



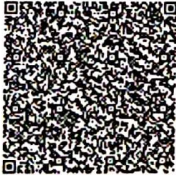
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL38134590024275T
Certificate Issued Date	: 18-Oct-2021 02:12 PM
Account Reference	: IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91450371528455976422T
Purchased by	: Sudhir Kumar Sengar
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: Sudhir Kumar Sengar
Second Party	: Not Applicable
Stamp Duty Paid By	: Sudhir Kumar Sengar
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: SUDHIR KUMAR SENGAR
MakeMyTrip (India) Private LTD

Vs

MakeMyWallet

ARBITRATION AWARD Disputed Domain Name: www.makemywallet.in

Sudhir Kumar Sengar

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. 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.
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1. The Parties

The Complainant in this arbitration proceedings is MakeMyTrip (India) Private Limited, 19th floor, Tower A, B & C, Epitome Building No. 5 DLF Cyber City, Phase – III, Gurgaon 122 002, India. Phone: +91 9716746496 Email: mohit@simandsan.com). The Complainant is represented by Sim And San, Attorneys At Law, 176, Ashoka Enclave-III, Sector-35, Faridabad -121003, National Capital Region (NCR), India. Telephone: +91 9784386634, Email: mohit@simandsan.com ; akshay@simandsan.com

The Respondent is Makemywallet, 412,413,414, 4th Floor, Evershine tower, Vaishali Nagar, Jaipur, 302021. Telephone: 8171626532 Email: makemywallet@gmail.com

2. Domain Name and Registrar

(i) The disputed domain name is <makemywallet.in>.

(ii) The accredited registrar with whom disputed domain is registered Godaddy.com, LLC.

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

The complaint was filed by the Complainant with NIXI against the respondent. NIXI verified the Complainant and its annexures for conformity with the requirements of Policy and Rules.

On October 1, 2021, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on October 1, 2021 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on October 1, 2021 and the Respondent was directed to submit a response within 7 days. The respondent did not reply to the notice within the stipulated time. The Respondent was further given five days time to respond to the notice already served through email dated 1.10.2021. The Respondent failed to file any response even after expiry of extended time line. In fact the respondent has not filed any response till date.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical to a trademark in which the Complainant has statutory /common law rights.



2.The respondent has no rights or legitimate interests in respect of the disputed domain name.

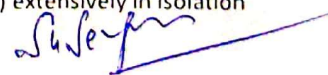
3..The registered domain name is registered or is/are being used in bad faith.

Background of the Complainant

The Complainant, MakeMyTrip (India) Private Limited, is a company registered under the Companies Act, 1956. The Complainant, 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. The Complainant was originally incorporated on 13 April 2000, with the trade name 'Travel by Web Private Limited' and subsequently the Complainant changed its trade name to 'Makemytrip.com Pvt. Ltd'. 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'.

The domain <makemytrip.com> was registered by the Complainant on 8 May, 2000. 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>, <makemy- trip.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>. The Complainant, through its primary website, <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 company is offering range of services which 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.

The Complainant has used and continues to use its MakeMyTrip Logo Marks in different unique and stylized forms. The Complainant has made a concerted and conscious effort to depict and use the "my" (hereinafter, "MY") formative element of its MAKEMYTRIP Marks in an artistic, unique, and catchy manner. The said efforts are evidenced by the prominent depiction of the "MY" element in the various MakeMyTrip Marks. The Complainant uses the MakeMyTrip Logo Marks in conjunction with unique and distinctive artistic elements, such as, the words "MakeMyTrip" in each logo are written in a specific and uniform colour combination of dark blue and deep red with "MY" written in the colour white. The words "Make" and "Trip" are written in dark blue colour whereas the word "MY" is written in white on a background of deep red colour. All other words, forming part of the composite logo, are also written in the same colours. In addition to the logo marks of the Complainant as described above, the Complainant uses the logo mark (hereinafter, referred to as the "MY Logo Mark") extensively in isolation



and in conjunction with other marks of the Complainant. The stylized word 'MY' written in white colour on a red background has been extensively used by the Complainant. Due to extensive use of MY Logo Mark by the Complainant, the public and trade have come to associate and recognize MY Logo Mark, and any word used in conjunction thereof, as that of Complainant's MakeMyTrip Marks.

