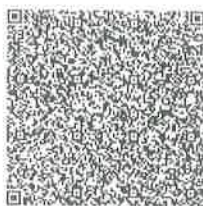


Government of National Capital Territory of Delhi

Certificate No.	IN-DL23595467253395W
Certificate Issued Date	05-Jan-2024 12:44 PM
Account Reference	IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference	SUBIN-DL91450310307718189534W
Purchased by	SUDHIR KUMAR SENGAR
Description of Document	Article 12 Award
Property Description	Not Applicable
Consideration Price (Rs.)	0 (Zero)
First Party	SUDHIR KUMAR SENGAR
Second Party	Not Applicable
Stamp Duty Paid By	SUDHIR KUMAR SENGAR
Stamp Duty Amount(Rs.)	100 (One Hundred only)



Please write or type below this line

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

VEDICARE AYURVEDA PRIVATE LIMITED

Vs

KRISHNA SUREHA

ARBITRATION AWARD Disputed Domain Name: <thesoultree.in>

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

Stock Holding 10/1/24

SUDHIR KUMAR SENGAR SUDHIR KUMAR SENGAR SUDHIR KUMAR SENGAR SUDHIR KUMAR SENGAR SUDHIR KUMAR SENGAR SUDHIR KUMAR SENGAR

1. The Parties

The Complainant in this administrative proceeding is Vedicare Ayurveda Private Limited, No 2 Forest lane, Near Ghitorni Metro Station , Sultanpur , M.G.Road, New Delhi-110030. The Complainant is represented by Arpit Kalra & Pranit Biswas S.S. Rana & Co., Advocates (Email: info@ssrana.com, Telephone: +91-11- 40123000; 4360644).

The Respondent is Krishna Surekha, Ruby 806, My Home Jewels, Madhinaguda, Hyderabad 500049, Telangana, India. (Telephone:+ (91).7032865254 , E-Mail: krishnasurekha@gmail.com). The Respondent is represented by Mr K.B. Chandrasekhar, Advocate, HIG 10, Phase 1, Road No 1,KPHB Colony, Kukatpally, Hyderabad-85 (Phone:9908638881, email:kbcsekhar28@gmail.com).

2. Domain Name and Registrar

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

(ii) The Registrar with whom the domain name is registered is Dreamspace Networks International Pvt Limited (Email abuse@crazydomains.com)

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 December 04, 2023, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on December 04, 2023 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on December 04, 2023 and the Respondent was directed to submit a response within 7(seven) days. The Respondent submitted through email dated 9.12.2023 that she will submit her response after receipt of hard copy from the complainant. The Respondent was further given 5 (Five) days' time through email dated 12.12.2023 to respond to the notice already served through email dated 04.12.2023. On 12.12.2023, the Respondent sought period of 15 days' time to submit her response as the hard copy was received by her only on 8.12.2023.. The Respondent was granted 10 days' time to submit her response. The Respondent submitted her response on 22.12.2023 through her advocate but the



advocate did not submit authorization from the Respondent to represent her in these arbitration proceedings. On 01.01.2024, the Respondent was further given 5 (five) days time to submit the authorization letter. The Respondent submitted the authorization letter on 03.01.2024 and Respondent submission were taken on record.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical to trademark or service mark in which the Complainant has rights.
2. The Respondent has no rights or legitimate interests in respect of the domain name.
3. The domain name was registered or is being used in bad faith.

5. Background of the Complainant

The Complainant submitted that the Complainant, Vedicare Ayurveda Private Limited, (hereinafter referred to as "Complainant") is a company incorporated under the Companies Act, 2013, and includes and intends to include Vedicare Ayurveda Private Limited, its predecessors- in- interest, group companies including subsidiary companies and sister concerns, franchisees, licensees, affiliates, associates, dealers/sub-dealers, retailers and distributors etc. The Complainant submitted that founded in 2002, 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. Complainant was incorporated on September 09, 2006 and was registered with the Registrar of Companies with Corporate Identity Number (CIN) U24233DL2006PTC 153470. The Complainant further submitted that since its inception, the Complainant has become a pioneer in the natural & organic products industry, establishing synergy between the principles of Ayurveda, organic movement and sustainable development. The Complainant further submitted that today, 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. The Complainant further submitted that complainant's teams includes chemists, vaidyas (practitioners of



