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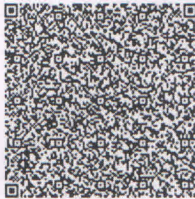
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Certificate Issued Date : 07-Oct-2022 03:05 PM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
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Purchased by : KARNIKA SETH
Description of Document : Article 12 Award
Property Description : INDRP ARBITRATION AWARD NO.1596
Consideration Price (Rs.) : 0
(Zero)
First Party : KARNIKA SETH
Second Party : KARNIKA SETH
Stamp Duty Paid By : KARNIKA SETH
Stamp Duty Amount(Rs.) : 100
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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1596

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.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.utz.co.in

Dated: 7th OCTOBER 2022

IN THE MATTER OF:

UTZ Quality Foods, LLC
900 High Street, Hanover
Pennsylvania 17331
United States of America

..... Complainant

Vs.

Zhu Xuebing
ChongQing Haotu dianzi shangwu gongsi
Huiyu 152
Rongchang
Chongqing
402460, China

..... Respondent

1. Parties

- 1.1 The Complainant in the arbitration proceeding is UTZ Quality Foods, LLC having its address at 900 High Street, Hanover Pennsylvania 17331, United States of America. The Complainant's authorised representative is Mr. Srijoy Das and Mr. Nikhil Kumar.

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1.2 The Respondent in this administrative proceeding as per the 'WHOIS' record is ZhuXuebing, ChongQing Haotu Dianzi Shangwu Gongsi, Huiyu 152, Rongchang Chongqing, 402460 China (as per Who is report -**Annexure 2** of the complaint). Registrant has registered the disputed domain name with "**NIXI Holding Account**".

2. **The Dispute-** The domain name in dispute is www.utz.co.in registered by the Respondent on 02 March, 2016. According to the .IN 'WHOIS' search, the Registrar of the disputed domain name "**NIXI Holding Account**".

3. Important Dates

S. No	Particulars	Dates (All Communication done in electronic mode)
1.	Date of Appointment as Arbitrator.	5 August, 2022
2.	Soft Copy of complaint and annexures were received from NIXI through email.	5 August, 2022
5.	Date on which notice was issued to the Respondent	6 August, 2022
6.	Date on which Complainant filed proof of completed service of complaint on Respondent	29 September, 2022
7.	Date on which Award passed	7 October, 2022

4. Procedural History

4.1 This is mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the

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National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996.

The updated rules are available on

<https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By

registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator had also submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.
- 4.4 The Arbitrator issued notice to the Respondent on 6 Aug 2022 at the email address userzxb@qq.com calling upon the Respondent to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed proof of completed service of the complaint upon Respondent on 29 September, 2022.
- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

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5. Factual Background

- 5.1 The Complainant, "UTZ", is a snack food company in United States of America. The Complainant company was founded and incorporated in 1921 by William and Salie UTZ, to manufacture diverse snacks products. The Complainant began producing the 'Hanover Home Brand' Chips in Hanover, Pennsylvania, U.S. The Complainant is a leading snack supplier in warehouse clubs and Mass merchandisers in United states and other countries.
- 5.2 The Complainant has been using UTZ trademark continuously and extensively since 1927 for producing high quality snack in international commerce. Complainant markets and sells the said products globally using the website utzsnacks.com (The Complainant has filed **Annexure 4 & 5** to support this claim). Further, Complainant uses a variety of social media sites, including Facebook, Instagram, Twitter, and YouTube, under the UTZ, to advertise its brand name.
- 5.3 The Complainant owns numerous trademark registrations and exclusive rights in the "UTZ" Trademarks along with its other formative trademark in various jurisdiction around the world. To support his claim Complainant has attached the copy of worldwide trademark report detailing the trademark registration annexed as **Annexure 3** of the Complaint. The "UTZ" trademarks have earned significant goodwill and international recognition through its long and continuous use.
- 5.4 The Respondent in this arbitration proceeding as per the 'Whois' record is Zhu xuebing. The email Id of the Respondent is userzxb@qq.com (as per **Annexure 2** of the complaint). The Respondent registered the disputed domain name with "NIXI HOLDING ACCOUNT" having email address userzxb@qq.com.

However, as per the Complainant, it has neither granted any authorisation to the Respondent to register the disputed domain name nor has any association with the Respondent.

