the Complainant in its MakeMyTrip Marks have been denied by Ms. Kavita Rakesh Ganjoo's and use of the Infringing Logo Mark has been claimed. The Respondent has filed a Withdrawal letter dated 23 March 2021. Copies of the trade mark journal and withdrawal letter filed by the Respondent in the Impugned Application was annexed as **Annexure-9**.
22. It was submitted that the Complainant, after these pleadings were filed in the opposition proceedings, carried out further investigation and came across the Disputed Domain Name at [www.lockmytrip.com](http://www.lockmytrip.com). The Respondent is engaged in an identical business of providing travel related services, including but not limited to selling and booking tickets, hotel reservations, arranging trips in India and abroad on through the Disputed Domain Name.
23. Thereafter, it was submitted that the Complainant instituted a Commercial Suit before the Hon'ble High Court of Delhi against, *inter alia*, the Respondent. Upon advance notice of the Commercial Suit, the Respondent reverted to the Complainant stating that, *inter alia*, they have brought down the Disputed Domain Name <[www.lockmytrip.com](http://www.lockmytrip.com)>, deleted their Twitter handle and Facebook page, took down their App, and issued a public notice notifying the closing down of <LockMyTrip.com>. The Respondent also undertook to withdraw their Impugned Application for Trademark and filed a Withdrawal letter. A copy of the email dated 01 September 2020 of the Respondent was annexed as **Annexure-10**. This is an implied admission of the *mala fide* of the



Respondent in adoption of the Disputed Domain Name and Infringing Mark and the identity between the marks.

24. Subsequently, it was submitted that the Complainant's lawyer instructed the Respondent by way of mail dated 12 October 2020 to execute an undertaking, *inter alia*, recognizing the Complainant's rights over the MakeMyTrip Marks, to permanently cease and desist from using the LockMyTrip mark and Disputed Domain Name, withdrawing the Impugned Application, and surrendering the Disputed Domain Name <[www.lockmytrip.com](http://www.lockmytrip.com)>. A copy of the mail dated 12<sup>th</sup> October 2020 along with the undertaking is collectively was annexed as **Annexure-11**. However, the Respondent addressed certain concerns about the undertaking and attempted to sell the Disputed Domain Name to the Complainant by way of their email dated 17 October 2020. The Respondent stated that "*We hold lockmytirp.com and lockmytrip.in also for five years. We are ready to sell both the domains to MMT for INR 100,000/- in lump sum but we won't be surrendering the domains.*" A copy of the mail dated 17 October 2020 of the Respondent was annexed as **Annexure-12**.
25. It was submitted that the Complainant's lawyer reverted to their queries through their email dated 27 October 2020 and addressed all their concerns and instructed them to either transfer or surrender the Disputed Domain Name. A copy of the mail dated 27 October 2020 was annexed as **Annexure-13**.
26. It was submitted that in response to the Complainant Lawyer's email dated 27 October 2020, the Respondent requested a video conference to allay their concerns. Consequently, a video conference was held on 29 October 2020 to discuss the terms of the Undertaking. Thereafter, by way of email dated 09 November 2020, the Complainant's lawyer sent a revised undertaking after addressing the concerns of the Respondent to arrive at an amicable solution. A copy of the mail dated 09 November 2020 along with the undertaking is collectively was annexed as **Annexure- 14**.
27. It was submitted by the Complainant that, as a diversionary tactic, the



Respondent addressed a mail to GoDaddy.com, LLC, the Registrar of the Disputed Domain Name, on 27 October 2020 questioning about the rationale behind selling the Disputed Domain Name to the Respondent. It was submitted that the Respondent admitted that "SELLING INTELLECTUAL [sic] PROPERTY OF ONE COMPAY [sic] TO ANOTHER IS ONLY ALLOWED WHEN THERE IS WRITTEN CONSENT FROM THE IP OWNER." A copy of the mail dated 27 October 2020 addressed to GoDaddy.com was annexed as **Annexure-15**.

