



मध्य प्रदेश MADHYA PRADESH

BS 852790

**BEFORE THE ARBITRATOR RAJESH BISARIA**

**UNDER THE**

**.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**[NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)]**

**ARBITRAL AWARD**

**Date-07.11.2023**

**Disputed Domain Name: WWW. MACCOSMETIC.IN**

**INDRP Case no -1762**

**THE PARTIES**

**(1)**

The Complainant is Make-up Art Cosmetics Inc. 767 Fifth Avenue, New York-10153, USA.

The Respondent is Domain Administrator, 4 Akanbi Danmole Street off Ribadu Road ,City- Ikoyi , State- Lagos - 101233, Nigeria , Phone: + (234).7060647844  
Email- sugarcane@mm.st



**THE DOMAIN NAME AND REGISTRAR****(2)**(a) This dispute concerns the domain name **http:// WWW. MACCOSMETIC.IN**(b) The disputed domain name: **http:// www. WWW. MACCOSMETIC.IN**

is registered with Registrar of the Disputed Domain Name is GoDaddy.com, LLC, is duly accredited with the .IN Registry and is listed on the website of the .IN Registry. . The website of the Sponsoring Registrar is www.godaddy.com of the address GoDaddy Corporate Domains, 2155 E. GoDaddy Way, Tempe, AZ 85284 and they can be contacted at abuse@gcd.com . This was registered on 29.05.2022 & updated on 31.08.2023 and expiry date 29.05.2024. Registrant ROID-C00FC75BB9DCE4186B996B1185DF66243-IN

**PROCEDURAL HISTORY****(3)**

The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	03.10.2023
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and NIXI .	03.10.2023
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 03.10.2023)	13.10.2023
Complainant's response by submitting their Statement of Claim to AT- Soft copy	06.10.2023 10.10.2023
Hard copy	07.10.2023

Due date of submission of Statement of Defense by Respondent as instructed by AT mail dated 03.10.2023 and as instructed by AT mail dated 24.10.2023	23.10.2023 31.10.2023
Respondent's response by submitting their Statement of Defense against the due date of submission as 23.10.2023 and thereafter 31.10.2023	Not submitted
Complainant's response by submitting their Rejoinder	Not required
The language of the proceedings.	English

### **FACTUAL BACKGROUND (COMPLAINT BY COMPLAINANT)**

#### **(4) The Complainant:**

The Complainant is Make-up Art Cosmetics Inc. 767 Fifth Avenue, New York-10153, USA

#### **The Complainant's authorized representative in this administrative proceeding is:**

Raghav Malik & Lalit Alley of Lall & Sethi, of D-17, South Extension – II, New Delhi – 110 049, Telephone number: +91-11-4289-9999, Fax number: +91-11-4289-9900 and at the email addresses rmalik@indiaip.com & lalley@indiaip.com.

#### **The Complainant's preferred method of communication directed to the Complainant in this administrative proceeding is:**

Both material & electronic methods

#### **(5) The Respondent:**

The Respondent is Domain Administrator, 4 Akanbi Danmole Street off Ribadu Road ,City- Ikoyi , State- Lagos - 101233, Nigeria ,  
Phone: + (234).7060647844 , Email- sugarcane@mm.st

**(6) Complainant's Activities:**

(a) The Complainant was established in January 1983, in Toronto, Canada by makeup artist and photographer, Frank Toskan and beauty salon owner, Frank Angelo to support the creative needs and high standards of professional makeup artists. The Complainant and its related companies are world renowned manufacturers and marketers inter alia of cosmetics, skin care products, fragrances, cosmetic brushes, bags and accessories, as well as provider of services in that area. The Complainant markets and sells its goods and provides its services under its renowned trademark M.A.C and/or MAC as well as its formatives which is derived from the Complainant's company name i.e., Make-Up Art Cosmetics Inc. Printouts of the Complainant's website [www.maccosmetics.com](http://www.maccosmetics.com), were submitted as Annexure C.