ayurveda) & quality control experts to achieve harmony between the traditional and the modern and the 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. The Complainant further submitted that the Complainant has been exporting raw herbs for over almost a decade now. The Complainant further submitted that some of the Complainant's distinguished clientele includes manufacturers of herbal beverages, pharmaceutical companies, producers of supplements and manufacturer of homeopathic remedies. The Complainant further submitted that post-harvest processes are carried out on-location and herbs are tested for various quality parameters. The Complainant further submitted that the Complainant is also undertaking cultivation of herbs under buy-back agreements with overseas buyers. The Complainant further submitted that the Complainant's philosophy is to engage with people at the grassroots level & work holistically with nature in order to bring out the benefits and create products that not only improve but enrich human lives. The Complainant further submitted that the Complainant's aim is to provide natural origin and certified organic ayurvedic herbs which are free from synthetic preservatives, color, fragrances, paraffin and silicon. The Complainant further submitted that the Complainant offers a wide range of products which includes various skin care products, bath care products, hair care products and beauty products which are further divided in various segments and the said products are promoted, advertised and sold under various trade marks 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. The Complainant submitted some images of Complainant's products bearing the trade mark SOUL TREE. The Complainant also submitted non-exhaustive list of Complainant's stores located at various locations across India. The Complainant further submitted that the Complainant's organic cold pressed oils retain all their natural goodness and the oils are obtained through traditional cold pressing of organic oils seeds and are filtered



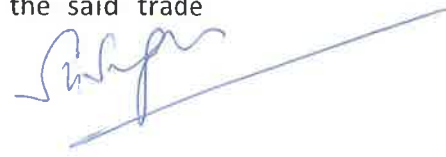
through natural means; Complainants range of organic cold pressed oil include organic sesame oil, organic sunflower oil, organic mustard oil, organic soya bean oil, organic apricot oil, organic almond oil, organic coconut oil etc. Complainant has partnered with various NGOs in Uttaranchal to promote organic farming of herbs and make their benefits available to conscious customers across the world. The Complainant further submitted that the Complainant has also encouraged the cultivation & collection of the herbs by providing an assured market to the farmers and the herbs are processed on location in the Himalayas in a modern well-equipped pharmacy. The Complainant further submitted that each product is guaranteed to meet international standards for heavy metal and micro-biology. The Complainant further submitted that the Complainant offers a range of certified organic herbs like organic brahmi, organic shatavari, organic ashwagandha and combination of herbs with specific benefits for various body systems. The Complainant further submitted that the Complainant is also the first company to offer authentic organic chyawanprash with more than 95% certified organic content and also offers a large range of certified organic herbs as Chumas. The Complainant further submitted that the Complainant sells its organic massage oils primarily to spas and therapists and their range of SOUL TREE oils includes classical oils like *mahanrayan oil*, *shirodhara oil*, *bhringraj oil*, *kumkumadi oil* etc. which are essentially prepared from herbs in cold pressed oils, mainly sesame oil. The Complainant further submitted that the Complainant also uses certified organic herbs of the highest quality and organic cold-pressed oils to prepare classical as well as proprietary massage oils, and the complainant submitted a screenshot of some of their products under the SOUL TREE mark. The Complainant further submitted that the Complainants range of natural personal care & beauty products under the trade mark SOUL TREE are made from natural origin ingredients and contain ayurvedic herbs as active ingredients. The Complainant further submitted that the Complainant's entire production including processing of ayurvedic herbs is carried out at its own manufacturing facility; thus, giving us a complete control over quality of the products. The Complainant further submitted that that the Complainant uses