The Complainant's MakeMyTrip App has become one of the fastest growing and most popular mobile applications in the world for travel and tourism, with over 50 million downloads in Google Apps Store. 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.

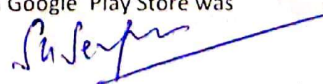
The Complainant is a part of several renowned national as well as international trade associations. With a view to offer better tour and travel packages and economical options to its customers, the Complainant has entered into collaboration agreements with numerous travel companies, hotels, airlines etc., including but not limited to British Airways, Turkish Airlines, Gulf Air, Singapore Airlines, Lufthansa, Etihad Airways, HSBC, Accor, Hilton, Expedia, Amex, IBM, SBICPSL, HDFC Tourism Boards of Korea, New Zealand, Singapore, Australia and Malaysia. These business alliances have helped the Complainant to further augment its already successful business.

Furthermore, in consideration of the Complainant's unmatched performance with its business tie-ups, its partners have conferred various accolades to the Complainant. The Complainant, to provide the best services to its ever-expanding clientele and to fulfil the ever-expanding demand of the international hospitality industry, has also acquired and invested in well-known brands to provide full spectrum services to its clients all across the globe, and, in turn, to grow its own business. The Complainant has also made substantial investments to develop a strong presence online by being active on different social media forums like Facebook, Twitter and YouTube. 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.

The Respondent

Sometime in the month of April 2021, the Complainant acquired knowledge of the existence of the Disputed Domain Name <makemywallet.in>. Being aggrieved by the Disputed Domain Name, the Complainant issued a cease-and-desist notice to the Respondent on 26 April 2021. However, the Respondent did not respond to it. Thereafter, on 28 May 2021, the Complainant issued another reminder notice, which again was not responded to by the Respondent.

The Respondent is purportedly engaged in the business of providing payment services through the Disputed Domain Name. When the Respondent's App available on Google Play Store was



downloaded, it was noticed that its app was not functional yet. Furthermore, the Complainant is also providing financial services purported to be provided by the Respondent through its Forex services (https://www.fxkart.com/makemytrip?utm_source=MMTAFF) and payment services (<https://payments.makemytrip.com/ui/easypay/>).

The Complainant further noticed that apart from using mark MAKEMYWALLET, which is deceptively, phonetically and conceptually similar to the Complainant's MAKEMYTRIP Mark, the Respondent was also using the Mark, which has a blue colour scheme, similar to the colour scheme of the MakeMyTrip logo mark, for which the Complainant has trade mark registrations. It is most relevant that the placement and prominence given to the word "MY" in the Respondent's Infringing Logo Mark is identical to the manner in which the word "MY" has been placed in the Complainant's MakeMyTrip logo mark. The Complainant is also the Registered Proprietor various MY Marks. It is also relevant to highlight that the Complainant is also the Registered Proprietor of the "Make My" Marks.

Given the blatantly abusive registration and use of the Disputed Domain Name and notably the Respondent's refusal to respond, the Complainant is constrained to file the present Complaint in order to request the transfer of the Disputed Domain Name under the Policy to protect its legitimate business interests and the rights of its user community.