(b) In January 1983, the Complainant launched the first M.A.C. branded make-up line in Toronto and the first M.A.C. store opened in 1991, in Greenwich Village, New York. Today it is one of the most influential and successful companies in the global cosmetics industry with over 2500 independent stores worldwide in over 120 countries, including India. The Complainant became a subsidiary of The Estee Lauder Companies Inc. (hereinafter referred to as "Estee Lauder") which acquired a controlling interest in M.A.C. in the year 1994 and extended the brand's distribution across the globe. In the year 1998, Estee Lauder acquired the remaining shares of the Complainant Company.

**(7) Complainant's Trade Marks And Domain Names:**

(a) The Complainant is the prior adopter and user of the trade mark M.A.C and/ or MAC and its formatives including MAC COSMETICS and the domains [WWW.MACCOSMETICS.COM/](http://WWW.MACCOSMETICS.COM/) , [WWW.MACCOSMETICS.IN](http://WWW.MACCOSMETICS.IN). In India, the Complainant holds trade mark registrations for the mark M.A.C and / or MAC and its formatives including MAC COSMETICS in various classes (hereinafter collectively referred to as "the earlier well-known trade marks"), with earliest registration dating back to the year 1995 in

Class 3. A list of registrations along with few representative copies of the Registration certificates and latest renewal certificates were submitted as Annexure D. These registrations are valid and subsisting and by virtue of the same, the Complainant has the exclusive right to use the aforementioned trade marks. As a fair disclosure, rectification proceedings have been initiated against the Complainant's registration nos. 658687 and 4512457 by third party and the said pending proceedings are being fervently contested by the Complainant. However, the same has no bearing to the validity of the said registrations and by virtue of provisions of the Trade Marks Act 1999, the registrations are prima facie evidence of the validity thereof.

(b) In addition to the above, the Complaint has also attained registrations in several jurisdictions of the world including but not limited to Australia, Canada, European Union, France, Germany, Ireland, Italy, New Zealand, Philippines, Saudi Arabia, Singapore, South Africa, Switzerland, United Kingdom, United States of America, to name a few. Copies of the registration certificates from these countries were submitted as Annexure E.

(c) Over the years, the Complainant has derived vast revenues from the products sold and services provided under their trade mark M.A.C and/or MAC and its formatives, which also evidences the extent and success of the Complainant's products and services under the said earlier well-known trade marks with its consumers and members of trade. In addition, the Complainant spends millions of dollars on marketing, advertising and promotion of their brand M.A.C and/or MAC and its formatives every year. To substantiate the Complainant's claims, the details of the global revenues and annual worldwide advertising and promotional expenses for the products sold and services provided under their world-renowned brand M.A.C and/or MAC and its formatives for the Fiscal years 2001 to 2022 are detailed below:

Fiscal Period (June - July)	Total Net Sales in US\$ (In Excess of)	Advertising and Promotional Expenditure in US\$ (In Excess of)
2001	280,000,000	45,000,000
2002	340,000,000	50,000,000
2003	410,000,000	60,000,000
2004	510,000,000	75,000,000
2005	640,000,000	95,000,000
2006	800,000,000	120,000,000
2007	950,000,000	140,000,000
2008	1,110,000,000	170,000,000
2009	1,095,000,000	165,000,000
2010	1,225,000,000	195,000,000
2011	1,435,000,000	250,000,000
2012	1,630,000,000	280,000,000
2013	1,783,760,000	297,597,000
2014	2,050,000,000	325,636,000
2015	2,271,000,000	371,000,000
2016	2,500,000,000	416,000,000
2017	2,427,000,000	434,000,000
2018	2,545,000,000	450,000,000
2019	2,600,000,000	517,000,000
2020	1,960,000,000	320,000,000
2021	1,475,000,000	300,000,000
2022	1,685,000,000	310,000,000

The above figures have been obtained from the books and records maintained by the Complainant Company. Since the originals contain numerous other accounts and other documents which cannot be conveniently examined, the Complainant craves leave to refer to and rely upon the general result of the whole collection.

