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INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

Brewing Gadgets General Trading LLC & Goutham Kumbargeri Srinath

Vs

SUHAS DWARKANATH

ARBITRATION AWARD Disputed Domain Name: <BREWINGGADGETS.CO.IN>

*Sudhir Kumar Sengar*

**Statutory Alert:**

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## 1. The Parties

The Complainants in this administrative proceedings are Brewing Gadgets General Trading LLC ( Complainant No1), Shop No.1, Building EMR 25, Emirati Cluster, International City, Dubai, UAE, 125813 (Email:info@brewinggadgets.com; Phone+971 4 447 4261) & Goutham Kumbargerri Srinath( Complainant No 2), Flat No.201, Building F6, China Cluster International City, Dubai – UAE ( Email: coffeefever@gmail.com; Phone+971 50 481 1546). The Complainants are represented by Sahib Singh Dhillon, Karmanya Singh Sareen, Kommit Techno-Legal LLP, F-12, Jangpura Extension, New Delhi110014, Delhi, India (sahib.ipo@kommit.com, karmanya.ipo@kommit.com)

The Respondent is Suhas Dwarkanath , 380 42nd cross 8th block Jayanagar Bangalore, Karnatka 560070 , India (Email: suhas.dwarkanath@gmail.com ; Phone: +91.9886731007)

## 2. Domain Name and Registrar

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

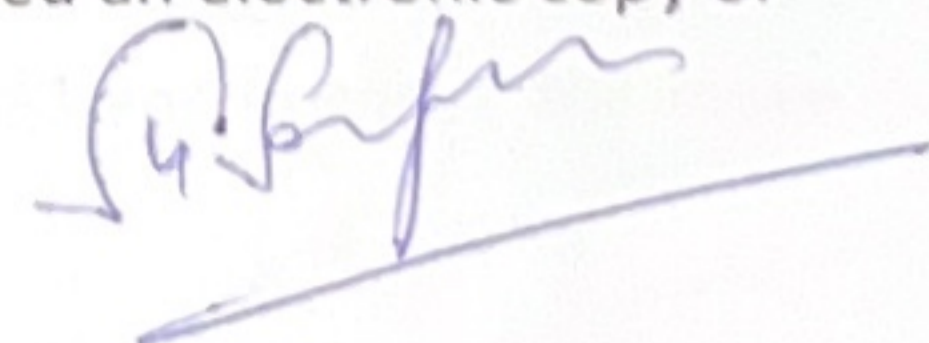
(ii) The Registrar with whom the domain name is registered is GoDaddy.com, LLC , 14455 North Hayden Road, Scottsdale, Arizona 85260 Also at: 003, Tower 4A, DLF Corporate Park, MG Road Gurgaon, India.

## 3. Procedural History

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

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

On October 04, 2023, I submitted my 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 04, 2023 and served an electronic copy of



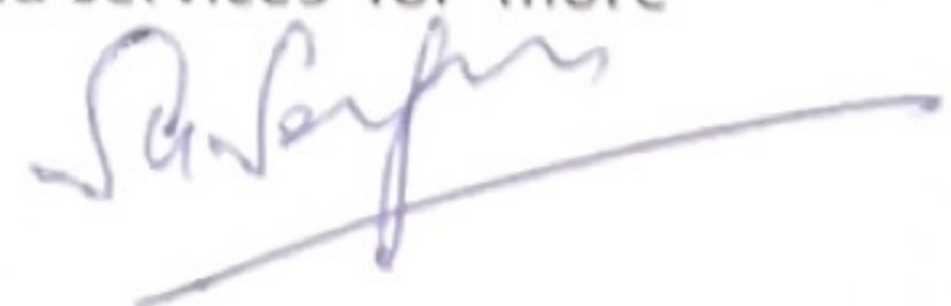
the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on October 04, 2023 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit response to the arbitration notice issued through email dated 04.10.2023 within the stipulated time. The Respondent was given another 5 (Five) days, through email dated 12.10.2023, more time to submit his response to the arbitration notice. The Complainant also failed to submit the proof of delivery of complaint to the Respondent by email/courier. The Complainant through email dated 12.10.2023, was given another 3 (three) days' time to submit the proof of delivery of complaint to the Respondent. The Complainant submitted proof of delivery of complaint to the Respondent through email dated 12.10.2023. The Respondent failed to submit any response to the arbitration notice issued through email dated 05.10.2023 even within the extended timeline. The Respondent in fact has not submitted any response to the arbitration notice till date.

