

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Reprinted e-Stamp Certificate

सत्यमेव जयते Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

IN-DL36630968201277T

13-Oct-2021 03:14 PM

SELFPRINT (PU)/ di-self/ NEHRU/ DL-DLH

SUBIN-DLDL-SELF68672084064715T

SANJEEV CHASWAL

Article 12 Award - Movable

ARBITRATION AWARD FOR DOMAIN 7 AND 11 BY ARBITRATOR

100

(One Hundred only)

SANJEEV KUMAR CHASWAL

SANJEEV KUMAR CHASWAL

(One Hundred only)



SELF PRINTED CERTIFICATE TO BE VERIFIED BY THE RECIPIENT

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

INDRP ARBITRATION

UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL

In the matter of Arbitration Proceeding for the Domain name "7-ELEVEN.CO.IN"

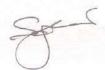
AND IN THE MATTER OF INDRP CASE NO:1425 LD. ARBITRATOR - CASE #: 34624446

M/s. 7-ELEVEN, Inc. 3200 Hackberry Road, Irving, Texas 75063 United States of America

Complainant

Global Floats No.39, Dr. Radhakrishnanan Nagar, P.H. Road, Arumbakkam, Chennai, Tamil Nadu - 600106.

Respondent



INDRP ARBITRATION UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL

In the matter of Arbitration Proceeding for the Domain name "7-ELEVEN.CO.IN"

AND IN THE MATTER OF INDRP CASE NO:1425 LD. ARBITRATOR - CASE #: 34624446

M/s. 7-ELEVEN, Inc. 3200 Hackberry Road, Irving, Texas 75063 United States of America

Complainant

Vs.

Global Floats No.39, Dr. Radhakrishnanan Nagar, P.H. Road, Arumbakkam, Chennai, Tamil Nadu - 600106.

Respondent

ARBITRATION AWARD

Disputed Domain Name: <u>WWW. 7-ELEVEN.CO.IN</u>

1. The Parties:

1.1 The Complainant in this arbitration proceeding is The complainant in these proceedings is 7-ELEVEN, Inc., of the address 3200, Hackberry Road,

Irving, Texas 75063, United States of America, the Complainant; represented by the Complainant's authorized representative Mr. Sanjay Chhabra of law firm M/s. Archer & Angel, India.

1.2 The Respondent in this arbitration proceeding is M/s. Global Floats No.39, Dr. Radhakrishnanan Nagar, Chennai, Tamil Nadu – 600106 as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

2. The Domain Name and Registrar:

2.1 The disputed domain name is **seveneleven.co.in**. The said domain name is registered as < **seveneleven.co.in**> and is registered with the Registrar **Endurance Domains**, **Technology**, **LLP**. The registrar of domain name is M/s. Endurance International Group (India) Private Limited Unit No. 501, 5th Floor & Unit IT Building No. 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai, Maharashtra – 400 063, India, **Email:** complaint@publicdomainregistry.com.

3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding 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] as approved by NIXI 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.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed the undersigned as the Sole

Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator have submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.3 Present Arbitral Proceedings have commenced on 26th august 2021 by issuing 1st notice under rule 5(c) of INDRP rules of procedure issuance by the undersigned Arbitrator through email directly to the Respondent as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully served by the complainant to the respondent through email and by speed post.
- 3.4 Further the respondent M/s. Global Floats No.39, Dr. Radhakrishnanan Nagar, Chennai, Tamil Nadu 600106 was also directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice, failing which the Complaint shall be decided on the basis of the merits of the Complaint.
- 3.5 The Respondent has failed to submit its reply or detailed statement to the sole arbitrator panel within 15 days of the notice. But due to current pandemic condition scenario and further in the interest of justice. The Respondent was provided another opportunity to submit its reply or detailed statement to the sole arbitrator panel by 21st of September 2021 and further direction was issued that no further extension of extending the time period for submitting reply, statement will be acceded further in any manner and in case of default in filing reply or statement your right for the same shall be but the Respondent has failed to comply with the said notice as well.

