



सत्यमेव जयते

INDIA NON JUDICIAL

**Government of National Capital Territory of Delhi**

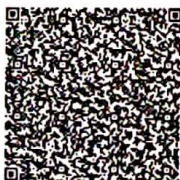
₹100

e-Stamp

Certificate No.	: IN-DL50371874000765T
Certificate Issued Date	: 15-Nov-2021 04:45 PM
Account Reference	: IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91450394274493640626T
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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₹100



Please write or type below this line

IN-DL50371874000765T

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

Societe Des Produits  
Nestle  
Vs

Raj Singh

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.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

DISPUTED DOMAIN: NESTLE DISTRIBUTORSHIP. IN

### 1. The Parties

The Complainant in this arbitration proceedings is Societe Des Produits Nestle, 15 Avenue Nestle, 1800 Vevvey, Switzerland. The Complainant is represented by Mr Luca Barbera, C/o Studio Barbero S.p.A, Corso Mossimo, d'Azeglio 57, 10126 Torino, Italy. (email: [info@studiobarbero.com](mailto:info@studiobarbero.com), telephone: +390113810600)

The Respondent is Mr Raj Singh, Kolkata, West Bengal (email: [rajsingha805010@gmail.com](mailto:rajsingha805010@gmail.com). Telephone: +91-9674423417)

### 2. Domain Name and Registrar

- (i) The disputed domain name is <nestledistributorship.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.

Upon filing of the original Complaint on October 20, 2021 and the NIXI's communication to the Complainant's Representative of October 28, 2021 reporting that the previously undisclosed identity of the registrant of the disputed Domain Name was revealed to NIXI by the concerned Registrar after the filing of the Complaint. The Complainant submitted an Amendment to reflect the data of the named registrant.

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

On October 29, 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 29, 2021 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on October 29, 2021 and the Respondent was directed to submit a response within 7(seven) days. The respondent did not reply to the notice





within the stipulated time. The Respondent was further given 3 (three) days time through email dated 8.11.2021 to respond to the notice already served through email dated 29.10.2021. 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.

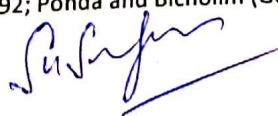
#### 4. Grounds for Administrative Proceedings

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.
2. The respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The registered domain name has registered the domain name in bad faith.

#### 4. Background of the Complainant

The Complainant in the present proceeding is Societe Des Produits Nestle S.A. (hereinafter SPN). The Complaint has submitted that "SPN is part of Nestle company founded in 1866 by Henri Nestle and is wholly owned by Nestle S.A. The Complainant is the registered owner of most of the trademarks of the Nestle Group. Today Nestle Group sells products and services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food. Nestle Group has more than 270,000 employees and is present in more than 80 countries with more than 400 production centers worldwide. The Complainant is the world's largest food consumer products company in terms of sales. Some figures indicative of the volumes of Complainant's products present in the market, the sales metrics of the group in 2020 were 84.3 billion Swiss Francs (CHF) worldwide, whereas those in 2019 in India were about 122,952.7 million INR."

The Complaint has further submitted that "according to Fortune Magazine's annual ranking of the world's 500 largest companies, the "Fortune Global 500", it was the 48th biggest company in the world in 2009 and grew to the 44th largest in 2010. In 2021, Nestle was positioned as the 78th company, as evidenced in the Fortune Global 500 list. According to Interbrand's annual Best Global Brands ranking for 2020, the trademark NESTLE can be valued at \$ 10,252 million and represents the 63<sup>rd</sup> most valuable trademark in the world. NESTLE was included in said Interbrand's list as of 2002. As to the presence of Complainant in India - where Respondent is *prima facie* based, it dates back to 1912, when Nestle began trading as the Nestle Anglo-Swiss Condensed Milk Company (Export) Limited, importing and selling finished products in the Indian market. Complainant set up its first factory in India in 1961 at Moga, Punjab, where the Government wanted Nestle to develop the milk economy. Then, it opened manufacturing facilities at Choladi (Tamil Nadu), in 1967, Nanjangud (Karnataka), in 1989, Samalkha (Haryana), in 1992; Ponda and Bicholim (Goa), in 1995