#### **4. Grounds for Administrative Proceedings**

1. The disputed domain name is identical to registered trademarks in which complainant has rights
2. The Respondent has no rights or legitimate interests in the disputed domain name.
3. The domain name was registered and is being used in bad faith.

#### **5. Background of the Complainants & The Respondent**

The Complainants submitted that the Brewing Gadgets General trading LLC (Complainant No.1) is the exclusive licensee of the trade marks "BREWING GADGETS" which are owned by Goutham Kumbargerri Srinath (Complainant No. 2). The Complainants further submitted that the Complainant No. 1, Brewing Gadgets General Trading LLC, is a registered company having its principal office at Shop No.1, Building EMR 25, Emirati Cluster, International City, Dubai, UAE, 125813 and is an established and well-known entity selling coffee machines, coffee equipment and other coffee related products and services for more



than 10 years. The Complainants further submitted that the Complainant No. 1 has clients ranging from private households to hospitality establishments in different parts of the world. The Complainants further submitted that the domain name owned and used by the Complainants wholly and solely contains the registered trade mark "BREWING GADGETS". The Complainants further submitted that the Complainants used the web-site, located at [www.brewinggadgets.com](http://www.brewinggadgets.com), which includes a comprehensive catalogue of the goods and services offered by the Complainants to their customers. The Complainants further submitted that the Complainants' domain name, [www.brewinggadgets.com](http://www.brewinggadgets.com) was registered on 01st August 2011 and the Complainants have been continuously and uninterruptedly using the said domain since then. The Complainants further submitted that due to the continued use of their domain name [www.brewinggadgets.com](http://www.brewinggadgets.com) and the mark "BREWING GADGETS" as the brand name, the Complainants have generated substantial goodwill and have, as a result of the same, captured a significant market share. The Complainants further submitted that the Complainants are a well-known, reliable and trusted name when it comes to goods and services related to coffee and this is evident from the sales figures and revenue of the Complainant. The Complainants further submitted that over the last five years, the Complainants have generated sales revenue of over USD 45 million (AED 172 million).

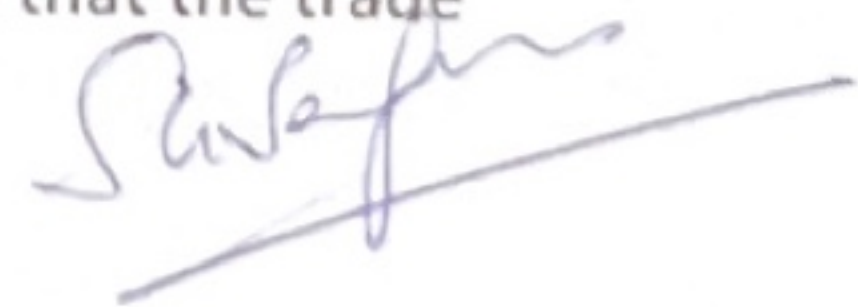
The Respondent Suhas Dwarkanath is former employee of Complainant's authorized licensee Moksh Trading FZE. The Respondent registered the disputed domain name < [brewinggadgets.co.in](http://brewinggadgets.co.in) > in 2018.

## 6. Legal Grounds

A. The domain name <[brewinggadgets.co.in](http://brewinggadgets.co.in)> is identical to trademarks or in which the Complainant has rights.

### Complainant's Contentions

The Complainants contended that Complainant No. 2, Mr. Goutham Kumbargeri Srinath, is the registered proprietor / owner of the trade mark "BREWING GADGETS" and the trade mark "BREWING GADGETS" has been in continuous and uninterrupted use since 01st August 2011. The Complainants further submitted that the trade marks "BREWING GADGETS" have been exclusively licensed to Complainant No. 1 by Complainant No. 2. The Complainants further submitted that the Complainant No. 2 is the registered proprietor of several trademarks and logos, including but not limited to "BREWING GADGETS". The Complainants further submitted that the trade