ayurvedic extracts produced in traditional manner instead of substituting them with superficially obtained extracts. The Complainant further submitted that the Complainant's products under various trademarks including SOUL TREE are India's first and only range of certified natural personal care products which are manufactured from organic herbs and natural origin ingredients and carry the assurance of Bundesverband Deutscher Industrie-und Handelsunternehmen (BDIH) seal. The Complainant further submitted that the Complainant's SOUL TREE hair care products include shampoos, conditioners and hair oils. The Complainant further submitted that the Complainant's shampoos are free from sodium laureth sulfate and sodium lauryl ether sulfate (SLS/SLES) and contain a selection of organic ayurvedic herbs which address problems like falling hair, premature greying, dandruff and dryness. The Complainant further submitted that the Complainant's hair oils are made from organic cold pressed oils and contain extracts of organic herbs prepared in the traditional ayurvedic way. The Complainant further submitted that in keeping with Complainant's philosophy of combining beauty with benefit, they have developed a unique range of ayurvedic lipsticks and kajals made from organic and natural ingredients and the colors used are of mineral origin, so the lipsticks are completely natural and safe. The Complainant further submitted that the Complainant has preserved this tradition and at the same time expanded the range with other colors in addition to black. The Complainant submitted screenshot showing Complainant's above mentioned product under the SOUL TREE mark. The Complainant further submitted that the Complainant's products are born out of extensive research firmly rooted in the principles of Ayurveda and are made from natural oils and other natural origin ingredients, these natural origin ingredients are derived from natural sources through strictly regulated processes to ensure that synthetic & harmful ingredients do not make their way into Complainant's products. The Complainant further submitted that no artificial colours, fragrances or harmful preservatives are used and all of the Complainant's products are environment friendly; the raw material sourcing follows the environment friendly practices like organic farming and water



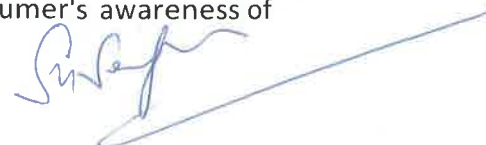
conservation. The Complainant further submitted that the Complainant is a certified processor and handler of organic products and since 2007, they have been certified to USDA NOP standards as well as Indian NPOP standards which are harmonized with European Organic standards governed by Council Regulation (EC) No 834/2007. The Complainant further submitted that the Complainant is audited and certified by OneCert, an accredited body, for compliance with the organic standards. The Complainant further submitted that the 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 and BDIH is one of the founders of the harmonized COSMOS standard for natural & organic cosmetics. The Complainant further submitted that the Complainant follows the strict BDIH standards for manufacturing and selling of natural cosmetics and these include restriction on the use of parabens, artificial fragrances, petroleum based ingredients and promoting the use of organic ingredients as far as possible & the compliance to these standards is verified by BDIH's certification arm, IONC. The Complainant further submitted that in addition to having the Complainant's own products from the SOUL TREE range certified by BDIH. The Complainant further submitted that the Complainant is also a contract manufacturer for various reputed European brands which are certified by BDIH. The Complainant further submitted that 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. The Complainant further submitted that the Complainant has been awarded the GMP certificate for complying with the same in all respects. The Complainant further submitted that the Complainant is the registered proprietor of the trade mark SOUL TREE and variations thereof in various classes and the Complainant has submitted the details of its Indian Registrations. The Complainant further submitted that the aforesaid registrations are valid, renewed and subsisting. The Complainant further submitted that by virtue of the said registrations, the 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. The Complainant has also submitted copies of the registration certificates of the aforementioned trade mark registrations. The Complainant further submitted that the Complainant has also registered the trade mark SOUL TREE in different classes in various countries and submitted details thereof. The Complainant further submitted that the Complainant has spent a substantial amount on advertisements and sales promotion of Complainant's various products and services including those sold and provided under the trade mark SOUL TREE and variations thereof. The Complainant further submitted that the Complainant's reputation and valuable goodwill in the aforementioned trade marks have not come from sales and promotional efforts alone. The Complainant further submitted that in order to expand their reputation, Complainant has taken numerous steps through the years and the Complainant's trademarks have been advertised in a wide variety of print and electronic media, including newspapers, magazines, radio and satellite television channels as well as on the Internet. The Complainant further submitted that the Complainant regularly issues blogs to keep their worldwide customers informed about the recent developments of their company and their trade mark SOUL TREE and variations thereof. The Complainant further submitted that the reputation of a trade mark in today's world is not limited either by geographical or political boundaries as with the case of communications, people and reputations travel around the world crossing such boundaries, as if they did not even exist. The Complainant further submitted that with the advent of satellite television and lately the Internet the world has become a global village. The Complainant further submitted that the reputation of a trade mark flashes quickly throughout the world through the aforesaid media of advance information technology. The Complainant further submitted that the Complainant has a presence on the internet and information about them is accessible to persons in India & abroad and even a simple online search for the word SOUL TREE reveals details of Complainant's various products under the said mark. The Complainant further submitted that the 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, Ideal Home Garden, Grazia, Beauty launchpad, Wedding Affair etc. The Complainant further submitted that the 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. The Complainant further submitted that the Complainant is also engaged in Corporate Gifting Programs which offer distinctly unique products which are made from finest natural ingredients offering body and hair care products. The Complainant further submitted that the Complainant has active websites namely www.vedicareayurveda.com, www.vedicareorganics.com and www.soultree.in on the internet which contains comprehensive information about the Complainant and also showcase the Complainant's various products including those sold under the trade mark SOULTREE/ SOUL TREE. The Complainant further submitted that it is pertinent to mention that the domain name www.soultree.in (Registered on July 04, 2016), prominently displays Complainant's products sold under the trade mark SOULTREE. The Complainant further submitted that in addition to Complainant's official websites, Complainant also uses the medium of social networking to promote its goods/services under various trademarks including SOUL TREE and variations thereof. The Complainant further submitted that Complainant has been promoting its business on social networking websites like Facebook (198K Likes as on October 17, 2023), LinkedIn (8K Followers as on October 17, 2023), Instagram (101 K Followers as on October 17, 2023) and Twitter (X). The Complainant further submitted that the SOUL TREE / SOULTREE products are available for sale on various well known and popular online shopping websites in India like jabong.com , nykaa.com, amazon.com, flipkart.com, purple.com, myntra.com, www.1mg.com etc. The Complainant further submitted that it is pertinent to mention that with the internet, the Indian consumer's awareness of