28. It was submitted that subsequently, by way of email dated 30 November 2020, the Respondent offered to sell their company to the Complainant. The Complainant was not interested in taking over the Respondent and did not respond to the frivolous attempts of the Respondent to unnecessarily prolong the matter. This email is testimony to the fact that Respondent's *mala fide* intent was to sell the Disputed Domain Name to the Complaint from the first instance. A copy of the mail dated 30 November 2020 was annexed as **Annexure-16**.

29. It was submitted that thereafter, by way of email dated 24 December 2020, the Respondent sent across a revised undertaking marked with their comments for the Complainant's review. It is relevant to note that in response to the clause in respect to the surrender of the Disputed Domain Name, the Respondent has sneeringly remarked that: "*Haha. Your client is willing to let us either surrender the domain name or.....I consulted my lawyer and there is no such law which will prevent me holding the domain name. You Either purchase the domain or let it be with us.*" Copy of the mail dated 24 December 2020 and the undertaking was annexed as **Annexure-17**.

30. That subsequently the present complaint came to be filed against the Respondent by the Complainant.

## V. PARTIES CONTENTIONS

### A. Complainant





- i) The domain name <lockmytrip.in> is identical to the trademark MAKEMYTRIP in which the Complainant has rights;
- ii) The Respondent has no rights or legitimate interests in respect of the domain name <lockmytrip.in>;
- iii) The domain name <lockmytrip.in> has been registered or is being used in bad faith.

#### B. Respondent

- i) The Respondent choose not to file a response despite of receiving copy of the complaint. Infact sent an email dates June 19, 2021 stating:

*"PFA the response which we got from do in registry with this mail. Please note that since we are not owner of this domain then why are we getting emails again and again. We have notified you on 14<sup>th</sup> June that we are not current domain owner. Even we had sent email to Dot IN registry to remove our details as ownership form [lockmytrip.in](https://lockmytrip.in) and that is the max what we can do. It is purely a technical issue from GoDaddy and Do IN registry end that they have not yet removed our details from ownership of this domain. You are requested to contact them directly rather than disturbing our inboxes. If you want we are ready to give in written also that we do not own this domain any more. Do you need any thing else from us do let us know and kindly directly approach to GoDaddy and DOT IN Registry for this issue. Since the lockmytrip.in is not owened by us anymore thus is there anything pending us to sign. We want to do it asap so that we can come out of this."*

*Hi GoDaddy,*

*Kindly confirm to the party that We have released this domain few weeks ago only and thus we are not current owner of the domain.*

*Regards,  
Kavita Rakesh Ganjoo "*

However, notwithstanding the concession made by the Respondent and





reproduced above, I am constrained to pass an award on merits keeping in view the contents of the Complaint where the Complainant has stated and submitted as under:

**C. The domain name <lockmytrip.in> is identical to the trademark MAKEMYTRIP in which the Complainant has rights;**

(Policy, Paragraph 4(a); Rules, Paragraphs 4(b)(vi)(1))

1. The Complainant has submitted that it is the registered proprietor of the MAKEMYTRIP Marks in India as well as several countries worldwide. Further submitted that it is well- established that trademark registrations constitute *prima facie* evidence of validity of trademark rights. In support has cited *Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER* (WIPO Case No. D2010-0858) and *Inter-Continental Hotels Cooperation v. Abdul Hameed* (NIXI Case No. INDRP/278, February 10, 2012), it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. The Complainant submitted that apart from use as a trademark it also uses the MAKEMYTRIP Mark as a prominent and essential portion of its corporate name, trade name and trading style. Moreover, the Complainant has extensively and continuously used the MAKEMYTRIP Mark for several years around the world, including in India.
2. It was submitted that the Disputed Domain Name <[www.lockmytrip.in](http://www.lockmytrip.in)> is confusingly similar to the Complainants' MAKEMYTRIP Marks. Merely replacing a portion of a mark with a generic prefix does not change the fact that the Disputed Domain Name is confusingly similar. Further, that in terms of sound, appearance, connotation, and commercial impression, <[www.lockmytrip.in](http://www.lockmytrip.in)> and "LOCKMYTRIP" are confusingly similar to MAKEMYTRIP Marks. It was submitted that one of the distinguishing features of the Complainant's mark is the first term "MYTRIP" that differentiates Complainant's services business from other businesses. Further, that the only material difference between the combinations of words forming the Disputed