4. Factual Background:

4.1 The Complainant counsel submits that the complainant company 7-Eleven, Inc., is the world's largest convenience store chain operating, franchising and licensing convenience stores under the brand name '7-ELEVEN' with 72,000 stores around the world in 18 countries and territories. The Complainant

company was founded in 1927 in Dallas, Texas, as The Southland Corporation, the Complainant pioneered the convenience store concept during its first years of operation, when it began selling milk, bread and eggs as a convenience to guests registered the accompanying domain name,

- 4.2 The Complainant counsel states that the trading name '7-ELEVEN' originated in 1946, and since then it is Complainant's house mark, the Complainant's stores were changed to '7-Eleven' and has been in use continuously ever since, with various 7-ELEVEN-fomative trademarks (hereinafter collectively '7-ELEVEN Marks' / 'Complainant's Marks') having obtained registration in over 90 jurisdictions worldwide.
- 4.3 The Complainant counsel states that since the operation of its first store in the year 1946 under the name '7-ELEVEN', the Complainant has been selling a wide range of products at its convenience stores which have gained immense reputation and recognition worldwide. By offering of a variety of products, the Complainant has become an international leader in this sector. In a short span, the Complainant's stores expanded beyond its home country's borders. The first 7-ELEVEN store of the Complainant outside the United States of America opened in Canada in 1969, and two years later the Complainant expanded into Mexico as well. The first 7-ELEVEN store outside North America was built in 1974 in Japan, which alone carries nearly 21,000 stores now.

5. Parties Contentions:

The complainant has raised three pertinent grounds as per INDRP Rules of Procedure for seeking relief is stated as under:

A. Complainant Grounds for proceedings

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.

The Complainant submits detailed contentions that are described in details as under:

I) Background of the Complainant and its statutory and common law rights related prior Adoption and use:

- 5.1 The Complainant company was founded in 1927 in Dallas, Texas, as The Southland Corporation, the Complainant pioneered the convenience store concept during its first years of operation, when it began selling milk, bread and eggs as a convenience to guests registered the accompanying domain name, The Complainant is the world's leading services. Since inception, the Complainant adopted the word "7-ELEVEN 'as trademark for its goods and services.
- 5.2 The Complainant counsel states that the trading name '7-ELEVEN' originated in 1946, and since then it is Complainant's house mark, the Complainant's stores were changed to '7-Eleven' and has been in use continuously ever since, with various 7-ELEVEN-fomative trademarks (hereinafter collectively '7-ELEVEN Marks' / 'Complainant's Marks') having obtained registration in over 90 jurisdictions worldwide.

II) Complainant's Claim of Statutory Rights:

and exclusive proprietor of the '7-ELEVEN' and name, logo, brand, and the 7-ELEVEN-Marks, including without limitation the 7-ELEVEN' globally registered trademarks '7-ELEVEN', the business thereunder. In order to protect the goodwill associated with these trademarks and business, the Complainant has secured statutory rights in its 7-ELEVEN Marks around the world, flowing from trademark registrations across classes relevant to its business, including but not limited to Classes 29, 30, 32, 35 &43 in numerous jurisdictions such as Australia, Austria, Canada, China, Egypt, European Union, France, Hong Kong, Indonesia, Iran, Iraq, Italy, Malaysia, Mexico, Nepal, New Zealand, Norway, Pakistan, Philippines, Qatar, Republic of Korea (South), Russian Federation, Saudi Arabia, Singapore, Spain, Switzerland, United Arab Emirates, United Kingdom, United States of America.

