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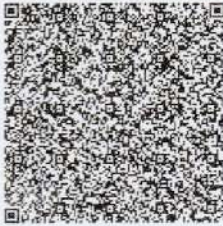
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Purchased by	: SANJEEV CHASWAL
Description of Document	: Article 12 Award - Movable
Property Description	: INT THE MATTER OF DOMAIN NAME APOLLO TYRES IN INDRP CASE NO 1797
Consideration Price (Rs.)	: 100 (One Hundred only)
First Party	: SANJEEV CHASWAL
Second Party	: NA
Stamp Duty Paid By	: SANJEEV CHASWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

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INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL
Arbitration Proceeding for the Domain name <apolloyres.in> and INDRP Case no: 1797

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**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

In the matter of Arbitration Proceeding for the Domain name

<apolloytyres.in>

and in the matter of INDRP Case no: 1797

**M/s. Apollo Tyres Limited
Apollo House, 7 Institutional Area,
Sector 32, Gurugram – 122001**

.....Complainant

Vs.

**M/s. Premium Domain Planet
New Jersey, United States of America
Email : premiumdomainplanet@gmail.com**

..... Respondent

ORDER

History:

WHEREAS I, have been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant The Complainant in this administrative proceedings is M/s. M/s. Apollo Tyres Limited, Apollo House, 7 Institutional Area, Sector 32, Gurugram – 122001, represented through its authorized attorneys seeking invoking of arbitration proceedings, against the Registrant / Respondent M/s.Premium Domain Planet, New Jersey, United States of America vide Email : premiumdomainplanet@gmail.com in respect of registration of domain name **<apolloytyres.in>**



The Complainant has filed the above arbitral complaint against you as Registrant / Respondent for registering the domain name **<apolloyres.in>** thus seeking a claim of relief for transferring the domain name to the Complainant herein

As per the WHOIS record the Registrant / Respondent, who had obtained registration of domain name **<apolloyres.in>** through the IN. registry Registrar's M/s. Endurance Digital Domain Technology LLP, and the said Registrar has withheld the registration record containing the address and the domain details of the Registrant / Respondent by invoking "REDACTED FOR PRIVACY" But the NIXI has provided the copies of WHOIS record containing the address and the domain details of the Registrant / Respondent.

In the above said arbitral reference the sole arbitrator had issued the directions to the complainant and the Registrant / Respondent to comply notice of **20th December 2023** to file reply, detail statement, if any, **within 15 (fifteen) days from issue the date of this Notice**, the reply detail statement, if any should reach by **5th of January 2024** and the complainant had served the notice to the respondent / registrant to their email address as listed in WHOIS records. As such the issued notice is duly served to the respondent / registrant.

The respondent / registrant M/s. Premium Domain Planet, New Jersey, USA vide their Email :premiumdomainplanet@gmail.com has submitted its short email reply, statement in the above arbitral reference in respect of registration of domain name **<apolloyres.in>**, before **5th of January 2024** under INDRP Rules and procedure.

1. The Parties:

The Complainant in this arbitration proceeding is M/s. Apollo Tyres Limited, Apollo House, 7 Institutional Area, Sector 32, Gurugram – 122001, represented through its authorized attorneys seeking invoking of arbitration proceedings, against the Registrant / Respondent M/s. Premium Domain Planet, New Jersey, in respect of domain name **<apolloyres.in>**, and seeking a claim of relief of transferring the said domain name to the Complainant herein.



2. The Domain Name and Registrar:

2.1 The disputed domain name <*apolotyres.in*>, is registered by the IN. registry registrar M/s.Endurance Digital Domain Technology LLP

3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to their solution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), the NIXI formally notified the appointment to the Respondent as well as the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under. IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.

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

3.3 The present Arbitral Proceedings have commenced on 20th of December 2023 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as directing the complainant to serve the copies of the domain complaint along with documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the record and the same was served by the complainant to the Respondent / Registrant



3.4 Further as per the issued Notice, the Respondent / Registrant was directed to file its reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 5th January 2024, failing which the Complaint shall be decided on the basis of the merits.

