



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL15191967919073V
Certificate Issued Date : 18-Dec-2023 09:28 PM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference : SUBIN-DL DL-SELF94280249192489V
Purchased by : PRABODHA AGRAWAL
Description of Document : Article 12 Award
Property Description : INDRP CASE NO. 1792 - ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : PRABODHA KUMAR AGRAWAL
Second Party : NOT APPLICABLE
Stamp Duty Paid By : PRABODHA KUMAR AGRAWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



SELF PRINTED CERTIFICATE TO BE
VERIFIED BY THE RECIPIENT AT
WWW.SHCILESTAMP.COM

IN-DL15191967919073V

Please write or type below this line

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

Vedicare Ayurveda Private Limited, Delhi vs Mr. Kamal Khanna, Delhi
INDRP Case no. 1792
Arbitrator: Mr. P.K.Agrawal

1 | Page

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. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.

AWARD

1. The Parties

The Complainant is M/S Vedicare Ayurveda Private Limited, No. 2 Forest Lane, Near Ghitorni Metro Station, Sultanpur, M.G. Road, New Delhi-110030.

The Respondent is Mr. Kamal Khanna, 92-B Shahpur Jat DDA Flats Opp Asian Games Village, New Delhi-110049.

2. The Domain Name and Registrar

The disputed domain name is <SOULTREE.CO.IN>. The said domain name is registered with the Registrar – Dreamscape Networks International Pte Ltd (IANA ID: 1219). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a) Domain ROID: DF3BAC195BCC74319B6FC4CAE6F69BEF7-IN
- b) Date of creation: July 27, 2022.
- c) Expiry date: July 27, 2024.

3. Procedural History

- (a) A Complaint dated 13.11.2023 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 04.12.2023 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 04.12.2023. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the

Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 04.12.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed on 13.12.2023 through email that the complaint with annexures was communicated to the Respondent through email dated 5.12.2023, and it was physically sent to the Respondent on 07.12.2023 through Blue Dart courier (delivered on 12.12.2023). In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent has not responded to the Notice. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. **Factual Background**

The Complainant in these proceedings is M/S Vedicare Ayurveda Private Limited, No. 2 Forest Lane, Near Ghitorni Metro Station, Sultanpur, M.G. Road, New Delhi-110030.

Founded in 2002, the Complainant started as an engagement with small farmers and protagonists of development in Himalayas and have grown into a formidable enterprise which is integrated from cultivation of organic herbs to manufacturing of ayurvedic natural & organic beauty products and herbal supplements. The Complainant was incorporated on September 09, 2006 and was registered with the Registrar of Companies with Corporate Identity Number (CIN) U24233DL2006PTC153470.

According to the Complainant, the Complainant's business covers approximately 3000 small farms, a processing unit for herbs, spices & oils, an ayurvedic pharmacy and a manufacturing unit for organic personal care products. Complainant is currently exporting a wide range of products which are available under the label "**Soul Tree**" for personal care and "Vedicare" for organic herbal supplements to Europe, North America, Middle East & Oceania. Complainant has been exporting raw herbs for over almost a decade now.

The said products are promoted, advertised and sold under various trademarks / brands including **SOUL TREE**. The trade mark **SOUL TREE** has been bonafidely adopted by the Complainant and is continuously and extensively used in India since **December 2010** and thereafter in various other countries.

Complainant is a certified processor and handler of organic products. Since 2007, they have been certified to USDA NOP standards as well as Indian NPOP standards which are harmonized with European Organic

standards governed by Council Regulation (EC) No 834/2007. Complainant is audited and certified by OneCert, an accredited body, for compliance with the organic standards. Complainant is also a member of Bundesverband Deutscher Industrie-und Handelsunternehmen (BDIH), a Germany body who is the pioneer in establishing standards for natural cosmetics. In India, the Complainant is a licensed manufacturer of ayurvedic products and follows the GMP guidelines laid down by the Department of Ayurveda under the Ministry of Health, Govt. of India. Complainant has been awarded the GMP certificate for complying with the same in all respects.