Switzen

- 5.4 The complainant has been granted the 7-ELEVEN Marks worldwide. It would be pertinent to note that the earliest of the aforementioned registrations for the Complainant's 7-ELEVEN Marks in relation to its core business, has been valid and subsisting on the Register of the United States Patent and Trademark Office since as early as July 04, 1961, with usage in commerce claimed since 1946. By virtue of these, the Complainant has exclusive rights over the 7-ELEVEN Marks on a global scale.
- 5.5 Further the Complainant counsel states that the Complainant's have registered and operate globally a number of websites using its trademark7-ELEVEN in the top level domain names such as: -

Domain Name Domain	Territory	Registration Date
seven-eleven.com	gTLD	18-Nov-1997
seven-eleven.info	gTLD	31 Jul-2001
seveneleven.biz	gTLD	05-Oct-2001
seveneleven.com	gTLD	13-Nov-1997
seveneleven.info	gTLD	01-Aug-2001
sevenelevens.com	gTLD	19-Apr-1998
seven-eleven.ca	Canada	14-Dec-2000
seveneleven.cl	cl Chile	16-Aug-2004
seveneleven.com.	.mx Mexico	28-Sep-2004

5.6 The Complainant counsel states that the Complainant operates its corresponding website at www.7-eleven.com, where information about the Complainant and its business under the 7-ELEVEN Marks and the 7-ELEVEN brands in general is freely available and accessible to millions of internet users, who may be current or potential consumers. As per the Google Analytics electronic data, the Complainant's official website is already immensely popular among Indians and experiences a large number of views from India alone. In 2019 alone over 65,000 Indian users viewed the www.7-eleven.com website, in over 81,000 different sessions. In this regard, it is pertinent to mention that the Applicant's first store was due to launch in the city of Mumbai in early 2020. However, the launch of its first store has been delayed owing to the global Covid-19 pandemic situation in the year 2020.

5.7 The Complainant counsel claims that various TM offices world over have declared the complainant marks 7-ELEVEN Marks as well-known, It is also pertinent to mention that different courts and quasi-judicial forums around the world have explicitly held the Respondent's 7-ELEVEN Marks as well-known, having gained immense goodwill and reputation.

Intellectual Property Office, Ministry of Economic Affairs, Taiwan	Trademark Opposition Decision: Opposition filed by 7-Eleven, Inc. against trademark "ONE TWO THREE and 1Design" Reg. No. 01307342 in the name of Lin Chao-Shun	February 02, 2009	registered in many countriesTherefore, the mark that belongs to the appellate "7-ELEVEN, INC." is a well-known trademark. the business reputation represented by the Cited Trademarks "7-ELEVEN & Design & Tri-stripe" have been generally recognized by relevant enterprises or consumers, and said trademarks have
			become well-known trademarks
Ministry of Science and Technology, National Office of Intellectual Property, Vietnam	Detailed examination of trademark '7 SEVEN, device' bearing no. 4- 2008-23969 in the name of Lac Hong Company Limited	May 19, 2011	The mark is not protected because it is confusingly similar to the well known trademark protected under Reg. No. 9903 dated 08 December 1993.

5.8 The Complainant counsel claims that the Complainant came across an

application for the mark under No. 4644996 (hereinafter 'Infringing Mark / Application') in class 29 filed by M/s. Seven Eleven (hereinafter also referred to as the 'Respondent') on September 07, 2020 on an intent to use basis with respect to "Peanuts, Nuts, Dry Fruits and Dates, Frozen Fruits" before the Trade Marks Registry, Chennai. The Infringing Marconsists of numerical 711 followed by the words SEVEN ELEVEN placed below the numerical in between a tri-striped background - thus imitating most essential features/ elements of Complainant's 7-ELEVEN Marks more specifically the iteration

. In order to protect its rights and prevent brand dilution of a well-known mark, the Complainant filed a Notice of Opposition with the Trade

Marks Registry, Chennai against the Application for the Infringing Mark under Opposition No. 1066158 dated October 09, 2020.