5. Legal Grounds

A. The domain name <makemywallet.in> is identical to the trademark MAKEMYTRIP in which the Complainant has rights;

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

Complainant's contention

The Complainant is the registered proprietor of the 'MAKEMYTRIP' Marks, including 'MAKEMY' and 'my' in India as well as several countries worldwide. It is well-established that trademark registrations constitute prima facie evidence of validity of trademark rights. The Complainant has relied on *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), where it was held that trademark registration constitutes prima facie evidence of the validity of trademark rights. The Complaint has relied on *Daifuku, Co., Ltd. v. X Herb Garden* (WIPO Case No. D2003-0075) where the Panel held that: "For the question of similarity in the context of the Policy it is not relevant whether the trademark is famous, nor is it relevant for which goods or services the trademark has been registered, or whether other identical or similar trademarks exist." The Complainant further submits that apart from its trademark rights, the Complainant also uses the



MAKEMYTRIP and MAKEMY Marks as prominent and essential portions of its corporate name, trade name and trading style. Moreover, the Complainant has extensively and continuously used the MAKEMYTRIP Marks, including MAKEMY and MY for several years around the world, including in India.

The Complainant contends that the Disputed Domain Name <www.makemywallet.in> is confusingly similar to the Complainants' MAKEMYTRIP Marks. The Complainant further submits that merely replacing a portion of a mark with a generic word does not change the fact that the Disputed Domain Name is confusingly similar. In terms of sound, appearance, connotation, and commercial impression, <www.makemywallet.in> and "MAKEMYWALLET" are confusingly similar to MAKEMYTRIP Marks. The Complainant further submits that one of the distinguishing features of the Complainant's mark is the first term "MAKEMY" that differentiates Complainant's business from other businesses. The only material difference between the combinations of words forming the Disputed Domain Name and Complainant's mark is the substitution by the Respondent of the word "TRIP" for "WALLET". An Internet user seeing the term "MakeMyWallet" is likely to assume that "MakeMy" when combined with "Wallet" refers to the provision of payment services by the well-known travel service provider "MakeMyTrip". 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. 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." The Complainant has relied on *La Quinta Worldwide, L.L.C. v. PrivacyProtect.org / Pantages, Inc.*, (WIPO Case No. D2011- 1530). Finally, substitution of the word "Wallet" in the Disputed Domain Name for the word "Trip" in the 'MakeMyTrip' Trademark is a difference that does not eliminate confusing similarity given that these words "are related." The Complainant has also relied on *Columbia Insurance Company v. Pampered Gourmet* (WIPO Case No. D2004-0649).

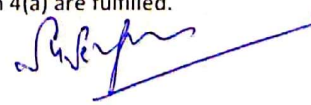
The Complainant contends that the dominant part of the Disputed Domain Name comprises the term "MAKEMY", which is confusingly similar to the MAKEMY Mark. The addition of the suffix "Wallet" will not have any impact on the overall impression of the dominant part of the name MAKEMY. The Complainant submits that the Complainant's Registered trade mark MAKEMY has been incorporated in full in the Disputed Domain Name, and all that has been added is the generic expression "Wallet". The addition of that generic expression does nothing to remove the confusing similarity caused by the inclusion in the Dispute Domain Name of MAKEMY's mark. The Complainant has relied on *Red Bull GmbH v. Chai Larbthanasub* (WIPO Case No. D2003-0709) where the Panel held that "...mere addition of a descriptive term to an identical trademark, has been repeatedly held by previous panels as not sufficient to avoid confusion between the domain name and the trademark." Anyone who sees the Domain Name is bound to mistake it for a name related to the Complainant. The likelihood of confusion includes an obvious association with the MAKEMY Mark. With reference to the reputation of the MAKEMY Mark there is a considerable risk that the public will perceive the Respondent's Disputed Domain Name either as a domain name owned by the Complainant or that there is some kind of commercial relation between the Respondent and the Complainant. The Complainant



further submits that the Complainant is also providing financial services purported to be provided by the Respondent through its Forex services (<https://payments.makemytrip.com/ui/easypay/>). Therefore, the addition of the generic term "Wallet" to the Complainant's MAKEMY trade mark will only heighten the chances of confusion. The Complainant has also relied on Cox & Kings Ltd. v. Mr. Manoj (WIPO Case No. D2011- 0349) where the Panel held that: "Generic terms used in conjunction with the trademark does not decrease the confusing similarity with the trademark and in some instances are found to heighten the confusing similarity, particularly if the generic word is connected with the business of the complainant. Confusing similarity can be found where an average consumer would expect the complainant to use a term in connection with the mark for identifying their goods or services." The Complainant has also relied on Olx, Inc. v. Jatin (NIXI Case No. INDRP/625, 07 November 2014) where the panel held that "It is well established that the addition of descriptive terms with a well-known mark is insufficient to distinguish the domain name in question with the mark."