and 1997, respectively, and Pantnagar (Uttarakhand), in 2006. In 2012, Nestle India set up its 8th manufacturing facility at Tahlilwal (Himachal Pradesh). Moreover, Complainant has also 4 Branch Offices located at Delhi, Mumbai, Chennai and Kolkata, facilitating the sales and marketing activities. The Nestle India's Head Office is located in Gurgaon, Haryana. Furthermore, the trademark NESTLE was and is presently strongly supported by global advertising campaigns through television and other media such as with international magazines. Besides the traditional advertising channels, NESTLE company and products have been also widely promoted via Internet, in particular with a strong presence online through the most popular social media, i.e. on Facebook, Twitter, YouTube, Instagram and Pinterest ( i.e. <https://www.facebook.com/Nestle>, <https://twitter.com/nestle>, <https://www.youtube.com/user/NestleCorporate>, <https://www.instagram.com/nestle/>, <https://pinterest.com/nestle/>) used as well for promotional purposes. In light of Nestle Group's significant investments in R&D, marketing and sales, the regular use of the sign NESTLÉ for over 140 years, as well as the existence of the impressive client base for all products worldwide, NESTLE is undisputedly a well-known trademark worldwide and including in India. In order to further support the protection of the "NESTLE" trademark on the Internet, Complainant registered the word "Nestle" and variations thereof as domain name in numerous gTLDs and ccTLDs, including .in, co.in. Nestle Group operates the website [www.nestle.com](http://www.nestle.com) as its primary web portal for global promotion, while the website dedicated to India is <https://www.nestle.in/>."

The Complainant has submitted that "the Respondent registered the Domain Name without authorization on June 07, 2021, well after Complainant's registration of the trademarks cited above. Since the time of its registration, the Domain Name was used, until the filing of the original Complaint, in the context of scam activities, to mislead Internet users as to the source of the misleading corresponding website and the fake Distributorship program promoted thereon, generating the impression that they were managed by Nestle to extort money. In particular, on [www.nestledistributorship.in](http://www.nestledistributorship.in) Complainant's trademarks were published, absent any authorization of the legitimate trademarks' owner, along with SPN product visuals, giving thus the wrong impression that the website was either run or at least authorized/endorsed by the Complainant. Such deceptive impression was further reinforced by the fact that, in the "About us" section of the website, information about Nestle India was published, thus suggesting that the website was operated by the Indian branch of SPN (which was not the case). In addition, at the bottom of the site's pages, the following misleading information was published: "Copyright © 2021 Nestle Distributorship". Furthermore, on the concerned website, Internet users were invited to join an allegedly official SPN distributors' network via two links published at the top of the homepage, reading, respectively, "Apply now" and "Apply for Distributorship". By clicking on said links, Internet users were redirected to an on-line form reading "Apply For Nestle Distributorship, Dealership, Franchise", where they were requested to add personal information along with the indication of the investment they wished to undertake. Subsequent to the submission of the form, applicants were receiving an email allegedly conveyed in the name of Nestle India which was sent





from an infringing email address based on the Domain Name, i.e. info@nestledistributorship.in. With such message, Internet users were requested to pay an amount of money (that, depending on the initially selected investment, varied from 49,999 INR up to 395,000 INR) to purportedly become Complainant's distributor, dealer, of franchisee. To this end, applicants had to provide bank details and were receiving fake agreements and receipts printed on false Nestle and Nestle India Ltd, letterhead.

Only subsequent to the filing of the original Complaint and after the disclosure of the previously undisclosed identity of the registrant of the disputed Domain Name revealed to NIXI by the concerned Registrar, Respondent resolved to redirect the Domain Name to an inactive website."