Forum	Case	Date of Judgment	Observations
The Federal District Court of Brazil	Ordinary Civil Action: The Southland Corp v. Guys and Dolls Boutique LTDA and Other	October 18, 1991	The Plaintiff's mark is well-known because it is widely known in many parts of the world, with large investments thereon, the registration granted to the Defendant refused
Spanish Patents and Trademarks Office	Motion for Appeal: Appealed by 7-Eleven, Inc against TITLE OR GRAPHIC 7 1- LEVENLESS (graphic) bearing no. 747.831	September 14, 2003	there is an evident similarity of name and a clear relation in the applications thereof, which added to the well known nature of the opposing trademarks which are not only known in Spain but also Throughout the world
Turkish Patent Institute	Appeal filed by 7- Eleven, Inc. against the refusal decision in opposition against trademark 'seven 7 s + device' bearing no. 2004/02926 in the name of Seven Gida Sanayi Ve Ticaret Anonim Sirketi	2006	there will be a risk of likelihood of confusion and likelihood of association of the marks by the consumers, if the "seven 7" trademark, which is very similar to the well-known "7 eleven" trademark belonging to the 7-eleven chain of stores.
Jordan Supreme Court of Justice	Appeal filed by 'Abdal-'Aziz Mahmood Al-Qaysiyyah against refusal of registration of his trademark bearing no. 711Q711	December 11, 2007	the trademark (7- ELEVEN) is registered in the country of original registration "United States of America" since 1946. Furthermore, its fame has exceeded the "United States of America" through legal registrations to be

- 5.9 The Complainant counsel states that the Complainant also learnt that that the Respondent has not only sought to secure trademark rights by filing the Infringing Application for a nearly identical trademark but has also registered the Disputed Domain Name, i.e. <seveneleven.co.in> and is flagrantly using its corresponding website at www.seveneleven.co.in in relation to its business of providing bird feed, vaccination for pets, pet foods, pet consultations etc.
- 5.10 The Complainant counsel states that the Complainant firmly believes in exploring the possibility of amicable resolution of differences before taking recourse to any other legal action. The Complainant therefore initiated correspondence with the Respondent on November 16, 2020 as the Complainant sent a Legal Notice ('Notice') apprising it of the Complainant's rights in its 7-ELEVEN Marks and requesting to transfer the Disputed Domain Name to the Complainant as well as withdrawal of the Infringing Application in Class 09 under No. 4544996 amongst other reasonable requisites.

III) The Complainant had sent a Legal Notices/Other Communication to the Respondent:

- 5.11 The Complainant has made great effort in contacting the Respondent to resolve the issue and prior to the commencement of this domain arbitration proceeding. In November 28, 2020, the Complainant learnt that the impugned domain name www. seveneleven.co.in has been registered by the Respondent on 26-08-2020
- 5.12 Further the Complainant counsel submitted that the Complainant on November 28, 2020, the Respondent in its Reply asserted rights in the Infringing Application and use thereof and refused to comply with the requisitions laid down in the Legal Notice.
- 5.13 Further the Complainant counsel states that the Complainant on December 14, 2020 with a view to provide the Respondent another opportunity, the Complainant yet again issued a Rejoinder Notice repudiating their claims and contentions which run contrary to established legal principles and providing them another opportunity to comply with requisitions sought in the previous Notice.
- 5.14 Further the Complainant counsel states that the Complainant on December 28, 2020, The Complainant received another Reply on behalf of the Respondent strongly objecting to Complainant's contentions and thus refusing to resolve the matter amicably.

5.15 The Complainant counsel states that the Complainant despite lapse of substantial time since the exchange of correspondence the Respondent has neither transferred the Disputed Domain Name www.seveneleven.co.in to the Complainant nor complied with the Complainant's other reasonable requisites As such the Respondent continues to own / use the Disputed Domain Name.

- I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.
 - 5.16 The Complainant complaint is based on the premise as being prior adopter and user of trademark 7-ELEVEN and its domain *seveneleven.com* in worldwide of the said trademark for many years, submitted that it is the sole proprietor of and has sole and exclusive rights to use, the said trademarks, which includes the trademark '7-ELEVEN' and ' *seveneleven.com*'.
 - 5.17 The Complaint is the registered proprietor of the many marks having word per se and with logo "7-ELEVEN world over. The Complainant submits that as the disputed domain name is 'www. seveneleven.co.in, the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

II) The Respondent has no rights or legitimate interests in respect of the disputed domain name

5.18 The Complainant argued that the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name of the complainant anywhere. The Complainant has further submitted that the Respondent has failed to submit any tangible proof of prior adoption and use of the disputed domain name or of a trademark or a service mark in connection with any goods or services prior to the complainant and after the registration of the disputed domain name in its favour. The Complainant has further submitted that the Respondent has no legitimate rights under trademark law or has any legitimate respect of the disputed interest in domain name www.seveneleven.co.in.