The Complainant contends that given the conceptual similarities between the Trade Marks and the Disputed Domain Name (i.e. the use of the words "MakeMy" as a suffix to suggest the nature of services), the well-known reputation of the Complainant's Trade Marks, allied nature of the service purportedly provided by the Respondent, and the Complainant's statutory and common law rights over 'MAKEMYTRIP' and 'MAKEMY' per se, Internet users are likely to be confused about the relationship between the Complainant and the Disputed Domain Name. The Complainant has relied on Just Car Insurance Agency Pty Ltd. v. Throne Ventures Pty Limited (WIPO Case No. DAU2008-0015) where 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."

The Complainant contends that the use of a logo highly similar to the Complainant's logo would cause people to associate the website at the Disputed Domain Name with the Complainant and its services. Using the MAKEMY trade mark in combination with the English word "Wallet" would, in view of the Complainant's reputation for travel and allied services across the world, cause many people to assume the web site was associated with the Complainant. The choice of this particular name and the use of the Complainant's logo shows an intention to be mistaken for the Complainant despite any disclaimers which have been found not to cure confusion caused by use of similar branding as they are often not carefully read by consumers. The Complainant has relied on Ulster Bank Limited v. Franchise Ulster (WIPO Case No. D2013-0275) where the Panel held that "the requirement of a finding of confusing similarity under the UDRP does not require the same test as the requirement of deceptive similarity under trade mark law, rather it operates as a standing test for the Complainant in order to commence proceedings and (if the other elements are shown) be the beneficiary of an order to transfer a disputed domain name." The Complainant further submits 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. It follows that the disputed domain name <makemywallet.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.



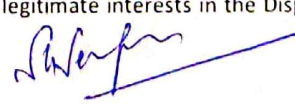
B. The Respondent has no rights or legitimate interests in respect of the domain name <makemywallet.in>;(Policy, Paragraph 4(b); Rules, Paragraph 4(b)(vi)(2))

Complainant's Contention

The Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. 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 evidence of its rights or interests in the domain name". The Complainant has relied on *The Vanguard Group, Inc. v. Lorna Kang*, (WIPO Case No. D2002-1064); 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 Marks, in a domain name or otherwise. The MAKEMYTRIP and MAKEMY Marks are significantly unique and used by the Complainant as 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 MAKEMYWALLET. The Complainant has relied on *Cavinkare Pvt. Ltd. v. LaPorte Holdings, Inc and Horshiy, Inc.*, (WIPO Case No. D2004-1072) where 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'. The Complaints further submits that the Respondent has intentionally chosen the Disputed Domain Name to create an impression of association with the Complainant and Respondent does follow or fulfill the below requirements for bona fide offering for goods and services as set out in *Oki Data Americas, Inc. v. ASD, Inc.* (WIPO Case No. D2001-0903):

- i. The Respondent is not actually offering the goods or services at issue. The attempts by the Complainant to avail the Respondent's service revealed that there is no active use of the website;
- ii. The Respondent is not using the website to sell/render trademarked goods/services. In fact, the Respondent is merely holding a passive website and is collecting financial information of confused consumers who end up on their website;
- iii. The website does not accurately disclose the Respondent's relationship with the trademark owner;
- iv. The Respondent's attempt is merely to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

The Complainant further submits 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.