The Complainant contends that "In view of fraudulent use of the Domain Name, which is entirely encompassing the well-known NESTLE trademark, the Complainant instructed its Representatives to start the reclaim activities against the Domain Name's holder and to accordingly draft and send to Respondent a Cease and Desist letter, aimed at requesting to immediately cease any infringing use of the Domain Name and to transfer it to Complainant free of any charge. Such letter was first sent to Respondent on June 14, 2021, via the email address used for sending the above-mentioned fraudulent messages and on the same date it was as well sent a notice of trademark infringement via the contact form available on the Registrar's website. Respondent, however, did not deem appropriate to reply to Complainant's formal communication and to its subsequent reminders, sent, respectively, on June 29, 2021, July 12, 2021 and July 26, 2021, despite the fact that all said messages were correctly delivered (as per delivery reports collected). Due to Respondent's failure to comply with the Complainant's requests and in view of the fact that Respondent, notwithstanding the receipt of the Cease and Desist letter and subsequent follow up correspondence, is continuing to use the Disputed Domain Name, confusingly similar to Complainant's registered trademark, by redirecting it to a website mirroring Complainant's official portal and in the context of the above-described fraudulent and phishing activities, the Complainant instructed its representatives to file the present Complaint, which falls within the scope of the INDRP."

#### **The Respondent**

The respondent is Mr Raj Singh, Kolkota, West Bengal, India (email: rajsingha805010@gmail.com and telephone:+91-9674423417)



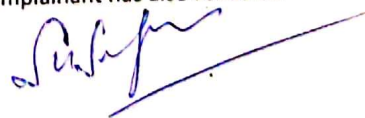
### 5. Legal Grounds

A. The Domain Name <nestledistributorship.in> is confusingly similar to the trade mark "NESTLE" in which the Complainant has rights:  
[Rule 4(b)(vi)(1) of the INDRP Rules of Procedure and Rule 4 (a) of the INDRP Policy]

#### Complainant's Contentions

The Domain Name <nestledistributorship.in> entirely reproduces Complainant's trademark NESTLE, which has been registered by Complainant in India and several other Countries, The Complainant has relied on the case *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP Case No. 665], wherein it has been held that the registration of a domain name wholly incorporating a Complainant's registered trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks, and that "if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark. (...) The Complainant has further relied on *Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol* [WIPO Case No. D2001-0489] wherein it has been held that "domain names that incorporate well-known trademarks can be readily confused with those marks".

The Complainant further contends that the Domain Name differs from NESTLE by the addition of the non-distinctive suffix "distributorship" followed by the ccTLD ".in" does not affect the confusing similarity. The Complainant has relied on similar cases: *Google Inc. v. Vinit Keshav* [INDRP n. 940], <googleplace.in>; *Disney Enterprises Inc. & Anr. v Registrant ID-DI\_7305075*, [INDRP n. 596]; *Google LLC v Titan Corporation*, [INDRP n. 1214]; *Siemens AG v Tech Narayana Software Pvt. Ltd. De' Longhi Appliances Srl v. Ye Genrong*, [INDRP n. 1262]. In particular, the mere addition of the ccTLD .in and of the word "distributorship" is not considered as a distinguishing feature. The Complainant has further relied on *Pathway IP S.A.R.L. v. Regus India* [INDRP Case No. 1168]: "The Disputed Domain Name <regusindia.in> incorporates the Complainant's trademark "REGUS" in its entirety, and mere addition of "India and .. ".in". It is a well-established in various decision under the Uniform Dispute Domain Name Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indications for Top Level Domains, such as .com, .us, .in etc. are irrelevant to consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Similarly, the addition of "India" would be insufficient to avoid a finding of consuming similarity.". The Complainant has also relied on





Black Berry Limited v. C Wiswanathan of MMS Solutions [INDRP Case No. 701], <blackberryservice.in>.