III) The Respondent's disputed domain name has been registered or is being used in bad faith.

- 5.19 The Complainant argued that the Respondent's adoption and registration of the disputed domain name www.seveneleven.co.in is dishonest and malafide. The Respondent had no previous connection with the disputed domain name www.seveneleven.co.in and has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name. Any use of the similar disputed domain www.seveneleven.co.in name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the Complainant, by the trade and public in India and all over the world.
- 5.20 It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith.

B. Contention of the Complainant

5.21 The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

6. Discussion and Findings:

6.1 The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand 7-ELEVEN. Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark '7-ELEVEN'. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name.

6.2 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

[a] The Respondent's Default:

6.3 As per INDRP Rules of Procedure, it require as defined under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) be read as follows

"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."

6.4 Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:

"In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

6.5 The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

6.6 As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer nor presented the assertions, evidence or contentions in any manner. The undersigned as being arbitrator opined that the Respondent has been given a fair opportunity to present his case, thus non representation of the reply by the Respondent the Arbitrator will now proceed

to a decision on the Complaint in accordance to its merit.

6.7 The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

[b] The issues involved in the dispute:

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the Respondent's domain name has been registered or is being used in bad faith.
- 6.8 The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

6.9 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

6.10 It has been proved by the Complainant that it has intellectual property, particularly trademark, and other rights in the mark "7-ELEVEN" by submitting substantial documents of its prior adoption and continuous use. The Complainant counsel states that the trading name '7-ELEVEN' originated in 1946, and since then it is Complainant's house mark, the Complainant's stores were changed to '7-Eleven' and has been in use continuously ever since, with various 7-ELEVEN - fomative trademarks (hereinafter collectively '7-ELEVEN' Marks' / 'Complainant's Marks') having obtained registration in over 90 jurisdictions worldwide.in relation to its business. The mark has been highly advertised by the Complainant in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations:

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:

the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

the Respondent is not registering the domain name for an unlawful purpose;

and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

6.11 The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, I have come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' "7-ELEVEN" mark. Accordingly, I conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

- 6.12 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 6.13 The Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name in its favour. The Respondent has also not used the disputed domain name as a trademark or a service mark in connection with any goods or services after the registration of the disputed domain name in its favour. The Respondent has also not registered the trademark "7-ELEVEN" in its favour in India.
- 6.14 Moreover, the burden of proof on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

6.15 The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name. Further, the

Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonfide offer of goods or services. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name www.seveneleven.co.in

For these reasons, the Arbitrator opines that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered or is being used in bad faith.

6.16 It has been contended by the Complainant that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of

6.18 From the circumstances of the case and from the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

6.19 Moreover, use of similar disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the complainant, by the trade and public in India and all over the world.

6.20 Further the Respondent has prevented the Complainant, who is the owner of the service mark "7-ELEVEN" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "7-ELEVEN" as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the Respondent has not given any proper contact details and has not been replying to the communications sent by the complainant.

Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

7. DECISION

7.1 The Respondent has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the

registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein

7.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. The Respondent had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to prevent the Complainant who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

7.3 The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

[Relevant WIPO decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services <u>D2000-0503</u>; Thaigem Global Marketing Limited v. Sanchai Aree <u>D2002-0358</u>; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano <u>D2003-06611</u>

7.4 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Thus it is very much clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupo d.d. v. WACHEM d.o.o. D2004-01101

in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three 7.5 The Respondent's registration and use of the Domain Name is abusive and requisite conditions laid down in paragraph 4 of the INDRP policy.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator from the Respondent to the Complainant; with a request to NIXI to monitor the directs that the disputed domain name www.seveneleven.co.in be transferred transfer in time bound manner.

SANJEEV KUMAR CHASWAL SOLE ARBITRATION INDRP ARBITRATION NIXI NEW DELHI DATE 11-10-2021