*P. Maheshwari*

Domain Name and Complainant's mark is the substitution by the Respondent of the word "lock" for "make". An Internet user seeing the term "LockMyTrip" is likely to assume that "MyTrip" when combined with "Lock" refers to the provision of travel services by the well-known travel service provider "MakeMyTrip". It was submitted that the travel industry is conducted in such a manner that Internet users and consumers would expect to find that a travel company will have multiple brands for various allied and cognate service and consequently, may falsely associate the Respondent with the Complainant. It was submitted that although the Disputed Domain Name does not contain the MAKEMYTRIP Trademark in its entirety, they are each *"confusingly similar to the dominant name in the Complainant's trademarks."* In support the Complainant has cited [\*La Quinta Worldwide, L.L.C. v. PrivacyProtect.org / Pantages, Inc.\*](#) (WIPO Case No. D2011- 1530). Finally, substitution of the word "lock" in the Disputed Domain Name for the word "Make" in the 'MakeMyTrip' Trademark is a difference that does not eliminate confusing similarity given that these words *"are related."* In support the Complainant has cited [\*Columbia Insurance Company v. Pampered Gourmet\*](#) (WIPO Case No. D2004-0649).

3. The Complainant contended that given the conceptual similarities between the Trade Marks and the Disputed Domain Name (i.e. the use of the words "MyTrip" as a suffix to suggest the nature of services) and the well-known reputation of the Complainant's Trade Marks, Internet users are likely to be confused about the relationship between the Complainant and the Disputed Domain Name. In support the Complainant has cited [\*Just Car Insurance Agency Pty Ltd. v. Throne Ventures Pty Limited\*](#) (WIPO Case No. DAU2008-0015) panel held that *"...given the conceptual similarities between the Trade Marks and the disputed domain name ... and the well-known reputation of the Complainant's Trade Marks, Internet users are likely to be confused about the relationship between the Complainant and the disputed domain name."*



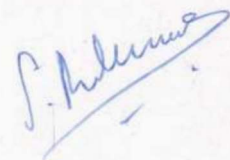


4. The Complainant contended that it is generally accepted that the suffix, such as .IN, is irrelevant when assessing whether a Disputed Domain Name is identical or confusingly similar to a trade mark as it is a functional element consequently, the disputed domain name <lockmytrip.in> is identical to the Complainant's MAKEMYTRIP Mark. Thus, the Complainant has established that the requirements of the INDRP Policy Paragraph 4(a) are fulfilled.

**D. The Respondent has no rights or legitimate interests in respect of the domain name <lockmytrip.in>;**

(Policy, Paragraph 4(b); Rules, Paragraph 4(b)(vi)(2))

1. The Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. That numerous previous panels have found under the Policy that "*once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the evidentiary burden shifts to the registrant to rebut the showing by providing evident of its rights or interests in the domain name*". In support the Complainant has cited [\*The Vanguard Group, Inc. v. Lorna Kang\*, \(WIPO Case No. D2002-1064\)](#); See also paragraph 2.1 of the [\*WIPO Overview 3.0\*](#).
2. The Complainant submits that the Respondent is not a licensee of the Complainant, nor has he been otherwise authorised or allowed by the Complainant to make any use of its MAKEMYTRIP trade mark, in a domain name or otherwise. Further submitted that the MAKEMYTRIP mark is significantly unique and used by the Complainant as a trade mark and trade name for a vast array of its business activities and consequently, it cannot be contended that the Respondent has with *bona fide* intent adopted the similar name LOCKMYTRIP. In support the Complainant has cited [\*Cavinkare Pvt. Ltd. v. LaPorte Holdings, Inc and Horshiy, Inc.\*, \(WIPO Case No. D2004-1072\)](#), panel held that "*it stretches credulity to breaking point to believe that it was a mere co-incidence that the Respondents adopted a name similar to*