The Complainant further contends that the combination in the Domain Name of "nestle" with the non-distinguishing feature "distributorship", does not affect the confusing similarity. The Complainant has relied on *Hotels Company Limited vs. Mr. Sanjay Jha*, INDRP Case No. 148, wherein "the domain wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity", The Complainant has further submitted that it further increase the risk of confusion with Complainant's trademark. In fact, such addition could be interpreted by Internet users as indicating a Complainant's subsidiary company based in India specialized in promoting affiliation to Nestle company. The Complainant has relied on *Carrefour v. Contact Privacy Inc. Customer 0153830825 / Milen Radumilo*, WIPO Case No. D2019-1591, involving the domain name <carrefour-finance.com> ("As the dominant element of the disputed domain name lies in the trademark CARREFOUR, the adjunction of the term "finance" cannot prevent the confusing similarity"). The Complainant has also relied on *Osram GmbH v. Shailesh Pedamkar, Osram Finance*, [WIPO Case No. D2020-0755] and also on *Trivago N.V. v. Shiv Singh* [INDRP Case No. 1171], where in a case involving the domain name <trivagoholiday.in>, the Panel held that the addition of the generic term "holiday" to the trademark TRIVAGO in the domain name, while was not affecting the confusing similarity, "further aggravates the probability of confusion since the word "holiday" has an obvious connection to the business/services being offered by the Complainant". The Complainant has also relied on *Amazon Technologies, Inc v. Logistics*, INDRP Case No. 939.

B. The Respondent has no rights or legitimate interest in respect of the disputed domain name. [Rule 4(b) (vi) (2) of the INDRP Rules of Procedure and Rule 4(b) and 6 of the INDRP Policy]

#### Complainant's Contention

The Complainant contends that the Complainant has legitimate interest in the well-known trademark NESTLE as it registered said trademark since 1973 in many jurisdictions, including India, and has been openly, continuously and extensively using it world-wide for several years. Moreover, by virtue of its long and extensive use and advertising, including online via Complainant's website "www.nestle.com" since 1994, the trademark NESTLÉ has become well-known worldwide.

The Complainant contends that the Respondent is not a licensee, an authorized agent of Complainant, or in any other way authorized to use Complainant's trademark NESTLE. The Complainant has relied on *inter alia, Pharmacia & Upjohn Company v. Moreonline*,



[WIPO Case No. D2000-0134], wherein "the mere registration, or earlier registration, does not establish rights or legitimate interests in the Domain Name." The Complainant has also relied on *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP Case No. 665] (*supra*) wherein "merely registering the domain name is not sufficient to establish right or legitimate interests."

Further, Respondent is neither commonly/popularly known in the public by the Domain Name, and "Nestle" is not the family name of the Respondent, which, based on the information provided by the competent Registrar to NIXI subsequent to the filing of the original Complaint, is Raj Singh. It should also be noted that Respondent, at the time of filing of the original Complaint, in a clear attempt to avoid Complainant's reclaim activities, resolved to conceal its identity behind a privacy protection service, as also shown in the official Whois database. In addition, even subsequent to the disclosure performed by the competent Registrar to NIXI for the sole purpose of the present dispute's resolution, Respondent's contact information published in the Whois database is still redacted for privacy.

Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services before any notice of the dispute and Respondent's use of the Domain Name does not amount legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademark. The Domain Name, entirely encompassing the NESTLE well-known trademark, was, in fact, intentionally registered and was used by Respondent, as described in the factual section and highlighted by the evidences, for fraudulent purposes. Indeed, Respondent has been redirecting the disputed Domain Name to a corresponding website which was clearly mimicking Complainant's official portal by publishing Complainant's trademarks, product visuals and misleading information falsely suggesting that the site was operated by Nestle India. Furthermore, on said website Internet users were further invited to enter into an allegedly official SPN distributors' network upon submission of personal sensitive data and payment of an amount of money (that is extorted with deceit). The Respondent even created an infringing email address based on <nestledistributorship.in>.

Such willful conduct clearly demonstrates that Respondent's use of the Domain Name is clearly not in connection with any legitimate purpose. Respondent's above-described use of the Domain Name to impersonate Complainant (both through the website and the email address based on the Domain Name and the documents enclosed to it) is in fact part of a fraudulent scheme aimed at obtaining unlawful payments from Internet users willing to enter into an allegedly official SPN distributorship network along with personal data. The Complainant has relied on *Bayerische Motoren Werke AG v. Gipo! Kaip*, [WIPO Case No. D2016-0906], "The Respondent's use of the disputed domain name in connection with





fraudulent transactions and the Respondent posing as an employee of the Complainant do not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name".The Complainant ha also relied on *Minerva S.A. v. Miranda Nyenhuis*, [WIPO Case No. D2018-0763], *Valero Energy Corporation, Valero Marketing and Supply Company v. Joe Mattews, Valero PLC*, [WIPO Case No. D2017-1856].The Complainant has also relied on *Amazon Technologies, Inc vs. Jack Worli*, INDRP Case No. 868, wherein the Panel agreed with Complainant's contentions that there cannot be any legitimate rights or interest in the Disputed Domain Name when "the same has been registered only to make unlawful gains".