6. Parties Contention

6.1 Complainant's Submissions

- 6.1.1 The Complainant has been using its UTZ marks extensively and continuously for its products and services, not only in India but across various other countries. Due to its established reputation across various other countries and in India, the word "UTZ" has been exclusively associated with the Complainant and no one else.
- 6.1.2 The Complainant has acquired statutory rights in the UTZ marks in numerous jurisdictions around the world such as USA, Australia, China, Germany, Hong Kong, China, Mexico, Canada, Indonesia etc. The Complainant has given details of few trademark registrations acquired by Complainant in USA under class 29 & 30 as mentioned in para 12 of the Complaint. The Complainant has also attached copy of the worldwide trademark report detailing the trademark registrations secured by the Complainant as early as 1927 (The Complainant has filed **Annexure 3** to support its claim).
- 6.1.3 The Complainant is also using the utz.snacks.com (which is accessed by Indian consumers too) for more than two decades to promote his high-quality snacks and related goods since 1996. (The Complainant has filed **Annexure 4 & 5** to support his claim). The Complainant submitted that the Respondent has registered disputed Domain Name **<www.utz.co.in>** without any authorization, which shows bad faith registration.
- 6.1.4 The Complainant uses a number of social media sites, including Facebook, Instagram, Twitter, and YouTube, under the name UTZ,

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to attract huge audiences from across all varieties of backgrounds. (The complaint has included **Annexure 6** to support this claim.) Under the UTZ trademark, the Complainant's goods are also advertised and made available for purchase on a number of Indian third-party websites, including www.desertcart.in and www.ubuy.co.in (The Complainant has filed **Annexure 7** to support its claim).

6.1.5 According to the Complainant, products with the UTZ® name are promoted and bought all over the world. The fact that the Complainant generated net sales of more than \$1 billion USD for the year ended January 2, 2022, from the sale of items branded with the UTZ® trademark all over the world, including in India, shows the Complainant's goodwill and reputation in the UTZ trademark. (The Complainant has filed **Annexure 8** to support its claim)

6.1.6 According to Complainant the WIPO has also acknowledged and affirmed that the Complainant has established rights in the name UTZ., such as in the following case:

UTZ Quality Foods, LLC v. Super Privacy LTD c/o Dynadot / Luquan Case No. D2022-0844. (The Complainant has attached as **Annexure 9** to support its claim) as mentioned in para 25 of the complaint.

6.1.7 The Complainant submits that the Respondent's domain name <utz.co.in> displays pay per click links to competitors, including through links titled "Pizza", "chicken Tikka" and "chapati recipe in local Hindi language. Respondent acts are aimed at trading off the goodwill in Complainant's UTZ mark. (The Complainant has filed **Annexure 10** to support its claim) as per para 35 of the complaint.

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6.1.8 The disputed domain name is identical and confusingly similar to the "UTZ" trademark and the Respondent has used it with an intention to pass it off as its own.

6.1.9 The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers and thereby infringe the "UTZ" trademarks and deceive consumer as to affiliation, connection or association of the dispute domain name with the Complainant, which is illegal and injures the Complainant's interests.

6.2 Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 13(b) that the Arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 13(b) reads as follows:

"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."

6.2.3 Further, the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 17 reads as follows:

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

6.2.4 In present arbitration, despite due service, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in

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any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 17 of the INDRP rules and decided on merits ex-parte.

7. Discussions and Finding

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right, and
- b) The Respondent has no rights or legitimate interest in the domain name, and
- c) The Respondent's domain name has been registered or is being used in bad faith.

7.2 The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))

The Complainant submitted that it owns trademark registrations using the house mark "UTZ" and its logo marks in numerous jurisdictions in many countries under class 29 & 30. The Complainant submitted that UTZ marks are well recognized amongst the consumers and has huge goodwill on internet as well and are protected by common law right as well as statutory right. The trademark UTZ is not registered with Indian Trademark office but is protected by common law rights on account of its use on e commerce websites /online presence in India including on www.desertcart.in and www.ubuy.co.in, utz.snacks.com (which is accessed by Indian

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consumers too) to promote his high-quality snacks and related goods since 1996 (The Complainant has filed **Annexure 7** to support its claim). The trademarks are also advertised on its social media platforms and has Indian audience (ref: **Annexure 6** of the Complaint)

The Arbitrator finds that the disputed domain name www.utz.co.in is clearly identical and deceptively similar to Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted documentary evidence to prove its rights and ownership in numerous jurisdictions around the world under class 29 & 30 (As **per Annexure 3** of the Complaint). A cursory glance at the disputed domain name <**utz.co.in**> makes it obvious that the Respondent has exactly incorporated the essential elements of the Complainant's "UTZ" mark and thus the disputed domain name is identical/ deceptively similar to the Complainant's mark.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for the purposes of UDRP standing. The Complainant has relied on *Vertex Pharmaceuticals Inc. v. Private Data Domains Ltd./Anonymous Speech, Anonymous Speech, Michael Weber, Case No. D2019-1259 (WIPO July 25, 2019); Reliance Industries Ltd. et al. v. jiomartfranchise.in et al., Case No. INDRP/1264 (NIXI Oct. 7, 2020)*

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The disputed domain name consists of “UTZ”, the Complainant’s trademark in entirety, followed by ccTLD “.in” which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant’s registered mark. The Complainant has relied on *Merryvale Ltd. v. Vikramaditya Ashtikar*, Case No. INDRP/1258 (NIXI Sept. 10, 2020), *Singapore Airlines Ltd. v. Wang Liqun*, Case No. INDRP/1227 (NIXI June 29, 2020), *Incase designs corp. V. Stavros fernandes*, case no. INDRP/1209 (NIXI March 27, 2020)

As the Respondent’s disputed domain name incorporates entire mark of Complainant’s trademark “UTZ”, the Arbitrator finds that the Respondent’s domain name is identical to Complainant’s registered trademark and is likely to deceive the customer.