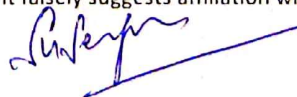


a. The Respondent cannot assert that they have been using the Disputed Domain Name, prior to any notice of the present dispute, in connection with a bona fide offering of goods or services in accordance with paragraph 6(a) of the Policy. As described above, the Respondent has used the Disputed Domain Name, which is confusingly similar to the Complainant's MAKEMYTRIP trade mark, to point to a website marketing a similar service. The Respondent has not used or made preparations to use the Domain Name in connection with a bona fide offering of goods and services as they are yet to make available any services through their website or app. Even otherwise, any 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 Marks to offer identical services. The Complainant has relied on *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, (WIPO Case No. D2000-0847) where 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. The Respondent is not commonly known by the term "MAKEMYWALLET", in accordance with paragraph 6(b) of the Policy, particularly given the notoriety surrounding the Complainant's MAKEMYTRIP Marks and its exclusive association with the Complainant. The Respondent's trading name, MakeMyWallet is an illicit imitation of the Complainant's MAKEMYTRIP and MAKEMY trade mark, and there is nothing in the evidence before the Panel that suggests the Respondent might otherwise have rights or legitimate interests in the Disputed Domain Name. 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. The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has no trade mark rights or license to use the MAKEMY and/or MARKMYTRIP Marks, nor is it commonly known by the name. Considering that the website connected to the Disputed Domain Name has been used for fraudulent purposes, it seems very likely that the Respondent's purported name is a false alias. The Respondent has not used or made preparations to use the Domain Name in connection with a bona fide offering of goods and services, nor is the Respondent making a legitimate non-commercial or fair use of the Domain Name.

c. 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 ("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. The Complainant has relied on *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. D2000-0003). In fact, the Respondent has used the Domain Name to pass itself off as the Complainant in order to defraud Complainant's customers through a fraudulent website identical to the Complainant's. The Respondent used the Domain Name to "phish" for financial information in an attempt to defraud the Complainant's customers. The Respondent's attempt to pass itself off as the Complainant and "phish" for customers' financial information is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use pursuant to Policy.

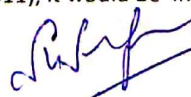
In light of the above, the Respondent's acts do not constitute a bona fide offering of goods or services. The Respondent, therefore, does not have any legitimate rights and interest in the Disputed Domain Name and has evidently registered the same with the mala fide intent of making illegitimate and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

C. The domain name <makemywallet.in> has been registered or is being used in bad faith.
(Policy, paragraphs 4(c); Rules, paragraph 4(b)(vi)(3))

Complainant's Contention

Bad faith is implicit in the registration of the Disputed Domain Name. The Respondent unauthorizedly registered the Disputed Domain Name on 03 January 2020, by which time the Complainant's MAKEMYTRIP Mark, through extensive and continuous use for more than 20 years, had acquired immense goodwill and reputation amongst the public and trade. The MAKEMYTRIP Mark is, therefore, associated exclusively with the Complainant.

The Complainant contends that 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. The Complainant has relied on *MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org*, (WIPO Case No. D2012-0691) where the panel found that "Complainant is a leading online travel company..." and "was the second most visited travel website in India." The complainant further submits that given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights well established in India (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 2020. Paragraph 3(b) of the INDRP Policy enjoins the Respondent to ensure that "the registration of the domain name will not infringe upon or otherwise violate the rights of any third party". Yet, the Respondent registered the Disputed Domain Name, which is deceptively similar to the MAKEMYTRIP Marks, in contravention of the Paragraph 3(b) of the INDRP Policy. Such acts impute explicit bad faith in registration.

The complainant further contends that the Respondent's reluctance to reply to the cease-and-desist notices issued by the Complainant leaves no doubt as to the Respondent's awareness of the Complainant at the time of registration of the Disputed Domain Name. The Complainant has relied on Go Daddy Operating Company, LLC v. Wu Yanmei (WIPO Case No. D2015-0177) where the panel held that: "The Respondent's lack of response to the Complainant's requests, is a further indication of the Respondent's bad faith registration and use of the disputed domain names."