3.5 The respondent / registrant have submitted its short email reply in place of detail statement in the above arbitral reference thereby ready to forgo or release domain name <apollo~~ty~~res.in>, in favour of the respondent

4. Factual Background:

4.1 The Complainant in this administrative proceedings is in this administrative proceedings is M/s. M/s. Apollo Tyres Limited, Apollo House, 7 Institutional Area, Sector 32, Gurugram – 122001,, company incorporated under the Indian laws has invoked domain arbitration proceedings in respect of registration of domain name <apollo~~ty~~res.in>, against the Registrant / Respondent M/s. Premium Domain Planet, and is seeking a claim of relief of transferring the said domain name to the Complainant herein.

5 Parties Contentions:

5.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief transfer of the domain name against the Registrant / respondent for registering domain name <apollo~~ty~~res.in> illegally.

5.2 The Registrant / Respondent have submitted its short email reply in place of detail statement in the above arbitral reference thereby ready to forgo or release domain name <apollo~~ty~~res.in>, in favour of the respondent.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <apollo~~ty~~res.in>, is stated as under:



I. To decide the matter there are Grounds for proceedings to be adjudged

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory / common law rights.

B. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. That the disputed domain name has been registered or is/are being used in bad faith.

The Complainant has submitted its detailed contentions in their complaint that are stated in details as under:

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.

The Complainant's Claim of Statutory Rights:

5.4 The complainant submits that the complainant company was established in the year 1972 as a single brand enterprise and has over the years grown into a conglomerate having its footprints across countries and brands. Today, the Complainant is the largest tyre manufacturer in India and one of the top 20 tyre manufacturers in the world. The Complainant manufactures and sells a range of automotive tyres for passenger cars, truck and bus, farm, off-the-road, industrial and specialty applications like mining, retreaded tyres and retreading material.

5.5 The Complainant submits that the complainant company has manufacturing presence in Asia and Europe, with seven modern tyre facilities located in India (5) and Hungary and Netherland exporting to over one hundred countries and is powered by its major brands APOLLO and VREDESTEIN.



the Complainant offers a comprehensive product portfolio spread across passenger car, light truck, truck-bus, off highway and bicycle tyres, retreading material and retreaded tyres. At the end of its financial year on March 31, 2023, the Complainant had clocked a turnover of approximately US\$ 3 billion, backed by a global workforce of approximately 19,000 employees. The complainant further submits that the complainant has 19,500 full-time employees with 36 offices in cities around the world and operates websites in 26 languages.

5.6 The Complainant further submits that the Complainant has regularly been running extensive advertisements from time to time in various countries showcasing its portfolio of products under the mark 'APOLLO'. The Complainant also maintains the website www.apollotyres.com (date of registration: March 04, 1998), which has contributed immensely to the popularity and well-known character of the Complainant as well as its products both internationally and nationally. Additionally, information pertaining to the Complainant and its products under the mark 'APOLLO' are also readily available and frequently accessed through search engines such as www.google.com , www.yahoo.com , www.msn.com , etc. The Complainant also has substantial presence on the internet through its website www.apollotyres.com is a ready medium of exposure to potential consumers and members of trade to widespread information about the Complainant and its products under the mark 'APOLLO'

5.7 That in order to safeguard its right in its trade marks, the Complainant has secured several trade mark registrations and filed applications filings worldwide including in India. The Complainant has been using the mark 'APOLLO' APOLLO with artwork since 1972. The Complainant has superior national and international statutory rights in the mark 'APOLLO'has brands prestige and global & national presence within the Complainant, and in view thereof, Complainant has its 'APOLLO' trademarks duly registered in India,



- 5.8 In connection with its worldwide business, the Complainant owns and uses several trademarks containing or comprising the word APOLLO'. APOLLO'



tyres are manufactured in India and are available across almost all categories, including commercial and passenger vehicles, farm and industrial vehicles and registrations of all these marks are valid and subsisting and secured till the year 2032

- 5.9 The Complainant has obtained statutory rights in the 'APOLLO' trade mark in several countries/jurisdictions worldwide including Argentina, Belarus, Bahrain, Chile, Croatia, Cuba, Egypt, Fiji, Hong Kong, Indonesia, Iran, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Mexico, Nepal, Norway, Oman, Pakistan, Qatar, Russian Federation, Saudi Arabia, South Korea, Switzerland, UAE, Ukraine, USA, Vietnam, Zambia, etc..