Complainant is the registered proprietor of the trade mark **SOUL TREE** and variations thereof in various classes. Details of its Indian Registrations are as under:

| Reg. No. | Trade Mark | Class | Application Date | User Detail |
|----------|-------------------------------------|-------|-------------------|---------------------|
| 1904600 | SOUL TREE | 3 | January 04, 2010 | Proposed to be used |
| 1904601 | SOUL TREE | 35 | January 04, 2010 | Proposed to be used |
| 2386898 | SOULTREE | 3 | August 30, 2012 | December 06, 2010 |
| 2511932 | SOULTREE COLOUR KOHL | 3 | April 11, 2013 | December 01, 2012 |
| 2511933 | SOULTREE COLOUR RICH | 3 | April 11, 2013 | December 01, 2012 |
| 2856928 | SOULTREE | 5 | December 02, 2014 | Proposed to be used |

By virtue of the above registrations, Complainant has the exclusive and statutory rights to use the said trade marks in respect of the goods/services for which they have been registered.

Complainant has also registered the trade mark **SOUL TREE** in different classes in various countries and details thereof are as under: -

| Country | Registration No. | Application Date | Class |
|----------------------------|------------------|-------------------|----------|
| European Union | 011578358 | February 15, 2013 | 3, 5, 35 |
| OHIM | 011578358 | July 12, 2013 | 3, 5, 35 |
| United States | 4429510 | November 5, 2013 | 3 |
| Japan | 5668984 | May 9, 2014 | 3 |
| Australia | 1685006 | December 02, 2014 | 3 |
| New Zealand | 1017013 | December 02, 2014 | 3 |
| International Registration | 1240847 | December 02, 2014 | 3 |

Complainant's products under the trade mark SOUL TREE have been featured in various magazines such as Asia Spa, Better Home and Gardens, Brides Today, FHM, Hair, Harper's Bazaar Bride, Salon International, Verve, The Sunday Standard, IdealHome Garden, Grazia, Beauty Launchpad, Wedding Affair etc. Complainant has collaborated with various hotels and spas where its products under the trade mark SOUL TREE are available, including but not limited to in CGH Earth, Kerala, Ken River Lodge, Madhya Pradesh, Mountbatten Lodge, Rajasthan, Svasara Todoba, Karnataka and The Brook, Goa.

Complainant has active websites namely www.vedicareayurveda.com, www.vedicareorganics.com and www.soultree.in on the internet which contain comprehensive information about the Complainant and also showcase the Complainant's various products including those sold under the trade mark **SOULTREE/ SOUL TREE**. It is also mentioned that the domain name www.soultree.in (Registered on July 04, 2016), prominently displays Complainant's products sold under the trade mark **SOULTREE**.

SOUL TREE / SOULTREE products are available for sale on various well known and popular online shopping websites in India like www.jabong.com, www.nykaa.com, www.amazon.in, www.flipkart.com, www.purple.com, www.myntra.com, www.lmg.com, etc.

Respondent's Identity and Activities

The Complainant has submitted that it was recently brought to the Complainant's notice that a domain name, namely <**SOULTREE.CO.IN**> was registered on **July 27, 2022** by the Respondent/ Registrant. An Internet search revealed that no content is being hosted at the said webpage.

The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

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

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

- a) The disputed domain name <**SOULTREE.CO.IN**> comprises of the Complainant's registered trade mark **SOUL TREE/ SOULTREE** in toto,

- and is therefore visually, phonetically, deceptively and confusingly identical to the Complainant's prior registered trade mark **SOUL TREE/ SOUL TREE** as well as its existing domain containing the name/mark **SOUL TREE/ SOULTREE**. The disputed domain name **<SOULTREE.CO.IN>**, owing to its identity with the Complainant's trademarks and domain names, is likely to mislead, confuse and deceive the Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name.
- b) It is a well-settled principle and has been held by prior panels deciding under the INDRP that where the disputed domain name wholly incorporates the Complainant's trade mark, the same shall be sufficient to establish deceptive similarity. Some notable decisions in this regard are *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Inter-Continental Hotels Corporation v. Jaswinder Singh (INDRP/278)* and *Starbucks Corporation v. Mohanraj (INDRP/118)*.
- c) The Complainant submits that country code top level domains (ccTLD), such as **“.in”** or **“.co.in”** are an essential part of a domain name. Therefore, it cannot be said to sufficiently distinguish the Respondent's domain name **<SOULTREE.CO.IN>** from the Complainant's registered marks **SOUL TREE/ SOULTREE** or its existing domain name **<SOULTREE.IN>** comprising prominently of the name/mark **SOUL TREE/ SOULTREE**. The mere technical requirement of the addition of the ccTLD does not grant any distinction to the Respondent, and the same has been upheld in prior decisions of the panel, including but not limited to in *Urban Outfitters Inc. v. Hua An Holdings (H.K.) Limited (INDRP/601)*. A generic TLD/ccTLD such as **“.co.in”** is a standard registration requirement and therefore cannot be said to distinguish the Respondent's domain name **<SOULTREE.CO.IN>** from the Complainant's registered trademark **SOUL TREE** or their domain. Reliance is also placed on *Equifax Inc. v. Nikhlesh Kunwar INDRP/1038*.
- d) The Hon'ble Supreme Court of India has in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., [2004Supp. (2) SCR 465]* held that the domain name has acquired the characteristic of being a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. This has been observed by prior panels in numerous cases, including but not limited to, *Dell Inc. v. Mani, Soniya INDRP/753*, *Patagonia Inc. v. Doublefist Ltd. (INDRP/1185)*, *Factory Mutual Insurance Company v. Rhianna Leatherwood WIPO Case No. D 2009* and *Avanti Feeds Limited v. Pradeep Chaturvedi (INDRP/1388)*. Further, it has also been observed by the panel in *Zippo Manufacturing Company Inc. v. Zhaxia (INDRP/840)* -