The Complainant has submitted that only subsequent to the formal request of NIXI to the competent Registrar of the registrant's contact details, performed for the present dispute's purpose, Respondent resolved to redirect the Domain Name to an inactive website. Nevertheless, in light of Respondent's incorporation in the Domain Name of the trademark NESTLE, which is highly distinctive and exclusively referable to Complainant, Complainant cannot conceive of any possible right or legitimate interest which Respondent could have in the Domain Name. The Complainant has also relied on *Sanofi-aventis v. Gerard Scarretta*, WIPO Case No. D2009-0229, concerning the domain name <blogsanoventis.com>.

The Complainant further contends that as a final remark on the issue of rights or legitimate interest, it is a consolidated principle that the burden of proof lies on Complainant. However, satisfying the burden of proving a lack of Respondent's rights or legitimate interests in respect of the domain name according to Paragraph 4 (b) of the INDRP is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, it is sufficient that Complainant shows a *prima facie* evidence in order to shift the burden of production on Respondent. The Complainant has also relied on *Bulgari S.p.A. v DomainBook* [INDRP/1002], *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455, *Belupo d.d. v. WACHEM d.o.o.* WIPO Case No. D2004-0110, *Sampo plc v. Tom Staver* WIPO Case No. D2006-1135, *Audi AG v. Dr. Alireza Fahimipour* WIPO Case No. DIR2006-0003).

C. The Respondent has registered the disputed domain name in bad faith .

[Rule 4(b)(vi)(3) of the INDRP Rules of Procedure and Rule 4 (c) and 7 (c) of the INDRP Policy]

Complainant contends that Respondent was well aware of Complainant's trademark rights at the time of registration and that it has been using the Domain Name in bad faith, even after being notified of the infringement of Complainant's rights via Complainant's Cease and Desist letter, first sent on June 14, 2021, and the subsequent correspondence addressed to its attention. Indeed, as highlighted *supra*, the trademark NESTLE was registered in 1973 and



extensively used for many years and is certainly to be considered famous worldwide. The well-known character of the trademark NESTLE has been indeed also recognized, inter alia, in the previous cases *Societe des Produits Nestle S.A. v. WhoisGuard Protected / WhoisGuard, Inc./ Mohamed Barrouchi, Red Communications Studio* [WIPO Case No. D2020-0974], *Societe des Produits Nestle S.A. v. Above.com Domain Privacy, Shu Lin, Shu Lin Enterprises Limited* [WIPO Case No. D2010-1882], *Societe des Produits Nestle S.A. v. Thinkartxp* [WIPO Case No. DA12020-0003]. Therefore, Respondent could not have possibly ignored the existence of Complainant's well known trademark when it registered the confusingly similar Domain Name <nestledistributorship.in>. Several INDRP and UDRP decisions confirmed that the well-known character of a trademark incorporated in a disputed domain name is a relevant circumstance in the assessment of bad faith registration. The Complainant has relied on *Accor v. Jiangdeyun*, [WIPO Case No. D2011-2277]; *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP Case No. 665] ; *Bulgari S.p.A. v DomainBook* [INDRP Case No.1002]; *Amazon Technologies Inc. v. Surya Pratap* [INDRP Case No. 835].