Complainant's products and the marks/names associated with them has been heightened considerably. The Complainant further submitted that by virtue of continuous and extensive use worldwide and in India since December, 2010 and quality of Complainant's products, Complainant's business has acquired substantial reputation in the industry and its trade marks SOUL TREE/ SOULTREE and variations thereof are always associated with its business and products alone. The Complainant further submitted that the Complainant's trade mark SOUL TREE/ SOULTREE is well known and famous in India within the meaning of Section 2 (1)(zg) of the Act. The Complainant further submitted that the Trade Marks Act, 1999 provides for protection of well-known marks in India and the Complainant make every effort to protect its trade mark rights. The Complainant further submitted that the protection of Complainant's trademarks extends beyond registration activities to enforcement actions, which range from opposing trade mark applications for the same or similar mark to sending cease and desist letters to infringers of the identical or marks similar to Complainant's trademarks. The Complainant further submitted that it was recently brought to the Complainant's notice that a domain name, namely <THESOULTREE.IN> was registered on February 25, 2022 by the Respondent/Registrant and an Internet search revealed that a parked page hosting several pay-per-click advertisements is being hosted at the said webpage. The Complainant further submitted that as the domain name <THESOULTREE.IN> incorporates the Complainant's registered trade mark SOUL TREE/ SOULTREE in entirety; its domain names soultree.in in toto; and its label/ brand under the name SOUL TREE. The Complainant further submitted that the Complainant is constrained to file the present complaint, in order to safeguard its valuable Intellectual Property Rights.

The Respondent is Krishna Surekha, Ruby 806, My Home Jewels, Madhinaguda, Hyderabad 500049, Telangana, India. (Telephone:+ (91).7032865254 , E-Mail: krishnasurekha@gmail.com). The Respondent registered the disputed domain name <the soultree.in> in Feb, 2022. The Respondent is a woman run non-profit organisation doing business in the Name of "THE SOUL TREE FOUNDATION "with intangible services being provided as TAROT, NUMEROLOGY, REIKI, RUNES, HYPNOTHRAPIST, PAST LIFE,

AKASHIC, RECORD READER, PENDULAM, DOWSING, MEDITATION, ENERGY VASTU. No product being manufactured nor marketed by the Respondent.

Legal Grounds

A.The domain name <THESOULTREE.IN> is identical to a trade mark in which

Complainant has rights

(Paragraph 4(a) of the .IN Policy)