7.3 The Registrant has no rights or legitimate interest in respect of the domain name (Para 4(b))

Under para 6 of the INDRP policy, a Respondent can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to “UTZ” trademarks, in which the Complainant enjoys rights, substantial reputation and goodwill. Complainant alleges Respondent has no legitimate interest in the disputed domain name which is being used to display list of food products leading to its competitors on payperclick. (The Complainant has filed **Annexure 10** to support its claim).

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Despite service of notice to file its reply, the Respondent failed to file its reply to the averments and claims made in the Complaint. Further, the Respondent has failed to prove any rights or legitimate interests in the disputed domain name / trademark 'UTZ'. Complainant has also submitted that it has not authorized nor licensed Respondent to use its 'UTZ' marks nor has any relationship with Respondent and Respondent has failed to rebut the same. The Complainant has relied on *Aditya Birla Management Corp. v. Chinmay*, Case No. INDRP/1197 (NIXI Feb. 18, 2020). The Complainant submits that the Respondent has registered the disputed domain name with a view to engage in unfair commercial use of the mark 'UTZ' with the sole aim to make illegal monetary benefits from unauthorised use of the goodwill and reputation of the Complainant's mark UTZ. The Complainant submits UTZ is a fanciful trademark which is inherently distinctive and cannot be registered by respondent but in order to illegally cash on its goodwill. The Complainant has relied on *Sbarro Franchise Co., LLC v. Domain Admin Domain Admin whoisprotection.biz / Burc Caglayan*, Case No. D2016- 1837 (WIPO Nov. 3, 2016); *Vertex pharmaceuticals Inc vs Private data domains ltd /Anonymous speech, Anonymous speech Michael Weber*, Case No. D 2019-1259 (WIPO July 25,2019.)

The Arbitrator is of the view that unlicensed and unauthorized use of domain name incorporating Complainant's trademark proves respondent has no legitimate rights nor interest in the domain name pursuant to ICANN Policy 4(b).

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It is the Respondent's responsibility to determine whether the Respondent's domain name registration is likely to infringe or violate someone else's rights. The Respondent has failed to discharge this burden as well (*Compagnie Générale des Etablissements Michelin v. Pacharapatr W., WIPO Case No. D2016-2465*). Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Para 4(c))

For the purpose of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has secured registration of the mark "UTZ" in classes 29 & 30 in USA and other countries (ref: **Annexure 3** of the Complaint). The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name or its honest adoption. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.utz.co.in despite prior knowledge to make unfair gains which amounts to bad faith registration. The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain

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name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case No. D2012-2395 and *Carige Vita Nuova S.P.A. v. Vita Nuova Public Organization, Domain Management / Whois Privacy Services by Domain Protect LLC*, WIPO Case No. D2010-1912, *Burberry Limited v. Ruo Chang*, WIPO Case No. D2010-1304, *Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163; *Pepsico, Inc. v. Zhavoronkov*, WIPO Case No. D2002-0562; *Pepsico, Inc. v. Domain Admin*, WIPO Case No. D2006-0435).

The Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain showing its unfair use by Respondent. This is evident from **Annexure 10** of the Complaint.

WIPO Overview 3.0 notes in Section 3.14 “*panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith*”. The same principle is relied on in *Adobe Inc. v. Amin Mohammad Salehi, Uranos*, case no. DIR2020-0006, June 30, 2020.

Despite notice, Respondent failed to submit its response and evidence to claim bonafide registration of disputed domain name in respect of its offering of goods/services which was only registered on 2 March 2016 (ref: Annexure 2 to the Complaint). Such registration and use are likely to mislead the consumers of an

affiliation with Complainant which amounts to bad faith registration under .IN policy.

Thus, Arbitrator finds that Respondent's disputed domain name is likely to mislead the consumers by creating a likelihood of confusion with the Complainant's name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231)). It is a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).

For the aforesaid reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395, *Atos IT Services UK Limited v Above.com Domain Privacy/Nish Patel* WIPO case No. D2013-0655, *Michael Patrick Lynch v. Steve Nicol (Stephen Joel Nicol)*, WIPO Case No. D2015-0933).

For the aforesaid reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

8. DECISION

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.

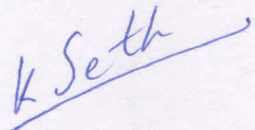
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- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.utz.co.in to the Complainant.

The Award is passed on this 7th October 2022

Place: Noida



Dr. Karnika Seth

Sole Arbitrator