“the Respondent has picked up the mark without changing even a single letter when a domain name wholly incorporates a complainant’s registered mark that is sufficient to establish identity or similarity for purpose of the Policy.”

- e) Reliance is also placed on a prior decision of this Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant’s registered trademark and domain names for “**AMERICAN EAGLE**”, having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,
“The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon’ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant”.
- f) In the present dispute as well, the Complainant has acquired rights in the mark **SOUL TREE/ SOULTREE** much prior to the date on which the Respondent created the disputed domain <SOULTREE.CO.IN> incorporating the Complainant’s registered trade mark **SOUL TREE/ SOULTREE** in toto.

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

In relation to **element (ii)**, the Complainant contends that **the Respondent does not have any right or legitimate interest in <SOULTREE.CO.IN>**.

- a) The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name <SOULTREE.CO.IN>. Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name **SOUL TREE**, and Respondent does not have any affiliation or connection with Complainant or with Complainant’s services under the name/mark **SOUL TREE**. Moreover, it is submitted that **SOUL TREE** is a unique combination of terms coined by the Complainant, having no dictionary meaning, and the Respondent does not prima facie have any reason, to use the Complainant’s well-known trade name/trading style and registered trademark “**SOUL TREE**”. The same constitutes prima facie proof in

favour of the Complainant under Paragraph 4 (b) – that the Respondent does not have any rights or legitimate interests in the domain name. Reliance is placed on *CareerBuilder, LLC v. Stephen Baker, Case No. D2005-0251*.

- b) Further, according to the Complainant, the Respondent cannot assert that it has made or that it is currently making any legitimate non-commercial or fair use of the domain name, in accordance with Paragraph 7 of the .IN Policy and the same is also corroborated by the fact that no website is currently operational from the said domain. In view thereof, it is clear that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 7 (iii) of the INDRP. Further, any use of the domain name <SOULTREE.CO.IN> in the future by Respondent is likely to create a false association and affiliation with the Complainant and its well-known trade mark as well as brand name SOULTREE. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate non-commercial or fair use of the domain name in accordance with Paragraph 7 of the .IN Policy.
- c) Respondent herein has registered the disputed domain <SOULTREE.CO.IN> approximately 7 years after the creation/registration of the domain name <SOULTREE.IN> by Complainant, and many years after the Complainant's trademark registrations. Under the circumstances of this case, Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 7 (iii) of the .IN Policy since there is no apparent legitimate justification for Respondent's registration of the <SOULTREE.CO.IN> domain name, that is visually, phonetically, conceptually, deceptively and confusingly similar/identical to Complainant's trade name/mark.
- d) Further, the continued ownership of the disputed domain name <SOULTREE.CO.IN> by Respondent, despite not having any legitimate or fair reason to do so, prevents Complainant from reflecting its trademark in the subject domain name. In *Motorola, Inc. vs NewGate Internet, Inc. (WIPO Case D2000-0079)*, it was held that *use of the trademarks not only creates a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also results in dilution of the marks.*
- e) For the reasons stated in the foregoing paragraphs, it is not possible to conceive of any plausible use of the domain name <SOULTREE.CO.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known trade mark SOULTREE. Therefore, the Complainant argues that the

Respondent has no rights or legitimate interests in respect of the impugned domain name.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the **Domain Name has been registered and used in bad faith.**

- a) The Complainant argues that in consideration of Complainant's reputation in India, where Complainant has extensive business operations as well as its reputation worldwide, and the ubiquitous presence of Complainant's mark **SOULTREE** on the Internet, Respondent must have been aware of Complainant's trademarks long prior to registering the domain name. In fact, considering that the disputed domain name **<SOULTREE.CO.IN>** as registered by Respondent incorporates Complainant's trade name/trademark **SOULTREE** in toto, reliance is placed on a prior decision of this Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

Hence, Respondent had no reason to adopt an identical name with respect to the disputed domain name except to create a deliberate and false impression in the minds of consumers and internet users that Respondent is somehow associated with or endorsed by Complainant, with the sole intention to ride on the massive goodwill and reputation associated with Complainant and to unjustly enrich from the same.