Complainant's Contentions

The Complainant contended that the Complainant is the registered proprietor of the trademark SOUL TREE/SOULTREE in many countries around the world, including in India, and has been continuously and exclusively using the same in relation to its business for many years. The Complainant further contended that the Complainant has continuously been in use of the brand since December 2010, which is much prior to the date on which Respondent registered the domain <THESOULTREE.IN>, i.e. more than a decade apart. The Complainant further contended that the by virtue of long standing use and registration, Complainant's trademark SOUL TREE/SOULTREE qualifies to be a well-known mark and is bound to be protected. The Complainant further contended that the impugned domain name <THESOULTREE.IN> comprises or the Complainant's registered trade mark SOUL TREE/SOULTREE, as well as the domain name <SOULTREE.IN> 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 Complainant further contended that the mere addition of article 'THE' to unique combination of words 'SOULTREE' that were originally coined by the Complainant does nothing to distinguish it from Complainant's brand name and trade mark, or to prevent the public from associating it with the Respondent. The Complainant has relied on *Compagnie Generale Des Etablissements Michelin v. Richard Geist, Arminmydeals.com Colp/Unc Sam* (Case No. D2020-3438) wherein it was observed that the addition of the definite article "the" in the disputed domain names has no impact on the assessment of confusion as it does not alter the fundamental character of these disputed domain names. Similarly, the disputed domain name <THESOULTREE.IN>, owing to its identity with the Complainant's trademarks and domain names, is highly 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. The Complainant further contended that 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. The Complainant has relied on some notable decisions in this regard are Kenneih Cole Productions v. Viswas Infomedia INDRP/093, Inter-Continental Hotels Corporation v. Jaswinder Singh (INDRP/278) and Starbucks Corporation v. Mohanraj (INDRP/118). The Complainant further contended that the the Hon'ble Supreme Court of India has in the case of Satyam Infoway Ltd v. Sifynet Solutions Pvt. Ltd., (2004Supp.(2)SCR465) held that the domain name has acquired the characteristic of being a business identifier. The Complainant further contended that domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers and this has been observed by prior panels in numerous cases inncluding but not limited to Dell Inc. v. Mani, Soniya (INDRP/1753), 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). The Complainant further contended that the it has also been observed by the panel in Zippo Manufacturing Company Inc. v. Zhaxia (IN DRP/840) wherein "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 the purpose of the Policy. The Complainant has also relied 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". The Complainant further contended that the in the present dispute as well, the Complainant has acquired rights in the mark SOUL TREE/SOULTREE by way of trademark registrations, and by virtue of use as part or their domain names since much prior to the date on which the Respondent created the impugned domain <THESOULTREE.IN> incorporating the Complainant's registered trade mark SOUL TREE/ SOULTREE in toto. The Complainant further contended that the evident identity between Respondent's domain name and Complainant's marks, domain names and brand name incorporating SOUL TREE is likely to mislead, confuse and deceive Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of Respondent's domain name. The Complainant further contended that the as evidenced in the preceding paragraphs, Complainant's rights over the marks SOUL TREE predate the Respondent's registration of the impugned domain

<THESOULTREE.IN> by more than one decade, which as per the WHOIS records, was only registered/created on February 25, 2022.

Respondent's Contentions

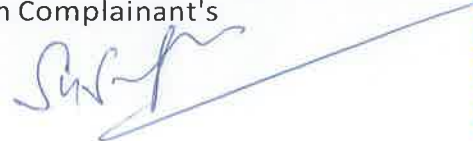
The Respondent submitted that the Respondent is a woman run non-profit organization doing business in the Name of "THE SOUL TREE FOUNDATION "with intangible services being provided as follows TAROT, NUMEROLOGY, REIKI, RUNES, HYPNOTHRAPIST, PAST LIFE, AKASHIC, RECORD READER, PENDULAM, DOWSING, MEDITATION, ENERGY VASTU. The Respondent further submitted that only the domain name is being taken and the web site is yet to be developed after spending money and there is no product being manufactured nor marketed by the Respondent and no infringement as such being alleged by the Complainant. The Respondent contended that no where there is implicit or explicit mention of the name or product that may come in the web site that is yet to be developed and there is no relation to what products the trade name and trade mark have been used. The Respondent further contended that there is no goodwill of the Complainant that can be used by the Respondent to promote the business which does not have any similarity. The Respondent further contended that the Respondent is not into sales or marketing of products of the Complainant. The Respondent further contended that the word in the domain name as such is a adjective and noun and is generic and the goods or products that are manufactured by the Complainant is sold and marketed does not have any correlation between the Trade name and the Trade mark that have been used and that of the Respondent who is in providing services as cited above. The Respondent further submitted that the Respondent has taken a generic domain name which is related to SOUL as this is a service being provided to refresh ones SOUL by way of various remedies offered and no products are marketed nor manufactured as such. The Respondent contended that all the documents perused by the Complainant are pertaining to Trademark and Tradename only and the domain name as such will not create any confusion for the users. The Respondent further contended that the notice served does not have any locus stadia as such because the web site is not developed and the Complainant is not aware of the contents as such. The Respondent further submitted that the Respondent did not develop the website and is prepared to withdraw/ cancel the domain name, subject to payment of expenses incurred for obtaining the Domain.