Complainant further submits that, by using the Domain Name, Respondent has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website or the activities promoted through the Respondent's website, according to Rule 7 (c) of INDRP Policy. Indeed, as highlighted above, the Domain Name until the time of filing of the original Complaint has been redirected to a website which was mirroring Complainant's official site, on which Complainant's trademarks were prominently featured along with Complainant's product visuals and where false information was published, suggesting that the website was operated by Complainant's Indian branch. Furthermore, on said website Internet users were invited to apply for an allegedly official SPN distributorship, upon payment of an amount of money and submission of personal information. The circumstances of the case clearly suggest that Respondent's purpose in registering the Domain Name, which encompasses Complainant's mark NESTLE in its entirety, was to capitalize on the reputation of Complainant's trademark by diverting Internet users seeking products under the NESTLE mark to its own website, for commercial gain. The Complainant has relied on *Sparkol Limited v. Mr. Shripal* [INDRP/1069] where it was held that "In light of the respondent's presumed knowledge of the complainant's rights, it is reasonable to infer that the respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. The Complainant has also relied on *Bulgari S.p.A. v DomainBook* [INDRP/1002] (supra), where the Panel held that, "On perusal of the disputed domain name the panel found that the Respondent has used the disputed domain name to intentionally





attract internet website users to its website or the on-line location by creating a likelihood of confusion with the complainants BULGARI/BVLGARI TradeMarks as to source, sponsorship or affiliation or endorsement of the website 'www.bulgari.co.in'.

The Complainant further contends that the Domain Name has been registered and used mainly for fraudulent purposes. Indeed Respondent, in order to further impersonate Complainant, besides registering and using the Disputed Domain Name in the above-described manner, created also an email address based on the Domain Name in order to send in Complainant's name fraudulent messages targeting the website's visitors wishing to apply to the false SPN distributors' network. The scheme created by Respondent was and is aimed at obtaining from applicants sensitive personal data along with the payment of amounts of money, letting them believe that the entire activity is conducted by SPN through their local branch based in India. Such willful conduct certainly cannot be considered as a bona fide use of the Domain Name, but to the contrary, besides tarnishing Complainant's trademark and company reputation, is also apt to additionally support the finding of Respondent's bad faith. The Complainant has relied on *Amazon Technologies, Inc. vs. Jack Worli*, INDRP Case No. 868, wherein the Panel confirmed that the fraudulent use of a domain name constitutes bad faith. The Complainant has also relied on *Juno Online Services, Inc. v. Carl Nelson*, FA0402000241972, *Amazon Technologies, Inc. v. Souders*, FA 1503001610740, *Veuve Clicquot Ponsardin v. The Polygenix Group Co.*, WIPO Case No. D2000-0163, *Playboy Enterprises International, Inc. v. Hector Rodriguez*, WIPO Case No. D2000-1016.

The Complainant has submitted that Respondent resolved to deactivate the website at the Domain Name – which is currently passively held - only subsequent to the formal request by NIXI to the competent Registrar to disclose the registrant's contact data, in a clear attempt to remove any tracks of its fraudulent activities and avoid the consequences of Complainant's reclaim activities. Such circumstance reinforces the finding of Respondent's bad faith. The Complainant has relied on *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, wherein the concept of "bad faith use" includes not only positive action but also passive holding, in presence of other circumstances evidencing bad faith. In view of the circumstances of this case, which clearly show that Respondent has engaged in fraudulent activities, intentionally attempting to attract Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website or the activities promoted through the Respondent's website and profiting of the probability of association between the Domain Name and the Complainant's trademark in order to extort money and personal information from Internet users, the Respondent's passive holding of the Domain Name amounts to acting in bad faith.



As an additional circumstance evidencing bad faith, the Respondent registered the Domain Name by using incomplete contact information since the postal address indicated in the Whois disclosed to NIXI by the competent Registrar for the purpose of the present dispute is clearly incomplete. The Complainant has relied on *Guccio Gucci S.p.A. v. Domain Administrator* - Domain Administrator, WIPO Case No. D2010-1589 wherein "The Panel finds the initial failure of the Respondent to provide full and proper contact details amounts to further evidence of bad faith"; *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107; *Steelcase Development Corporation v. Admin, Domain*, WIPO Case No. D2005-1352; *Oxygen Media, LLC v. Primary Source*, WIPO Case No. D2000-0362 § 6A; *Wachovia Corporation v. Peter Carrington*, WIPO Case No. D2002-0775).