(d) By virtue of such long and extensive use of the well-known and earlier registered trade mark M.A.C since the 1980's in the US & Canada and 1990's in various countries throughout the world, the well-known and earlier trademarks M.A.C and / or MAC and its formatives have become well known and famous world over.

(e) The Complainant's products bearing the well-known and earlier registered trade mark M.A.C are also widely marketed and sold across India. In India, the Complainant opened its first store in the city of Mumbai in July 2005. At present the Complainant has M.A.C. stores in various cities of Delhi (NCR), Mumbai, Kolkata, Chennai, Bangalore, Amritsar and Hyderabad. The details of the Complainant's stores in India were submitted as Annexure F.

(f) Additionally, the Complainant has spent large sums of money in advertising and promoting their famous brand M.A.C and/or MAC and its formatives in India. The annual turnover/revenue and marketing expenditure incurred by the Complainant in India since 2005 to 2022 are given hereunder:

Fiscal Period (June – July)	Total Net Sales in US\$ Expenditure in US\$ (In Excess of)	Advertising and Promotional Expenditure in US\$ (In Excess of)
2005	105,000	35,000
2006	350,000	140,000
2007	815,000	220,000
2008	3,115,000	825,000
2009	3,200,000	615,000
2010	4,750,000	850,000
2011	7,180,000	1,600,000
2012	8,345,000	1,650,000
2013	8,250,000	2,315,000
2014	9,000,000	1,875,000
2015	11,650,000	2,100,000

2016	14,000,000	2,500,000
2017	17,900,000	3,600,000
2018	20,500,000	4,000,000
2019	23,500,000	4,300,000
2020	19,500,000	1,800,000
2021	15,600,000	1,600,000
2022	28,400,000	4,500,000
2023 (YTD)	40,200,000	6,800,000

The above figures have been obtained from the books of accounts maintained in the ordinary course of business by the Complainant Company. Copies of sales invoices for the mark M.A.C were submitted as Annexure G.

(g) The Complainant has collaborated with various famous celebrity artists from around the world, which includes names such as Rihanna, Lorde, Proenza Schouler, Mariah Carey, Ariana Grande, Miley Cyrus, Lady Gaga, Nicki Minaj, Ellie Goulding, Selena Gomez, Liza Minelli, and Diana Ross amongst many others. They have also partnered with various world-famous fashions designers such as Prabal Gurung and Vivienne Westwood. In 2018, the Complainant also launched a line of cosmetics in collaboration with Indian origin top model and TV show hostess Padma Lakshmi under the brand MAC PADMA. Another collaboration by the Complainant with Indian visual artist and singer Amrita Sen, was for the launch of MAC x BollyDoll Collection in 2014. The Complainant has secured a status of the world's leading beauty trendsetter and its earlier well-known trade marks have also been extensively discussed and advertised in major international magazines and newspapers which are accessible in India. Documents in support of the aforementioned were submitted as Annexure H.

(h) The Complainant was the official makeup sponsor of the International Indian Film Academy Awards (IIFA) for past many years Not only this, the Complainant has collaborated with the famous Bollywood icon makeup artist Mickey Contractor and has launched in January 2011,



the “Mickey Contractor Collection” which caters to the needs of the Indian skin tones. This is one of the many successful ventures of the Complainant’s expansion in India. Documents in support of the aforementioned were submitted as Annexure I.

(i) The Complainant is also the owner of the website [www.maccosmetics.com](http://www.maccosmetics.com) which is exclusively dedicated to the Complainant’s M.A.C. line of products. The goods and services under the well-known and earlier trade mark M.A.C and/or MAC and its formative have been extensively advertised and promoted on the internet vide their website [www.maccosmetics.com](http://www.maccosmetics.com). The said website which was registered on December 17, 1996 contains extensive information regarding the Complainant; their products marketed and sold under the aforementioned trademarks. Printout of the said website and registration details from WHOIS, were submitted as Annexure J.

(j) The Complainant also has a website dedicated exclusively towards the Indian customer base, i.e., [www.maccosmetics.in](http://www.maccosmetics.in). The said website which was registered on February 16, 2005, provides Complainant’s details and location of the various stores in India. Printout of the said website and registration details from WHOIS, were submitted as Annexure K.

