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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No.	: IN-DL39222815165148T
Certificate Issued Date	: 20-Oct-2021 06:05 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SELF73600558863947T
Purchased by	: PRABODHA AGRAWAL
Description of Document	: Article 12 Award
Property Description	: INDRP CASE NO. 1443 ARBITRATION AWARD
Consideration Price (Rs.)	: 0 (Zero)
First Party	: PRABODHA KUMAR AGRAWAL
Second Party	: NOT APPLICABLE
Stamp Duty Paid By	: PRABODHA KUMAR AGRAWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
New Delhi – 110 001 India

MakeMyTrip (India) Pvt Ltd, Gurgaon vs. Make My Wallet, Jaipur
INDRP Case no. 1443
Arbitrator : Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is M/s MakeMyTrip (India) Private Limited, 19th floor, Tower A, B & C Epitech Building No. 5, DLF Cyber City, Phase-III, Gurgaon 122 002, India

The Respondent is makeMyWallet, 412,413,414, 4th Floor, Evershine tower, Vaishali Nagar, Jaipur, 302021.

2. The Domain Name and Registrar

The disputed domain name is <www.makemywallet.co.in>. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146), 14455 North Hayden Rd, Suite 219, Scottsdale AZ 85260, US.

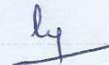
The details of registration of the disputed domain name (as per Annexure-B to the Complaint) are as follows:

- a. Domain ROID: D50061ADD09E547CB847F06F6689F249C-IN
- b. Date of creation: July 06, 2020
- c. Expiry date: July 06, 2022

3. Procedural History

(a) A Complaint dated 14th August, 2021 has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

(b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Advocate and former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.



- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were served by the National Internet Exchange of India on 1.10.2021 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint with annexures to the parties through email on 1.10.2021. The Respondent was given 14 days for reply to the complaint. The Complainant sent the copies of complaint & annexures by DTDC courier to the Respondent on 1.10.2021, which could not be delivered as the addressee changed address and hence returned by DTDC on 5.10.2021 and handed over back to the Complainant on 6.10.2021. However, the Complainant confirmed its delivery through email on 5.10.2021 itself to all parties including the Registrar of the domain name. Therefore, a Notice was again issued on 15.10.2021 calling for proof of delivery of the complaint to the Respondents. The Complainant replied through email dt. 18.10.21 and confirmed the service through emails. In view of this, the Complaint and its annexures may be deemed to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since, the Respondent has not responded to the repeated notices served through emails, the present proceedings have to be conducted ex-parte as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant in this arbitration proceeding is MakeMyTrip (India) Private Limited with address at 19th floor, Tower A, B & C Epitome Building No. 5 DLF Cyber City, Phase – III, Gurgaon 122 002, India. Originally incorporated on 13 April 2000 with the trade name 'Travel by Web Private Limited', the Complainant changed its trade name to 'Makemytrip.com Pvt. Ltd' vide a fresh Certificate of Incorporation dated 02 August 2000 with its registered office at B-36, First Floor, Pusa Road New Delhi-110005, and having started its business initially with airline ticket bookings alone, the Complainant 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,

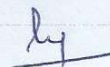



















European Union, Australia, and United Kingdom, amongst others. The Complainant also coined the MMT Letter Mark as an acronym for MakeMyTrip. Thereafter, on 28 June 2002, the Complainant effected another change that remains its current and present name, i.e., 'MakeMyTrip (India) Pvt. Ltd.'.

According to the Complainant, over the years, the Company has expanded its range of products and services beyond online travel bookings. Presently, the Complainant, through its primary website, 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.