## 6. Discussion and findings

The Complainant Societe Des Produits Nestle is part of Nestle company founded in 1866 by Henri Nestle and is wholly owned by Nestle S.A. The Complainant is the registered owner of most of the trademarks of the Nestle Group. Nestle Group is present in many countries including India where the Respondent is based. The presence of Complainant in India dates back to 1912. The trademark NESTLE is registered in India and many other countries and has a strong presence on social media besides other modes of advertising. The Complainant has made significant investments in R&D, marketing and sales over the years for all of its products worldwide, NESTLE trademark comes under the category of well known trademark worldwide. The Complainant has registered the mark in many jurisdictions including India to further support the protection of the "NESTLE" mark. The Complainant also registered the word "Nestle" and variations thereof as domain name in numerous gTLDs and ccTLDs, including .in, co.in. The Complainant is using the website [www.nestle.com](http://www.nestle.com) as its primary web portal for global activities, while the website dedicated to India is [www.nestle.in/](http://www.nestle.in/). The later domain was registered in India way back in 2005.

The respondent is Mr Raj Singh, Kolkata, West Bengal, India (email: [rajsingha805010@gmail.com](mailto:rajsingha805010@gmail.com) and telephone: +91-9674423417).. The Respondent registered the Disputed Domain Name on June 07, 2021 years after Complainant's registration of the trademarks in 1973 in India and after registration of domain nestle.in in 2005 in India. The Respondent had redacted contact details from whois data base information. The Complainant sent cease and desist notice on infringing email address used on disputed domain name. The registrant details were provided to NIXI by concerned registrar and only after getting the details, the Respondent resolved disputed domain to inactive status and still passively held.





Based on documents presented to this panel, it is found that the disputed domain was being used by the Respondent to impersonate the Complainant. The Respondent failed to produce any evidence of bonafide or legitimate use of disputed domain as he has preferred not to respond to notice issued by this panel. The Respondent has neither replied to the communications made by the Complainant nor responded to notices sent by this panel.

#### **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 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 <nestledistributorship.in> is confusingly similar to the trade mark "NESTLE" in which the Complainant has rights:**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'NESTLE' by submitting substantial documents. The mark comes under category of well known trademark. The mark is widely used by the Complainant in different advertising modes and has



a strong presence in social media like facebook, twitter, instagram and pinterest etc. The disputed domain contains entirely 'NESTLE' and is sufficient to prove the confusingly similar domain. A mere addition of non-distinctive word 'distributorship' does not reduce the confusion of similar domain. Addition of top level domain (CCTLD) extension '.in' is insignificant. There can not be coincidence that the respondent has chosen domain name incorporating mark of the Complainant. The mark is registered in India since 1973 and domain nestle.co.in and nestle.in were registered in 2005.

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

**The Respondent has no rights or legitimate interest in respect of the disputed domain name.**

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark NESTLE. The Respondent is neither a licensee nor an authorized agent of Complainant, to use Complainant's mark. The Respondent is not known by the mark and can not have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contention of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. The Respondent has also failed to respond to the contentions of the Complainant. This panel is of the view that mere registration of domain name can't establish rights in disputed domain.

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 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 has no rights or legitimate interest in the disputed domain name.





**The Respondent has registered the disputed domain name in bad faith.**

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been using the mark for several years when the Respondent registered the disputed domain name in Jun 2021. The Respondent redacted critical information from Whois data base which was made available to NIXI's by the concerned registrar. The respondent resolves the disputed domain name to inactive status only after disclosure of registrant details by concerned registrar to NIXI.

The panel finds that the Respondent has used the well known mark of the Complainant in disputed domain name giving impression that this site is Indian subsidiary of Nestle group. The sole purpose of the respondent is to create confusion to internet user who were diverted to make payment for getting dealership or distributorship. The respondent is making money by using the popularity of the Complainant's well known mark. The Respondent must have done dilly diligence by the respondent 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, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.

A handwritten signature in blue ink, appearing to be 'S. K. Singh', followed by a long horizontal line extending to the right.

### 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 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.

November 16 ,2021

  
Sudhir Kumar Sengar  
Sole Arbitrator