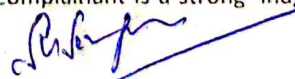
The Complainant further contends that the content of the Respondent's website, in particular the fact that it has used an imitation of the Complainant's official logo on the Respondent's site makes it clear that the Respondent was aware of the Complainant's rights at the time of registration. The Complainant further noticed that apart from using mark MAKEMYWALLET, which is deceptively, phonetically and conceptually similar to the Complainant's MAKEMYTRIP Mark, the Respondent is also using the Mark which has a blue colour scheme, similar to the colour scheme of the MakeMyTrip logo mark and the use of the connector 'My' identical to the Complainant, for which the Complainant has trade mark registrations.

The Complainant therefore submits that the Respondent registered the 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. The complainant has relied on eBay Inc. v. Sunho Hong, (WIPO Case No. D2000-1633) where 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) where panel held that: "finding bad faith where the respondent 'knew or should have known' of the complainant's trade mark."

The Complainant further submits that, given its inherently distinctive MAKEMYTRIP trade mark, the Respondent could simply not have chosen the Disputed Domain Name, which is confusingly similar to the Complainant's MAKEMYTRIP Marks, for any reason other than to take unfair advantage of the Complainant's goodwill and reputation. The Complainant has relied on In WhatsApp Inc. v. Private Person / Mario Rieger (WIPO Case No. DRO2017-0005) where 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." Therefore, the Complainant submits that the Respondent registered the Domain Name in bad faith.

The complainant further submits that the Respondent's refusal to transfer the Disputed Domain Name 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 to the Complainant is a strong indication of

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their intention to transfer the Disputed Domain Name only in return for an amount of money over and above their registration costs. The Complainant further submits that the use of the Disputed Domain Name to intentionally attract users, for commercial gain to the Respondent's phishing website, by creating a likelihood of confusion with the Complainant's trademarks, is clear evidence of bad faith. The Complainant further submits that the Respondent's bad faith is also evidenced by the lack of any disclaimer disclosing the Respondent's relationship to the Complainant, and its failure to respond to the Complainant's notices.

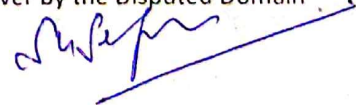
The complainant further contends that in adopting the MakeMyWallet Logo, the Respondent must have known of the MAKEMYTRIP Marks. The similarities between the MakeMyWallet Logo and the MAKEMYTRIP Logo are too strong to be mere coincidence. Without any reasonable explanation from the Respondent of his adoption of the MakeMyWallet Logo on the Respondent's website, it is evident that the Respondent is intentionally attempting to attract Internet users to the website for commercial gain in the manner described in paragraph 7(c) of the INDRP Policy. 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. The Complainant has relied on *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. D2000-0003).

The Complainant further contends that the Respondent has 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. The Complainant has relied on *trivago GmbH*

v. Nomads/Perminder (David) Marin-Pache, (WIPO Case No. D2014-0542) where 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."

The Complainant further contends that in view of (i) the Complainant's registered and common law rights the MAKEMYTRIP Marks, (ii) the extensive use of the MAKEMYTRIP Marks by the Complainant, including use in India, where the Respondent is based and in respect of domain names, prior to the Respondent's registration of the Disputed Domain Name, (iii) the fame, goodwill and reputation associated with the MAKEMYTRIP Marks, (iv) the Respondent not having any rights in the mark MAKEMYTRIP or ever been known commonly or in any manner whatsoever by the Disputed Domain



Name <makemywallet.in>, (v) offering of an identical service on the Disputed Domain Name, (vi) the current use of the Disputed Domain Name, as set out above, suggests endorsement by the Complainant, (vii) the use of the Disputed Domain Name is of a commercial nature (so is not legitimate non-commercial or fair use), (viii) the Respondent's failure to respond to cease and desist notices, and (ix) 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.