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

(Paragraph 4 (b) and Paragraph 6 of the INDRP)

Complainant's Contentions

The Complainant contended that Respondent has no rights or legitimate interests in the domain Name <THESOULTREE.IN>. The Complainant further contended that the Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name SOUL TREE and/or its phonetic equivalents/ variations, and Respondent does not have any affiliation or connection with Complainant or with Complainant's



services under the name/mark SOUL TREE. The Complainant further contended that the 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" and 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. The Complainant has relied on Career Builder, LLC v. Stephen Baker, Case No. D2005-0251. The Complainant further contended that 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 6 of the .IN Policy and the same is also collaborated by the fact that no website is currently operational from the said domain & Instead, a parked page featuring several pay-per-click (PPC) links advertising various services, are currently featuring on the impugned domain. The Complainant further contended that the Respondent is also ineligible to sustain their rights under the ambit of Paragraph 6 (b) of the INDRP, given the fact that the Respondent has held the impugned domain for more than a year (close to 20 months) despite having no legitimate use thereof. The Complainant further contended that the they most certainly are not in any capacity commonly known by the impugned domain name <THESOULTREE.IN> and in no way have any claim under Paragraph 6 of the INDRP. The Complainant further contended that the it is also 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 6 (c) of the INDRP and any use of the domain name <THESOULTREE.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. The Complainant further contended that the 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 6 of the .IN Policy. The Complainant further contended that the Respondent herein has registered the disputed domain <THESOULTREE.IN> approximately 6 years after the creation/registration of the domain name <SOULTREE.IN> by Complainant, and several years after the Complainant's use on the marks SOUL TREE/ SOULTREE and its trademark registrations. The Complainant further contended that the under the circumstances of this case, Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph G (c) of the .IN Policy since there is no apparent legitimate justification for Respondent's registration of the <THESOULTREE.IN> domain name, that is visually, phonetically, conceptually, deceptively and confusingly similar/identical to Complainant's trade name/mark. The Complainant further contended that the

continued ownership of the disputed domain name <THFSOULTREE.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. The Complainant has relied on *Motorola Inc. vs NewGate Internet Inc.* (WIPO Case D2000 -0079) wherein it was held that use of the trademark 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 marks. The Complainant further contended that for the reasons stated in the forgoing paragraphs it is possible to conceive any plausible use of domain name <the soultree.in> that would not be illegitimate, as it would inevitably create a false association and affiliation with the complainant and its well-known mark. The Complainant further contended that the Respondent has no rights or legitimate interests in respect of the impugned domain name.

Respondent's Contentions

The Respondent submitted that the Respondent is a woman run non-profit organization doing business in the Name of "THE SOUL TREE FOUNDATION "with intangible services being provided as follows TAROT, NUMEROLOGY, REIKI, RUNES, HYPNOTHERAPIST, PAST LIFE, AKASHIC, RECORD READER, PENDULAM, DOWSING, MEDITATION, ENERGY VASTU. The Respondent further submitted that only the domain name is being taken and the web site is yet to be developed after spending money and there is no product being manufactured nor marketed by the Respondent and no infringement as such being alleged by the Complainant. The Respondent contended that no where there is implicit or explicit mention of the name or product that may come in the web site that is yet to be developed and there is no relation to what products the trade name and trade mark have been used. The Respondent further contended that there is no goodwill of the Complainant that can be used by the Respondent to promote the business which does not have any similarity. The Respondent further contended that the Respondent is not into sales or marketing of products of the Complainant. The Respondent further contended that the word in the domain name as such is a adjective and noun and is generic and the goods or products that are manufactured by the Complainant is sold and marketed does not have any correlation between the Trade name and the Trade mark that have been used and that of the Respondent who is in providing services as cited above. The Respondent further submitted that the Respondent has taken a generic domain name

which is related to SOUL as this is a service being provided to refresh ones SOUL by way of various remedies offered and no products are marketed nor manufactured as such. The Respondent contended that all the documents perused by the Complainant are pertaining to Trademark and Tradename only and the domain name as such will not create any confusion for the users. The Respondent further contended that the notice served does not have any locus stadia as such because the web site is not developed and the Complainant is not aware of the contents as such. The Respondent further submitted that the Respondent did not develop the website and is prepared to withdraw/ cancel the domain name, subject to payment of expenses incurred for obtaining the Domain.