marks are registered in India and in several other jurisdictions around the world including the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE) . The Complainants further submitted that the trade mark registrations recognize the Complainants' use of the mark since 2011 and protect the same. The Complainants further submitted that the Complainants adopted the trademark "BREWING GADGETS" in the year 2011 and have been using the said mark continuously, extensively and uninterruptedly since 01st August, 2011. The Complainants further submitted that the said trade mark has now become well-recognized and widely associated with the Complainants. The Complainants further submitted that BREWING GADGETS is an established and internationally renowned name in the business of selling coffee machines, coffee equipment and other coffee related products and services. The Complainants further submitted that the Complainant No. 2 also owns several other domain names such as [brewinggadgetsindia.com](http://brewinggadgetsindia.com); [brewinggadgets.asia](http://brewinggadgets.asia); [www.brewinggadgets.co](http://www.brewinggadgets.co); [www.brewinggadgets.coffee](http://www.brewinggadgets.coffee); [www.brewinggadgets.net](http://www.brewinggadgets.net) which include the trade mark "BREWING GADGETS" as its integral part. The Complainants further submitted that the Complainants' website [www.brewinggadgets.com](http://www.brewinggadgets.com) has several products offered for sale and receives a considerable number of hits on a regular basis and the customer base of the Complainants has grown significantly over the years. The Complainants further submitted that Complainants and the website [www.brewinggadgets.com](http://www.brewinggadgets.com) have consistently kept pace with the modern technological advances. The Complainants further submitted that the trademark "BREWING GADGETS" has been used by the Complainants exclusively and extensively, thus making it synonymous with the Complainants and the products and services provided by them under the said name / mark. The Complainants further submitted that the trade mark "BREWING GADGETS" is the coveted property of Complainant No. 2 (licensed to Complainant No. 1 and no other party, unless duly authorised by Complainant No. 2, is entitled to use any identical or deceptively similar marks so as to ride upon the goodwill of the Complainants. The Complainants further submitted that the Complainant No. 2 is the exclusive licensee for the trade marks "BREWING GADGETS" and is duly authorised by Complainant No. 1 to use the said trade marks in the course of its business. The Complainants further submitted that any unauthorised use of the trade mark / name "BREWING GADGETS" by any third-party shall amount to a flagrant violation of the statutory and common law rights of the Complainants, while also being a violation of the INDRP Policy. The Complainants further submitted that it is blatantly evident that the impugned domain name [www.brewinggadgets.co.in](http://www.brewinggadgets.co.in), with "brewinggadgets" as the operative portion of the domain name, is IDENTICAL to the registered trademarks of the Complainants, which have been in use since 01st August



2011. The Complainants further submitted that the trade mark "BREWING GADGETS" has been in continuous and uninterrupted use by the Complainants since 01st August, 2011 and has acquired distinctiveness over time and is solely attributed to Complainants and there is a serious likelihood of confusion of innocent internet users, customers and potential customers. The Complainants further submitted that therefore, by registering the impugned domain name which is IDENTICAL to the Complainants' trade marks "BREWING GADGETS", the alleged Respondent is in flagrant violation of the statutory and common law rights of the Complainants while also violating the Policy.

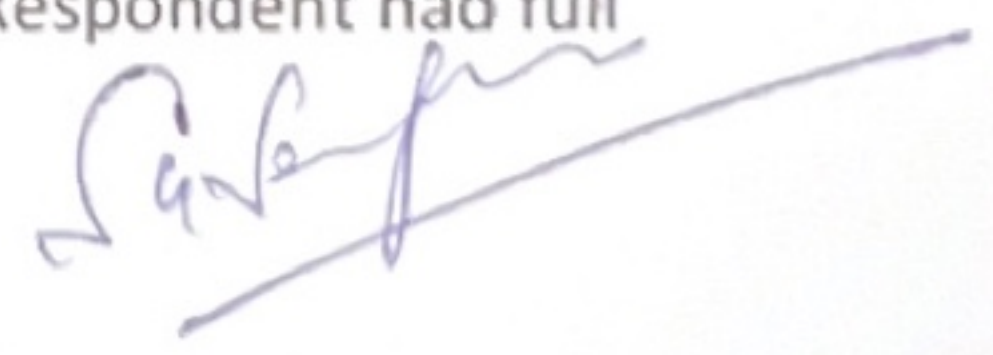
#### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