(k) Additionally, in this time and age of the ever-growing influence of social media and alternative advertising platforms to promote brands, the Complainant maintains its own personalized pages on various social media websites such as facebook, twitter, instagram and youtube to create awareness and disseminate information about the products available under the trade mark/brand M.A.C and/or MAC and its formatives. The said information is accessible by current and potential consumers worldwide including India. The Complainant’s Instagram profile and Facebook page has over 20 million followers each. Printouts of the Complainant’s pages from the abovementioned social media websites are annexed herewith and were submitted as Annexure L.

(l) The earlier well-known trademarks of the Complainant are one of its most valuable assets The Complainant has successfully taken actions

against infringers globally and in India as well. A select list of Decisions, where the Complainant's actions against infringers prevailed was submitted as Annexure M.

(m) From the above and as per the provisions of The Trade Marks Act, 1999, the earlier trade marks qualify as a well-known trademarks and were well known trade marks on the date on which the disputed domain was applied for registration. The Complainant's trade mark M.A.C and/or MAC also belongs to the category of famous trademarks as defined by Article 6bis of the Paris Convention to which India is a signatory. The reputation and goodwill enjoyed by the Complainant's earlier well-known trademarks are not confined to any specific geographic location or goods.

(n) By virtue of the extensive use, promotion and enormous business activities, throughout the world including India, the earlier well-known trademarks have acquired substantial goodwill and reputation globally, including in India. Owing to the above, the earlier well-known trade marks have come to be exclusively associated and identified in the minds of the public and others connected with the trade, with goods / services originating from the Complainant alone. The Complainant alone has the exclusive right to use the earlier well-known trade mark MAC, as part of its domain name and company name and / or in any other manner whatsoever. The earlier well-known trademarks of the Complainant merits protection from a third party's act of cyber piracy and/or cybersquatting including that of the Respondent.

(o) The fame and goodwill associated with the MAC trade mark is also made apparent by the number of cybersquatters who have sought to unfairly and illegally exploit the very significant consumer recognition attached to the MAC trade mark. Prior domain name dispute panels have recognized the enormous goodwill and reputation of Complainant's MAC trade mark, and have ordered infringing respondents to transfer infringing domain names to Complainant. Listed below are few of the decisions:

- a. Estee Lauder Cosmetics Ltd., Make-Up Art Cosmetics Inc. v Telmex Management Services, WIPO Case No. D2001-1428

(<macosmetics.com >) (“The Complainants sell skin care products, makeup, and perfume in many countries worldwide. For more than 15 years, companies affiliated with Complainants have continuously provided high quality cosmetic products under the MAC® trademark and trade name. Complainants both own exclusive rights to the MAC name, design and logo, in distinct geographical areas. Estee Lauder Cosmetics Ltd. owns exclusive rights to the MAC name, design and logo.”);

b. Makeup Art Cosmetics Inc. and Estee Lauder Cosmetics Ltd. v. Justin Chen and Domains by Proxy, LLC, WIPO Case No. D2014-0541 (<maccosmetic-me.com, maccosmetic-store.com >) (“The Panel finds that the Complainants are the owners of the registered trademark MAC and that the disputed domain names <maccosmetic-me.com> and <maccosmetic-store.com> are confusingly similar to the Complainants’ trademark.”);

c. Estee Lauder Cosmetics Ltd., Makeup Art Cosmetics Inc. v. Pingnan Shang aka Shang Pingnan, Ruijuan Wang aka Wang Ruijuan, mac makeup, WIPO Case No D2011-0457 (<macmakeupwholesale.com>, <macmakeupwholesaie.com>, <mac-makeup-wholesale.com>, <macmake-upwholesale.com>, <mac-makeupwholesales.com>, <macmakeup-wholesales.com> and <macmakeupwholesale.com>), WIPO Case No D2011-0457, (“The Complainants claimed that the Respondents attempted to sell counterfeit MAC products on their websites, and said “the functioning websites at five of the Domain Names clearly display the Complainant’s MAC trademark and sell counterfeit versions of Complainant’s goods.”)