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. The Complainant has used and continues to use its MakeMyTrip Logo Marks in different unique and stylized forms. 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
MakeMy	3869251	09	25 June 2018	Registered
MakeMy	3869252	35	25 June 2018	Registered





MakeMy	3869253	36	25 June 2018	Registered
MakeMy	3869254	39	25 June 2018	Registered
MakeMy	3869255	43	25 June 2018	Registered
make  trip	3328459	39	04-08-2016	Registered
	3328461	9	04-08-2016	Registered
	3328462	35	04-08-2016	Registered
	3328463	38	04-08-2016	Registered
	4319612	36	14-10-2019	Registered
	4319613	41	14-10-2019	Registered
	4319615	42	14-10-2019	Registered
	4304218	09	25-09-2019	Registered
	4304219	35	25-09-2019	Registered
	4304220	36	25-09-2019	Registered
	4304221	38	25-09-2019	Registered
	4304222	39	25-09-2019	Registered
	4304223	41	25-09-2019	Registered
	4304224	42	25-09-2019	Registered
	4304225	43	25-09-2019	Registered
	4319609	36	14 October 2019	Registered
	2415691	35	22 October 2012	Registered

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	2415692	38	22 October 2012	Registered
	2415693	39	22 October 2012	Registered
	2415694	41	22 October 2012	Registered
	2415695	42	22 October 2012	Registered
	2415696	43	22 October 2012	Registered

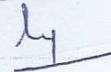
Due to extensive use, now spanning more than twenty (20) years, the MAKEMYTRIP Marks are synonymous with services provided by the Complainant. The Complainant has made a concerted and conscious

effort to depict and use the  (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 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.

Respondent's Identity and Activities

The Respondent's activities, except the fact that he is running some payment business through the disputed domain name, are not known. The Respondent has not responded to the Notice and complaint.



5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant contends that by virtue of its trademark and service mark registrations, the Complainant is the owner of MAKEMYTRIP trademarks. The Disputed Domain Name <www.makemywallet.co.in> is confusingly similar to the Complainant's MAKEMYTRIP Marks. 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.co.in> and "MAKEMYWALLET" are confusingly similar to MAKEMYTRIP Marks. 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 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

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confusing similarity caused by the inclusion in the Dispute Domain Name of MAKEMY's mark. In *Red Bull GmbH v. Chai Larbthanasub* (WIPO Case No. D2003-0709), 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."*

The Complainant contends that as per the principle, which past panels have consistently held, the addition of the generic term "Wallet" to the Complainant's MAKEMY trade mark will only heighten the chances of confusion. In *Cox & Kings Ltd. v. Mr. Manoj* (WIPO Case No. D2011- 0349), 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."*

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. In *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."*

Therefore, the disputed domain name is confusingly similar or identical to the registered trademark of the Complainant under the Policy

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. 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. In *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*'.

Further, Respondent is not commonly known by the Disputed Domain Name, which evinces a lack of rights or legitimate interests.

- 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.

Respondent is making neither a bona fide offering of goods or services nor a legitimate, noncommercial fair use of the Disputed Domain Name. 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 that suggests the Respondent might otherwise has 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.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the **element (iii)**, the Complainant contends that the bad faith is implicit in the registration of the Disputed Domain Name. The Respondent unauthorizedly registered the Disputed Domain Name on 06 July 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 further contends that given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights well established in India, 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.

According to the Complainant, the Respondent has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. 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. In *Go Daddy Operating Company, LLC v. Wu Yanmei* (WIPO Case No. D2015-0177), 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 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. 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.*"

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.makemywallet.co.in > or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

Although Respondent has failed to respond to the complaint, the default does not automatically result in a decision in favour of the Complainant, nor is it an admission that Complainant's claims are true.

The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

The disputed domain name <www.makemywallet.co.in > was registered by the Respondent on July 06, 2020.

The Complainant is an owner of the registered trademark "MAKEMYTRIP" in India for the last many years. The Complainant is also the owner of other domains as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <makemywallet.co.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "MAKE MY TRIP" products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.makemywallet.co.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the

domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is makemywallet as given in Whois details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "MAKEMY" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <www. makemywallet.co.in > under INDRP Policy, Paragraph 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant 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 Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The foregoing circumstances lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the

Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name < www.makemywallet.co.in > be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator
Dated: 21st October, 2021