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

(Paragraph 4(c) and Paragraph 7(f) of INDRP Policy)

Complainant's Contentions

The Complainant further contended that the in consideration of Complainant's reputation in India, where Complainant has extensive business operations (as demonstrated in the preceding paragraphs) 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. The Complainant further contended that the considering that the disputed domain name <THESOULTREE.IN> as registered by Respondent incorporates Complainant's trade name/trademark SOULTREE in toto, reliance is placed on a prior decision of thus 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." The Complainant further contended that the 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 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. The Complainant further contended that the fact that the mark SOUL TREE is a unique combination of words coined by the Complainant, further aggravates the

Respondent's bad faith, in as much as, the Respondent is using the identical name with respect to the impugned domain name <THESOULTREE.IN>. The Complainant further contended that there can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <THESOULTREE.IN> which incorporates the Complainant's mark SOUL TREE as well as their domain name <SOULTREE.IN> in toto. The Complainant further contended that the fact that the Respondent is currently using the domain impugned domain name in relation to parked page displaying advertisements/links gives unwavering impressions that it is a case of passive holding and same tantamount to the fact that the respondent does not hold any legitimate interest in the domain name. The Complainant has relied on Online services private Ltd Vs Azeem Ahmad wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith." The Complainant further contended 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 trade marks long prior to registering the domain name. The Complainant further contended that in view of the aforesaid, it is submitted that Respondent had constructive notice of Complainant's mark SOULTREE. The Complainant has relied on Caesars World Inc. v. Forum LLC IPO Case No. D2005-0517), HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka, (WIPO Case No. D2015-0640). The Complainant has also relied 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". The Complainant has also relied on Johnson & Johnson v. Daniel Wistbacka (WIPO Case No. D2017-0709) while discussing the elements constituting bad faith 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 made on the base of four preceding elements and this fifth elements plays

a decisive role in determining whether any passive holding can be regarded as bad faith use of 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." The Complainant further contended that the facts and contentions enumerated above establish that Respondent's domain name registration for <THESOULTREE.I> is clearly contrary to the provisions of paragraph 4(c) of the INDRP.

Respondent's Contentions

The Respondent submitted that the Respondent is a woman run non-profit organization doing business in the Name of "THE SOUL TREE FOUNDATION "with intangible services being provided as follows TAROT, NUMEROLOGY, REIKI, RUNES, HYPNOTHERAPIST, PAST LIFE, AKASHIC, RECORD READER, PENDULUM, DOWSING, MEDITATION, ENERGY VASTU. The Respondent further submitted that only the domain name is being taken and the web site is yet to be developed after spending money and there is no product being manufactured nor marketed by the Respondent and no infringement as such being alleged by the Complainant. The Respondent contended that nowhere there is implicit or explicit mention of the name or product that may come in the web site that is yet to be developed and there is no relation to what products the trade name and trade mark have been used. The Respondent further contended that there is no goodwill of the Complainant that can be used by the Respondent to promote the business which does not have any similarity. The Respondent further contended that the Respondent is not into sales or marketing of products of the Complainant. The Respondent further contended that the word in the domain name as such is an adjective and noun and is generic and the goods or products that are manufactured by the Complainant is sold and marketed does not have any correlation between the Trade name and the Trade mark that have been used and that of the Respondent who is in providing services as cited above. The

Respondent further submitted that the Respondent has taken a generic domain name which is related to SOUL as this is a service being provided to refresh ones SOUL by way of various remedies offered and no products are marketed nor manufactured as such. The Respondent contended that all the documents perused by the Complainant are pertaining to Trademark and Trade name only and the domain name as such will not create any confusion for the users. The Respondent further contended that the notice served does not have any locus stadia as such because the web site is not developed and the Complainant is not aware of the contents as such. The Respondent further submitted that the Respondent did not develop the website and is prepared to withdraw/cancel the domain name, subject to payment of expenses incurred for obtaining the Domain.