d. Make-Up Art Cosmetics Inc. v Doublefist Limited, INDRP/1094 (<maccosmetics.co.in>) (Based on the complaint and the evidence filed, the Ld. Arbitrator held that the Respondent’s registration and use of the domain name: www.maccosmetics.co.in is abusive and in bad faith. The Respondent has no rights or legitimate interest in respect of the domain name and accordingly

the disputed domain name was transferred from Respondent to the Complainant)

**(8) Respondent's Identity and activities :**

Respondent failed to submit required documents, so his identity and activities are not clear.

**(10) Rejoinder by Complainant:**

Since the Respondent failed to submit their reply to the Complaint of Complainant, so Rejoinder is not required to be submitted by Complainant.

**(11) Submissions of Documents by Complainant:**

Complainant submitted Domain name complaint with pages 1 to 14 (words 4927) and annexure from A to N with pages 1 to 100.

As per the INDRP Rules of Procedure, Clause 4(a) –

*The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted pleadings of around 4927 words and annexures of 100 pages, which is as per the above norms of the INDRP Rules of Procedure.

**OTHER LEGAL PROCEEDINGS:**

**(12) Submission of Complainant**

As required under paragraph 4(b) (viii) of the Rules, the Complainant submits that other than the filing of this Complaint, no legal proceedings have been brought in connection with the Disputed Domain Name.

**REMEDY SOUGHT:****(13) Submission of Complainant**

In accordance with Paragraph 11 of the Policy, for the reasons described in Section V above, the Complainant requests that the Panel appointed in this proceeding issues a decision that the Disputed Domain Name be immediately transferred to Complainant. Costs as may be deemed fit, may also be awarded.

**THE CONTENTIONS OF THE COMPLAINANT****(14) The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:****Submission by Complainant**

(a) Based upon information and belief, the Respondent registered the Disputed Domain Name on May 29, 2022. An extract of the Databases where the creation date is mentioned has already been annexed.

(b) The Disputed Domain Name, MACCOSMETIC.IN, is identical to the earlier well-known trademarks and the domain names MACCOSMETICS.COM and MACCOSMETICS.IN of the Complainant. Not only is the earlier well-known Trade Mark MAC COSMETICS subsumed in its entirety in the Disputed Domain Name but also the Respondent has only removed the last letter "S" from the Complainant's earlier domain names and registered the Disputed Domain Name. MAC as well as MAC COSMETICS is enriched in the minds of the members of trade and public and is also the prominent part of the Disputed Domain Name. See EPSON Europe BV v. M31 Internet Palma, S.L. Case No. D2005-0604 (If the disputed domain name did not include the trademark EPSON, its significance and importance would have been completely different in the sense that it would not specifically relate to Complainant or its Services)

(c) In addition, at the time that the Respondent registered the Disputed Domain Name, the earlier well-known trademarks of the Complainant were already registered and had already acquired the status

of a well-known mark as defined under section 2(1)(zg) of the Trade Marks Act, 1999, which merits enhanced protection. The Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to rights, goodwill and reputation in the earlier well-known trade marks M.A.C. and/or MAC of the Complainant.

(d) Accordingly, the first condition, that Respondent's domain name is identical, virtually identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy, has been satisfied.

**(15) The Respondent has no rights or legitimate interests in respect of the domain name:**

**Submission by Complainant**

(a) The Complainant's earlier well-known trade marks M.A.C and/or MAC as well as its formatives including MAC COSMETICS are highly distinctive and well-known, and there can be no plausible justification for the adoption of the Disputed Domain Name. Such adoption and use of the Disputed Domain Name creates a likelihood of confusion and deception amongst the members of trade and public that the goods and/or services from the website under the Disputed Domain Name originate from the Complainant, which is not the case. Also, such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the earlier well-known trademarks of the Complainant.