*Complainant's unique and distinctive name, and if it is not co-incidence, the inference inevitably arises that the Respondents have misappropriated the Complainant's name which conduct cannot create rights or legitimate interest'.*

3. It was further submitted that the Respondent is unable to invoke any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name, for reasons detailed hereunder:

- a. It was submitted that the Respondent cannot assert that they have been using the Disputed Domain Name, prior to any notice of the present dispute, in connection with a *bona fide* offering of goods or services in accordance with paragraph 6(a) of the Policy. As described above, the Respondent has used the Disputed Domain Name, which is confusingly similar to the Complainant's MAKEMYTRIP trade mark, to point to a website marketing an identical service. Such use of the Disputed Domain Name cannot constitute a *bona fide* offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's MAKEMYTRIP trade mark to offer identical services. In support cited Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com", (WIPO Case No. D2000-0847), the panel stated that: "... use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy."

- b. It was submitted that the Respondent is not commonly known by the term "LOCKMYTRIP", in accordance with paragraph 6(b) of the Policy, particularly given the notoriety surrounding the Complainant's trade mark and its exclusive association with the Complainant. The Respondent's trading name, Satisar Travels, does not bear any resemblance to the



Disputed Domain Name and there is nothing in the evidence before the Panel that suggests the Respondent might otherwise has rights or legitimate interests in the Disputed Domain Name. The Respondent's



Impugned Application for the mark has been covertly filed to attempt to gain an unfair advantage in a view to sell the Disputed Domain Name to the Complainant and to circumvent the application of the INDRP. In support cited Trend Magazacilik ve Internet Hizmetleri Kuyumculuk Sanayi ve Dis ticaret A.S. v. Cenk Taylan Erdogan, (WIPO Case No. D2015-1195), panel held that "... under these circumstances the Respondent's trademark application was most likely filed in an attempt to gain an unfair advantage in a view to sell the disputed domain name to the Complainant and to circumvent the application of the UDRP. ... Such activity does not give rise to any rights or legitimate interests in the disputed domain name." It was submitted that This is corroborated by the Respondent's attempts to sell the Dispute Domain Name to the Complainant through their emails dated 27 October 2020 and 30 November 2020. This demonstrates that the Respondent does not have any rights or legitimate interest in the Disputed Domain Name and they intend to make unjust commercial profits.

- c. It was further submitted that neither can the Respondent assert that they have made or is currently making a legitimate non-commercial or fair use of the Disputed Domain Name, pursuant to paragraph 6(c) of the Policy. The Respondent therefore does not have any legitimate rights and interest in the Disputed Domain Name and has evidently registered same with the *mala fide* of making illegitimate and illegal commercial gains. The fact that the Disputed Domain Name is pointing to a website offering identical services cannot be considered as a non-commercial use of the Disputed Domain Name. In addition, the fact that the Disputed Domain Name falsely suggests affiliation with the Complainant will generally exclude any possible fair use as per paragraph 2.5 of the WIPO Overview 3.0

*J. Anderson*



("Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trade mark owner... Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation"). Given the distinctiveness, notoriety and premium quality of the Complainant's marks and services, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. See [\*Telstra Corporation Limited v. Nuclear Marshmallows\*, \(WIPO Case No. D2000-0003\)](#).

- d. In light of the above, the Respondent's acts do not constitute a *bona fide* offering of goods or services. The Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has evidently registered the same with the *mala fide* intent of making illegitimate and illegal gains. Thus, the Complainant has established that the requirements of the INDRP Policy Paragraph 4(b).