- b) Moreover, Paragraph 3 of the INDRP states that, *"it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."* As held by the panel in *Lockheed Martin Corporation v. Aslam Nadia (INDRP/947) <lockheedengineering.in>*, since the Respondent failed to discharge such responsibility, the panel concluded that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. In the present dispute as well, the Respondent, at the time of registering the disputed domain name, has clearly failed to reveal that the name/ mark **SOULTREE** and the rights subsisting therein vest exclusively with the Complainant, despite Complainant's reputation in India, thereby illustrating that the impugned domain name has been registered in bad faith.



- c) Further, given that the disputed domain name < **SOULTREE.CO.IN**> as registered by the Respondent is currently inoperative, coupled with the fact that the name/mark **SOULTREE** is a unique combination of words having no dictionary meaning in combination, there is no plausible reason for the Respondent to adopt the domain name <**SOULTREE.CO.IN**>. It is submitted that in light of the aforesaid immense reputation of the Complainant's mark **SOULTREE** worldwide, as well as its ubiquitous presence on the Internet, Respondent was, or should have been, aware of Complainant's trademarks long prior to registering the domain name. In view of the aforesaid, it is submitted that Respondent had constructive notice of Complainant's mark **SOULTREE**. See *Caesars World, Inc. v. Forum LLC* (WIPO Case No. D2005-0517), *HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka*, (WIPO Case No. D2015-0640).
- d) The Complainant further submits that the fact that the Respondent has held the impugned domain for more than a year (close to 15 months) despite having no legitimate interest in the name/mark **SOULTREE** coupled with the fact that Respondent has not used the same for any legitimate purpose, gives the impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold interest in the domain name. This is corroborated by a snapshot dated December 09, 2022 hosted by the digital archive *Wayback Machine* that does not account for any legitimate use at such time either.
- Reliance is placed on *Instagram, LLC v. Contact Privacy Inc. / Sercan Lider* (WIPO Case No. D2019-0419) wherein it was held that “*passive holding can be sufficient to find bad faith use*”. In another decision in *Johnson & Johnson v. Daniel Wistbacka* (WIPO Case No. D2017-0709) while discussing the elements constituting bad faith with respect to passive holding of respondent's domain name as noted in the landmark case of *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No. D2000-0003), it was held that,
- “...In particular it seems that the fifth element (i.e., impossibility to conceive of any plausible active use) is actually a conclusion which was made on the base of the preceding four elements and that this fifth element plays a decisive role in determining whether any particular passive holding can be regarded as a “bad faith” use of a domain name in dispute.*
- In the present case like in the above cited case, the Panel cannot conceive of any plausible use of the disputed domain name that would be legitimate, absent an authorization from the Complainant. As the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that an*

active website connected to the disputed domain name is operated or endorsed by the Complainant, when such is not the case.

The Panel accordingly reaches the conclusion that the passive holding of the disputed domain name amounts to use in bad faith given the circumstances of the case.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

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

According to the Policy, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The disputed domain name <SOULTREE.CO.IN> was registered by the Respondent on July 27, 2022.

The Complainant is an owner of the registered trademark SOUL TREE for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <SOULTREE.CO.IN>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

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

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

Therefore, I hold that the domain name <**SOULTREE.CO.IN**> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

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

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the

Registrant / Respondent is not **SOUL TREE** as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

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

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

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <**SOULTREE.CO.IN**> under INDRP Policy, Para-4(ii).

C. Registered and Used in Bad Faith

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

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

with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. The Respondent has held the impugned domain for more than a year (close to 15 months) despite having no legitimate interest in the name/mark **SOULTREE** coupled with the fact that Respondent has not used the same for any legitimate purpose, gives the impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold interest in the domain name. In WIPO Case No. D2019-0419 - Instagram, LLC v. Contact Privacy Inc. / Sercan Lider, it was held that "passive holding can be sufficient to find bad faith use".

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

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <**SOULTREE.CO.IN**> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator
Dated: 19th Dec, 2023