(b) The Respondent is not affiliated with Complainant in any way, nor is Respondent licensed to use the earlier well-known trademarks of the Complainant. Respondent is not an authorized vendor, supplier, distributor, or customer relations agent for Complainant's goods and services. Further, the Respondent has never been legitimately recognized as MAC and/ or MAC COSMETICS, which forms an imperative part of the Disputed Domain Name. See *Broadcom Corp. v. Ibecom PLC*, FA FA0411000361190 (finding no rights or legitimate interests where there

was nothing in the record to indicate that Respondent was commonly known by the domain name).

(c) It is difficult to conceive that Respondent did not know of Complainant's earlier well-known trademarks when Respondent registered the disputed domain name. The manner of illegal adoption and misuse of the Complainant's earlier well-known trademarks is discussed further in 'Clause C' below. The Respondent is knowingly, with intent of commercial gain, trying to mislead and divert the consumers for the Complainant to its website. Such adoption and use of the Disputed Domain Name is likely to tarnish the earlier well-known trade marks of the Complainant. Therefore, the Respondent does not have and / or cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered to make unlawful monetary gains.

(d) Given the fame of the Complainant's Mark as a trade mark, trade name and domain name, it is not possible to conceive any use by the Respondent of the Disputed Domain Name that would not constitute infringement of the Complainant's rights in its Trade Mark. See *Veuve ClicquotPonsardin v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 at Section 6. Mere registration by Respondent of the Disputed Domain Name is thus further evidence of Respondent's bad faith.

(e) Accordingly, the second condition, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy has been satisfied.

**(16) The domain name was registered and is being used in bad faith:**

**Submission by Complainant-**

(a) The bad faith of the Respondent in registering the Disputed Domain Name can be simply established from the fact that the Respondent has registered the Disputed Domain Name by adopting the earlier well-known MAC/ MAC COSMETICS in its entirety. The mala fide and bad faith intention of the Respondent is further clear from the fact that they have

only removed the last letter “S” from the Complainant’s earlier domain names and registered the Disputed Domain Name. The Complainant’s M.A.C, MAC and MAC COSMETICS are so well-known that it cannot be considered that the Respondent was not aware of the same and its well-known status at the time of its adoption. See Victoria’s Secret Stores Brand Mgmt., Inc. v. Michael Bach, FA 1426668 (Although Complainant has not submitted evidence indicating actual knowledge by Respondent of its rights in the trademark, the Panel finds that, due to the fame of Complainant’s [VICTORIA’S SECRET] mark, Respondent had actual notice at the time of the domain name registration and therefore registered the domain name in bad faith under Policy 4(a)(iii).) and Amazon.com, Inc. v. Korotkov, Case No. D2002-0516 (Respondent evidently is familiar with the sphere of Internet-based commerce. In that sphere the Complainant’s trademark AMAZON.COM® is so well-known, being practically a euphemism for an Internet bookstore (among other things), that it is inconceivable Respondent was unaware of the trademark, its connotations and its commercial attractiveness).

(b) Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith, see Caravan Club v Mrgsale NAF Decision FA 95314. In Playboy Enterprises International, Inc. v. Hector Rodriguez, WIPO Case No. D2000-1016 (playboychannel.com and playboynetwork.com), it was said that “People, who manifest an intent to traffic in domain names that incorporate well-known or famous trademarks, as the Respondent does here, simply do not expend their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking.” (Transfer awarded.)

(c) Further, the website bearing the Disputed Domain Name i.e.maccosmetic.in, uses the Complainant’s Well-known Earlier Trade Mark MAC COSMETICS blatantly on their homepage and also lists various hyperlinks for identical goods i.e. Cosmetics which then re-directs to third



party websites for identical goods. Extract is enclosed as Annexure N. See: Respondent's Website

It is clear from the above, that the Respondent was well aware of the goodwill and reputation of the Complainant's earlier well-known trade marks at the time of adoption of the Disputed Domain Name and has made every effort to design the website bearing the disputed domain name in a manner to draw an association with the Complainant, when no such association exists. See *Crocs, Inc. v. Chustz*, FA0706001002536 (finding bad faith where Respondent's use of Complainant's mark in its domain was "capitalizing on the illusion of direct affiliation with Complainant's business and goodwill"). *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1148 (Where an alleged infringer chooses a mark, he knows to be similar to another, one can infer an intent to confuse).