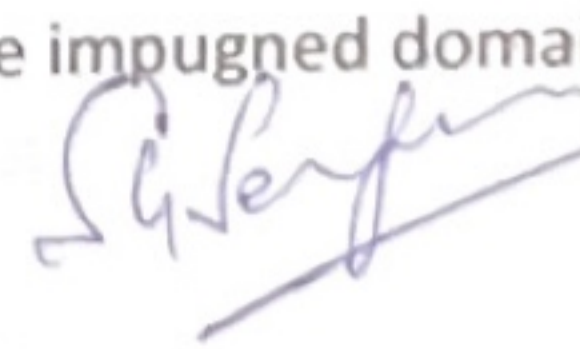
**B. The Respondent has no rights or legitimate interests in respect of the domain name(s);**

#### **Complainant's Contentions:**

The Complainants contended that the Complainant No. 2, being the registered proprietor / owner of the trade mark "BREWING GADGETS" and its derivatives/ formatives, is the only legitimate claimant to the name and trade mark "BREWING GADGETS" and any domain name containing the same. The Complainants further contended that the impugned domain name www.brewinggadgets.co.in itself has NO content on it and is parked on GoDaddy.com. The Complainants further contended the Respondent is one Mr. Suhas Dwarkanath, a former employee of Complainants, who has registered the impugned domain name after his resignation solely to harass and cause wrongful loss to Complainants. The Complainants submitted that the said employee held a significant position in the corporate hierarchy of Moksha Trading FZE and had full knowledge about the business of Complainants and he was fully aware of the use of the brand "BREWING GADGETS" by the above-named entity and even handled and processed several customer orders on behalf of the Complainants under the said brand. The Complainants further submitted that before being appointed as the Manager, the Respondent, Mr. Suhas Dwarkanath, was actively working in the business which is evident from the delivery note. The Complainants further submitted that during his employment, the alleged Respondent used the email info@brewinggadgets.com for communicating with the customers, prospects and other stakeholders in the business and therefore, the Respondent had full



knowledge of the brand "BREWING GADGETS". The Complainants further submitted that the Respondent resigned from his position as Manager on 27th July 2013. The Complainants further submitted that the Respondent has registered the impugned domain names after his resignation to illegally prevent the Complainants from being able to register the impugned domain in for their own use in their own name. The Complainants further submitted that the Respondent, who is the Registrant of the impugned domain name www.brewinggadgets.co.in, is not connected to the Complainants or the Complainants' mark "BREWING GADGETS" in any manner whatsoever and has no rights or legitimate interests in the same whatsoever. The Complainants further submitted that there is no evidence of legitimate use of the impugned domain name www.brewinggadgets.co.in by the Respondent and this gets substantiated from the fact that no content has been uploaded by the Respondent and the said website is not in use. The Complainants further submitted that the impugned domain name has been parked on GoDaddy.com. and the Respondent's primary purpose of registering the impugned domain name www.brewinggadgets.co.in is to prevent and block the Complainants from registering the said domain name and profit from reselling it to the Complainants. The Complainants further submitted that, having gained significant knowledge of the industry during his employment with Complainants and being well versed with the workings of the same, the Respondent may also try to take the Complainants' business away from them by deliberately using a domain name that is identical to and infringes upon the Complainants' trade mark "BREWING GADGETS". The Complainants further submitted that the ill-intention of the Respondent is blatantly clear as the impugned domain name was registered only in the year 2018, i.e. after much deliberation and plotting following the Respondent's resignation, with the motive to cause wrongful loss to the Complainants and wrongful gain to the Respondent. The Complainants further submitted that the Respondent's registration of the impugned domain name www.brewinggadgets.co.in is unauthorised, illegal and entirely malafide. The Complainants further submitted that the Complainants have been using the mark "BREWING GADGETS" continuously and uninterruptedly since August 2011, evidenced by the trade mark registrations and affidavits enclosed with this complaint - while the impugned domain name was registered in November 2018. The Complainants further submitted that it is clear that the Respondent has no legitimate interest in the impugned domain name and has registered it in violation of the IN Domain Name Dispute Resolution Policy, merely for the purpose of preventing the Complainants from registering the impugned domain



name. The Complainants further submitted that the Respondent does not have any legitimate interest in the impugned domain name and have been registered for the primary purpose of illegally preventing the Complainants from being able to register it in their ownname for their own use.

#### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

**C. The domain name was registered and is being used in bad faith.**

#### **Complainants Contentions**

The Complainants contended that the impugned domain name www.brewinggadgets.co.in was registered by the Respondent on 17th November 2018 whereas, Complainant No. 2 had already registered his domain name www.brewinggadgets.com on 01st August 2011. The Complainants submitted the Complainants, in their Trademark Applications, have claimed and proved the prior, continuous and uninterrupted use of the trade mark "BREWING GADGETS" since 01st August 2011. The Complainants submitted that the Respondent has been impleaded in the present Complaint as the impugned domain name www.brewinggadgets.co.in has been registered in its name by the Registrar GoDaddy.com, LLC. The Complainants further contended that the Registrant of the impugned domain name www.brewinggadgets.co.in has no official website and is not operative. The Complainants further submitted that the Complainant apprehends that the Respondent, one Mr. Suhas Dwarkanath, a former employee of Complainants, has registered the impugned domain name, in order to illegally prevent the Complainants from registering the same and for extracting a premium from the Complainants for the purchase of the same from the Respondent. The Complainants further contended that the *mala-fide* intention of the alleged Respondent is blatantly clear as the impugned domain name has been registered only on 17th November 2018, i.e. after much deliberation following the Respondent's resignation. The Complainants further contended that the Respondent has been aware of the use of the mark "BREWING GADGETS" by the Complainants, as he is a former employee of the Complainants and this knowledge of the use of the mark is clearly evidenced from copy of a delivery note signed on behalf of BREWING GADGETS by the alleged Respondent himself. The Complainants further contended that the appointment letter of the Respondent, Mr. Suhas





Dwarkanath, as a manager for BREWING GADGETS under Moksha Trading FZE - the erstwhile permitted user of the trade mark "BREWING GADGETS". The Complainants further contended that the Respondent registered the impugned domain name in bad faith and is misusing the impugned domain name. The Complainants further contended that the impugned domain name www.brewinggadgets.co.in is identical to the Complainant No. 1's registered trade mark "BREWING GADGETS". The Complainants further contended that the impugned domain name www.brewinggadgets.co.in has been registered with the primary intention of illegally preventing the Complainants from exercising their rights to register and own the impugned domain name as per the INDRP Policy and applicable laws. The Complainants further contended that the impugned domain name www.brewinggadgets.co.in has been registered with the sole intention of causing wrongful gains to the Respondent and wrongful loss to the Complainants by squatting on the impugned domain name. The Complainants further contended that the Respondent is, in fact, Mr. Suhas Dwarkanath, he has gained significant knowledge of the industry during his employment with Complainants and being well versed with the workings of the same, the alleged Respondent may also try to take the Complainants' business away from them by deliberately using a domain name that is identical to and infringes upon the Complainants' trade mark "BREWING GADGETS".

#### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

#### **DISCUSSION AND FINDINGS**

The Complainant No. 1, Brewing Gadgets General Trading LLC, is the exclusive licensee of the trade marks "BREWING GADGETS" which are owned by Complainant No. 2 Goutham Kumbargerri Srinath. The Complainants are in business of selling coffee machines, coffee equipment and other coffee related products and services. The Complainants are owner of trademark 'BREWING GADGET' and domain www.brewinggadgets.com. The Complainants' domain name, www.brewinggadgets.com was registered on 01st August 2011 years before registration of disputed domain name in 2018 by the Respondent. The trademark 'BREWING GADGETS' is registered in KSA ( Kingdom Of Saudi Arabia) , UAE ( United Arab Emirates) and also in India where the Respondent is based. The Respondent is former employee of the Complainant's company



Moksh Trading FZE. The Respondent being former employee of Complainants was well versed with the business operations of the Complainant. The disputed domain name does not host any active website and is parked with the Registrar who allotted the disputed domain to the Respondent. The purpose of the respondent appears to gain from the goodwill and popularity of complainant's marks. The Complainants are significantly present of social media platforms. The Respondent has failed to submit any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