**E. The domain name <lockmytrip.in> has been registered or is being used in bad faith.**

(Policy, paragraphs 4(c); Rules, paragraph 4(b)(vi)(3))

1. Bad faith is implicit in the registration of the Disputed Domain Name. The Respondent unauthorizedly registered the Disputed Domain Name on 31 January 2019, by which time the Complainant's MAKEMYTRIP Mark, through extensive and continuous use for more than 19 years, had acquired immense goodwill and reputation amongst the public and trade. The MAKEMYTRIP Mark is, therefore, associated exclusively with the Complainant.

**Registration in bad faith**



2. The Complainant's MAKEMYTRIP trademark is highly distinctive and well known throughout the world. It has been continuously and extensively used since 2000 in connection with an online travel booking services, and has rapidly acquired considerable goodwill and renown worldwide, including in India where the Respondent is based. In *MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org, (WIPO Case No. D2012-0691)*, panel found that " *Complainant is a leading online travel company...* " and "*was the second most visited travel website in India.*"
  
3. Given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights well established in India (see Annexure 3 for a copy of the Complainant's Indian trade marks registered as early as in 2011), it would be inconceivable for the Respondent to argue that he did not have knowledge of the Complainant's MakeMyTrip marks at the time of registration in 2019. The Respondent's subsequent withdrawal of the LOCKMYTRIP Mark upon advance service of the Commercial Suit by the Complainant before the Hon'ble Delhi High Court leaves no doubt as to the Respondent's awareness of the Complainant at the time of registration of the Disputed Domain Name.
  
4. The Complainant further noticed that apart from using mark LOCKMYTRIP, which is deceptively, phonetically and conceptually similar to the Complainant's MAKEMYTRIP Mark, the Respondent was also using the Mark , which has a colour scheme of blue and red, similar to the colour scheme of the MakeMyTrip logo mark , for which the Complainant has trade mark registration. It is most relevant that the placement of the word ".com" in the Respondent's Infringing Logo Mark is identical to the manner in which the word ".com" has been placed in the Complainant's MakeMyTrip logo mark.
  
5. The Complainant therefore submits that the Respondent registered the

*J. Kulkarni*

Disputed Domain Name in full knowledge of the Complainant's rights. Prior panels deciding under the Policy have held that actual and constructive knowledge of a complainant's rights at the time of registration of a domain name constitutes strong evidence of bad faith. In eBay Inc. v. Sunho Hong, (WIPO Case No. D2000-1633) panel held that: "*actual or constructive knowledge of the Complainant's rights in the trade marks is a factor supporting bad faith.*" and in E. & J. Gallo Winery v. Oak Investment Group, (WIPO Case No. D2000-1213) panel held that : "*finding bad faith where the respondent 'knew or should have known' of the complainant's trade mark.*"

6. Furthermore, given its inherently distinctive MAKEMYTRIP trade mark, the Complainant submits that the Respondent could simply not have chosen the Dispute Domain Name, which is confusingly similar to the Complainant's MAKEMYTRIP mark, for any reason other than to take unfair advantage of the Complainant's goodwill and reputation. In WhatsApp Inc. v. Private Person / Mario Rieger (WIPO Case No. DRO2017-0005), panel held that: "*The Panel is of the opinion that the Respondent has registered the Domain Name with the intent to profit from the reputation of the Complainant's trademark by choosing a domain name that is confusingly similar to the Complainant's mark.*"
7. Therefore, the Complainant submits that the Respondent registered the Domain Name in bad faith.

#### **Use in bad faith**

8. The Respondent's refusal to transfer the Disputed Domain Name for free is evidence of bad faith as set out in paragraph 7(a) of the Policy. It is submitted that the refusal of the Respondent to transfer the Disputed Domain Name for free to the Complainant is a strong indication of their intention to transfer the Disputed Domain Name only in return for an amount of money over and above their registration costs. As can be seen in the correspondence at Annex 23 and 27, such intention can be easily perceived from the Respondent's emails dated 27 October 2020 and 30 November 2020. In OLX, B.V. v. Abdul Ahad / Domains By Proxy, LLC, (WIPO Case No. D2015-0271), panel found that:



*"Paragraph 4(b)(i) of the Policy makes it clear that the registration of a domain name for the purpose of selling it to the Complainant, in excess of the Respondent's documented out-of-pocket costs, amounts to bad faith." The Disputed Domain Name is therefore being used in bad faith in accordance with the Policy. Furthermore, in Swarovski Aktiengesellschaft v. PrivacyProtect.org / MURAT KILKIS, (WIPO Case No. D2013-1049), panel held that: "In particular, the Respondent's offer to transfer the disputed domain name only in return of an appropriate amount of money indicates that the Respondent registered and has used the disputed domain name in bad faith."*

9. In any event, given the overwhelming renown and explosive popularity of the Complainant's MAKEMYTRIP Marks worldwide, and the nature of the Disputed Domain Name, which is confusingly similar to the Complainant's trade mark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name as this would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. See Telstra Corporation Limited v. Nuclear Marshmallows, (WIPO Case No. D2000-0003).
10. It is submitted that the Respondent has in the past used the Disputed Domain Name to intentionally attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the website, in accordance with paragraph 7(c) of the Policy. The Respondent has used the Disputed Domain Name to divert Internet traffic to its website offering competing and identical services to those of the Complainant, for the purpose of achieving commercial gain. Such conduct constitutes bad faith registration and use under paragraph 4(c) of the Policy. In trivago GmbH v. Nomads/Perminder (David) Marin-Pache, (WIPO Case No. D2014-0542), panel held that *"The Respondent is using the disputed domain name to divert Internet traffic to its website offering competing and identical services to those of the Complainant, for the purpose of achieving commercial gain. Such conduct constitutes bad faith registration and use under paragraph 4(b)(iv) of*



*the Policy."*

11. Therefore, in view of: (i) the Respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the Complainant's mark, (iii) threats to transfer the Disputed Domain Name to a third party, (iv) failure of the Respondent to present a credible evidence-backed rationale for registering the Disputed Domain Name, (v) the Respondent's request for money in exchange for the Disputed Domain Name and their company, (vi) the Respondent's attempt to force the complainant into an unwanted business arrangement, (vii) the Respondent's past conduct or business dealings, and (viii) the Respondent's past conduct, it is arduous to conceive of any circumstance in which the Respondent could have registered the Disputed Domain Name in good faith or without knowledge of Complainants' rights in the MAKEMYTRIP marks.

In light of the above, it is apparent that the registration and use of the domain name <lockmytrip.in> by the Respondent is not *bona fide* and the Respondent has *prima facie* registered and is using the disputed domain name in bad faith. Thus, the Complainant has established that the requirements of the INDRP Policy Paragraph 4(c) are fulfilled

## VI. DISCUSSION AND FINDINGS:

In view of all the above facts and well-known legal propositions and legal precedents I find and hold as under:

- that that the Respondent's domain name is deceptively similar to the trademark/ trade name in which the Complainant has rights.
- that the disputed domain name "< lockmytrip.in>" registered by the Respondent incorporates the Complainant's well-known MAKEMYTRIP trademark/ tradedress.
- that due to the fame of the distinctive and reputation of the trade mark MAKEMYTRIP, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.





- that Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the MAKEMYTRIP trademark.
- that the Complainant has prior rights in the trademark MAKEMYTRIP which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- that the disputed domain name has been registered in bad faith
- that the disputed domain name is deceptively similar to the Complainant's registered trademark MAKEMYTRIP, in which the Respondent cannot have any rights or legitimate interest.

That I received no detailed Reply to the Complaint on behalf of the Respondent except an email from her evidencing her own willingness to have the domain name transferred to the Complainant and here surrendering the ownership of the domain name. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

## VII. DECISION

- a. In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b. That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "< *lockmytrip.in* >" to the Complainant;
- c. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 1<sup>st</sup> day of July, 2021.



Sridharan Rajan Ramkumar  
Sole Arbitrator  
Date: 01/07/2021