6. Discussion and findings

The Complainant, MakeMyTrip (India) Private Limited, is a travel company 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. The Company is owner of domain <makemytrip.com> since May 8, 2000 and offers range of products and services beyond online travel bookings. Presently, the Complainant, through its primary website, <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. The Complainant has significant presence in India where the Respondent is based.

The company have registered trade mark 'Make my trip', 'Makemy', and 'my' in many jurisdictions including India. The logo design is also registered and extensively used by the complainant in business and advertising. The trademark and logos are also widely used by the Complainant on popular social media platforms. The Complainant issued cease and desist notice to the respondent on April 26, 2021 and again in May 28, 2021 but the respondent did not respond. I issued arbitration proceedings notice to the respondent on 1.10.2021 but the respondent did not reply to the notice issued on 1.10.2021 within the stipulated (7 days) time. I again gave the respondent another 5 days time to respond to the notice issued on 1.10.2021 but the respondent did not file any reply. In fact, the respondent has not submitted any response till date.

Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:



"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to actual notice to the Respondent of the complaint. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.

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

The Complainant has been able to prove that it has trademark rights and other rights in marks 'makemytrip', 'makemy' and 'my' by submitting substantial documents. The mark is used by the Complainant in its corporate name, trade name and trading style for several years in many countries including India where the Respondent is based. A mere glance at logo style of the Respondent gives confusion that it is deceptively similar to mark of the Complainant and any internet user may consider that 'makemywallet' is payment services of the Complainant's 'makemytrip' company. The similarity in logo of the Respondent is likely to give a false indication to an ordinary internet user that <makemywallet.in> is subsidiary of the Complainant's domain name <make my trip.com> and new services has been launched by the Complainant to cater to the demands of their existing customers. There cannot be coincidence that the Respondent has chosen similar domain name as the disputed domain name was registered in Jan 2020 almost 20 years after registration of Complainant's domain name in year 2000. The Complainant has presence across India and also visible on major social media platforms for several years. This panel, therefore, finds it difficult to believe that the Respondent has got registered the disputed domain name without knowledge of the Complainant's domain name and mark. Addition of the country code Top Level Domain (ccTLD) extension ".in" is insignificant. The respondent failed to put forward any justification to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is identical/or deceptively similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the domain name <makemywallet.in>

According to 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 burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The Complainant has not authorized the Respondent to use the Complainant mark. The Respondent is



neither licensee nor authorized to use the disputed domain name in which the Complainant has rights. The burden of proof to establish any legitimate interest falls on the respondent. The Respondent could have invoked 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 but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contention of the Complainant

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent does not have legitimate interest in the disputed domain name.

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

The Respondent registered the Disputed Domain Name on 03 January 2020, by which time the Complainant's MAKEMYTRIP Mark, was in continuous use for more than 20 years. The registration of disputed domain name after several years of existence of the Complainant mark is clearly a case of bad faith. Paragraph 3(b) of the INDRP Policy provides the Respondent to ensure that "the registration of the domain name will not infringe upon or otherwise violate the rights of any third party". The registration of disputed domain name chosen by the Respondent shows his intent of using the similar mark of the Complainant to divert the internet user who may consider the disputed domain name to be business associate of the Complainant and profit from the popularity of the Complainant's mark. The respondent is making profit by using the reputation of the Complainant mark and definitely bad faith use. The disputed domain does not have any disclaimer as they are not business partners of the Complainant.

The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has preferred neither respond to the cease and desist notice of the Complainant nor give reply to the notice issued in these arbitration proceedings.

In view of the above, I am of the opinion that registration of disputed domain name is ⁱⁿ bad faith.



Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and In view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to file any response to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/ confusingly similar to the Complainant's marks. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name be transferred to the Complainant , with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

October 20 ,2021



Sudhir Kumar Sengar

Sole Arbitrator