#### **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;

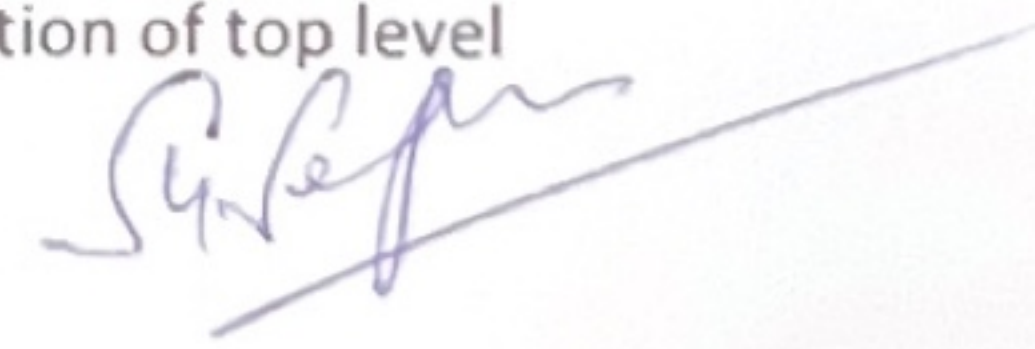
" In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

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 <BREWINGGADGETS.CO.IN> is identical to trademark or trade name in which the Complainant has rights.**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'BREWING GADGETS' by submitting substantial documents. The marks are widely used by the Complainant group in relation to their business. The disputed domain name <BREWINGGADGETS.CO.IN> contains mark 'BRWING GADGETS' of Complainant's mark completely. Addition of top level



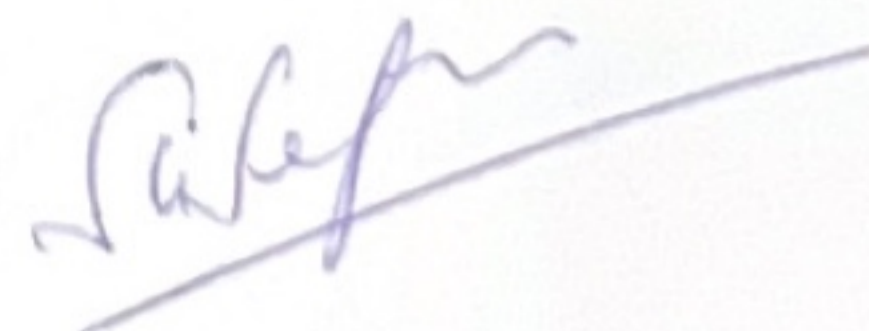
domain (CCTLD) extension 'CO.IN' is insignificant and does little to make it different. There can't be coincidence that the Respondent has chosen domain name similar to the marks/domain of the Complainant. The top level domain <BRWINGGADGETS.COM> was registered by the Complainant in 2011 years before registration of disputed domain <BREWINGGADGETS.CO.IN> by the Respondent in 2018. The disputed domain name <BREWINGGADHETS.CO.IN> is deceptively similar to the mark of the Complainant. The intent of the Respondent appears to commercially gain from the popularity of Complainant's mark. The Respondent has failed to submit any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

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

**The Respondent has no rights or legitimate interests in respect of the Domain Name.**

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'BREWING GADGETS'. The Respondent, a former employee of the Complainants, is not authorized to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. 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 contentions 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 Domain Name was registered or is being used 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 more than seven years before registration of the disputed domain name in 2018 by the Respondent. The panel finds that the Respondent has used the mark of the Complainant in disputed domain. The sole purpose of the Respondent is to create confusion to an ordinary internet user. The Respondent is not hosting any active website on the disputed domain and his motive appears to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has submitted for amicable settlement to this arbitration case.

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


## Decision

Based on the of contentions of the complainant , the attached documents , 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 is not hosting any active website on the disputed domain <brewinggadgets.co.in> and this disputed domain is merely parked. The intent of the respondent is malafide and appears to benefit from the goodwill of the Complainants. The Respondent has failed to submit any response to arbitration notice issued by this panel to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is nearly identical to the Complainant's marks/domain. 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 <BREWINGGADGETS.CO.IN> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

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

No order to costs.

October 27,2023

  
Sudhir Kumar Sengar

SOLE ARBITRATOR