(d) The adoption of the aforementioned domain name and the Disputed Domain Name by the Respondent is solely for attracting online traffic and then redirecting them to a website providing identical goods and services, only shows the mala fide intention of the Respondent to promote his goods and services to try and gain monetary benefits at the cost of the goodwill and reputation of the Complainant's earlier well-known trademarks. Such acts constitute misrepresentation to the members of trade and public, with a view to mislead them into believing that the Respondent is affiliated with the Complainant. Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public.

(e) The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's earlier well-known trademarks M.A.C and/or MAC as well as its formatives including MAC COSMETICS, to improperly benefit the Respondent financially, in violation of applicable trade mark and unfair competition laws. Moreover, these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the Policy under Paragraph 7 of the Policy.

(f) The adoption of the Disputed Domain Name, in the manner as discussed above, proves, beyond reasonable doubt, the bad faith adoption

by the Respondent. In view of the above, the Complainant has sufficiently proven that adoption and use of the Disputed Domain Name falls within the purview of Paragraph 4(c) of the INDRP policy.

### **DISCUSSION AND FINDINGS**

- (17) After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the Complainant.
- (18) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) by 23.10.2023 and thereafter by 31.10.2023 . But Respondent failed to submit the same within said time limit; therefore the Respondent had lost their right to entertain it. The proceeding of this case was kept closed for award on 01.11.2023 and the matter is be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.
- (19) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant has filed a complaint to .IN Registry on the following premises:
- (a) the Registrant's domain name is identical or confusingly similar to a Name , Trademark or Service Mark in which the Complainant has rights; and
  - (b) the Registrant's has no rights or legitimate interest in respect of the domain name; and
  - (c) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

- (20) The Registrant's domain name is identical or confusingly similar to a Name, Trademark or Service Mark in which the Complainant has rights:**

**Facts & Findings**

On the basis of the referred Awards of WIPO cases & others and above mentioned facts by Complainant, and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes that the Complainant has established 4(a) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

- (21) The Registrant's has no rights or legitimate interest in respect of the domain name:**

**Facts & Findings**

On the basis of the referred Award of WIPO cases & others and above mentioned facts by Complainant and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

- (22) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose:**

**Facts & Findings**

On the basis of referred Awards of WIPO & others and above mentioned facts by Complainant and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**(23) ARBITRAL AWARD**

I, **Rajesh Bisaria** , Arbitrator, after examining and considering the pleadings and documentary evidence produced before and having applied mind and considering the facts, documents and other evidence with care, do hereby publish award in accordance with Clause 5, 17 and 18 of the INDRP Rules of Procedure and Clause 11 of .IN Domain Name Dispute Resolution Policy (INDRP), as follows:

***Arbitral Tribunal orders that the disputed domain name***

***“www. maccosmetic.in”***

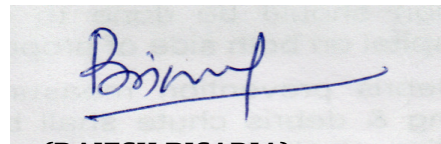
***be forthwith TRANSFERRED from Respondent to Complainant.***

***Further AT takes an adverse view on the bad faith registration of impugned domain by the Respondent and to restrict the act for future misuse, fine of Rs 10000/- (Rs Ten thousand only) is being imposed on the Respondent, as per the provision in clause 11 of .IN Domain Name Dispute Resolution Policy (INDRP) to be paid to .IN Registry for putting the administration unnecessary work.***

AT has made and signed this Award at Bhopal (India) on 07.11.2023 (Seventh Day of November, Two Thousand Twenty Three).

**Place: Bhopal (India)**

**Date: 07.11.2023**



**(RAJESH BISARIA)**

**Arbitrator**