7. Discussion and findings

The Complainant Vedicare Ayurveda Private Limited is an company to manufacturing of natural & organic personal care products. The Company is registered in Sep, 2006 with the Registrar of Companies. The Complainant's range of products which are available under the label "Soul Tree" for personal care. The Complainant is also operational in many countries of the world. The Complainant's products are sold under various trade marks brands including SOUL TREE. The trade mark SOUL TREE has been used by Complainant in India since December 2010. The Complainant's stores are located in various across India. The Complainant's products under various trademarks including SOUL TREE carry the assurance of Bundesverband Deutscher Industrie-und Handelsuntemehmen (BDIH) seal. The Complainant is the registered proprietor of the trade mark SOUL TREE and variations thereof in various classes. Complainant has also registered the trade mark SOUL TREE in different classes in various countries. The Complainant spends substantially on advertisements & promotion of Complainant's various products and services in print/electronic media Media. the Complainant has active website vedicareayurveda.com, The Complainant has active website <vedicareorganics.com>. The domain name <soultree.in> was registered by the Complainant in 2016 years before the registration of disputed domain by the Respondent. The Complainant is also significantly present on social networking websites like Facebook, LinkedIn

Instagram and Twitter (X). The SOUL TREE / SOULTREE products are also sold through on line shopping websites in India. The Complainant's trade mark SOUL TREE/ SOULTREE is well known and need to be protected from unauthorized misuse by third parties. The disputed domain name <THESOULTREE.IN> was registered on February 25, 2022 by the Respondent years after registration of trademarks/domain by the Complainant. The disputed domain contains in entirety mark/domain 'soultree' of the Complainant. The Respondent's domain lands on a parked page hosting several pay-per-click advertisements. The parked page is clearly a case of passive holding of domain. The Respondent does not have any active website even after 20 months of the registration of disputed domain in Feb, 2022. The respondent's contentions that its products/services are different from those of the Complainant does not hold any ground because any ordinary internet user/consumer is likely to take Respondents products/services associated with or affiliated to the Complainant. The Complainant is prior user of marks/domain and its mark/domain need to be protected from unauthorized use by third parties. The respondent has failed to submit any supportive evidence to justify its interest in the disputed domain name <thesoultree.in>. The addition of generic article 'the' in the disputed domain name <the soultree.in> does little to make it different from the mark/domain of the Complainant. The combination of word 'soultree' in marks/domain of the Complainant is not generic but it is unique combination coined by the Complainant. *The Respondent has submitted to withdraw or cancel the domain conditionally but has not shown any evidence to show her preparedness to develop the website.*

The domain name <thesoultree.in> is identical to a name, trademark or service mark in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks 'SOUL TREE' and 'SOULTREE' by submitting substantial documents. The mark comes under category of well known trademark .The mark is widely used by the Complainant in advertising and has a strong presence in internet world. The disputed domain contains name which is identical and similar to mark 'SOULTREE' as the disputed domain contains Complainant's mark completely. Addition of word 'the' is insignificant and does little to

make it different. There can't be coincidence that the Respondent has chosen domain identical to the marks/domain of the Complainant. The Complainant is using the mark 'soultree' since 2010. The domain <soultree.in> was registered by the Complainant in 2016 years before registration of disputed domain by the Respondent in Feb, 2022.

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

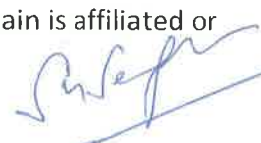
The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark SOUL TREE/SOULTREE. The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant's mark/domain. The Respondent is not known by the mark/domain and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest. 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 submitted response to justify the legitimate interests in the disputed domain name .

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 the using the mark for several years when the Respondent registered the disputed domain name in 2022. The panel finds that the Respondent has used the well known mark of the Complainant in disputed domain name giving impression that this domain is affiliated or



associated with the Complainant. The disputed domain lands on a parked page parked page hosting several pay-per-click advertisements. The intent of the Respondent appears to profit from the reputation of the Complainant's mark/domain and 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.

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 , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to submit evidence to justify its legitimate interest in the disputed domain. The Complainant is prior user of mark/domain. This panel has also taken notice of the fact the Respondent has offered to withdraw/cancel the domain. In view of the forgoing discussion, I am of the opinion that the disputed domain name is 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 <thesoultree.in> may be cancelled and 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.

January 10,2024


Sudhir Kumar Sengar

Sole Arbitrator