The Respondent and its use of the domain name:

- 5.10 The Complainant further submits that the Respondent registered the Disputed Domain Name <apollo~~ty~~res.in>, on 2018-07-17 for six years. Accordingly, the than 6 years after Complainant obtained its first registration for the "APOLLO" trademark and many years after Complainant registered the domain name <apollo~~ty~~res.com>. The Complainant further submits that the Respondent is not using the Disputed Domain Name in connection with an active website. It is further submitted that the Respondent's impugned name, "APOLLO" along with the corresponding impugned domain name <apollo~~ty~~res.in>. can be seen to be incorporating the Complainant's trade name / trademark "APOLLO" in its entirety.
- 5.9 That the Respondent have been registering regularly many domain names, who has admitted to having more domain names besides the Complainant's trademark "APOLLO" in a standalone manner or as a part of other trademarks owned by the Complainant, the Registrant / Respondent has further admitted that he is not using the said domain name at present.



The disputed domain is identical or confusingly similar to a trademark of the Complainant

- 5.10 The Complainant has submitted that it owns at least 235 trademark registrations in at least 62 jurisdictions worldwide that consist of or include the “APOLLO” Trademark. The Complainant’s registrations for the “APOLLO” Trademark includes the following in India too, India App. No. 383045 for “APOLLO” registered September 28, 1972 in international class 12, for use in connection with, tyres manufactured in India and are available across almost all categories, including commercial and passenger vehicles, farm and industrial vehicles
- 5 11 The Complainant’s products under the mark ‘APOLLO’, its domain name www.apollotyres.com and its trading name i.e. Apollo Tyres Ltd. represents important proprietary rights of the Complainant. The Complainant has invested years of time, capital, effort and resources and attained immense goodwill and reputation in respect of its products/ domain name/ trading name under the mark ‘APOLLO’. Consequently, a secondary meaning has come to be attached with respect to Complainant’s products/domain under the mark ‘APOLLO’ and the same is exclusively associated worldwide, including India by members of the trade and public with the Complainant and its products/business. WHOIS report of Complainant’s domain name www.apollotyres.com is already operating
- 5.12 *The Sole Arbitrator appointed in the matter of Google Inc. v. Mr. Gulshan Khatri (Case No. INDRP-189 May 06, 2011), in relation to the domain googlee. in, held that the act of registering a domain name similar to or identical with a well-known trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the trademark to either increase traffic to the domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. As such, the same principle is applicable here as well, since the disputed domain completely subsumes the well-known trademark ‘APOLLO’ of the Complainant.*



B. The respondent has no right or legitimate interest in respect of the domain name:

- 5.13 The Respondent submits that the Respondent has no right or legitimate interest in the Disputed Domain Name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the 'APOLLO' Trademark in any manner. Accordingly, where, as here, "[t]he Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark," the panel should find a lack of rights or legitimate interests under the

INDRP. Sony Ericsson Mobile Communications AB v. Salvatore Morelli, NIXI Case No. INDRP/027. also Six Continents Hotels, Inc. v. Patrick Ory, WIPO Case No. D2003-0098

("There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship, between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Domain Name."); and Marriott International, Inc. v. Thomas, Burstein and Miller, WIPO Case No. D2000-0610 (transferring domain name <marriottreward.com> where "[n]o evidence was presented that at any time had the Complainant ever assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the marks MARRIOTT REWARDS or MARRIOTT in any manner").

In the other matter of Accenture Global Services Limited vs. Vishal Singh, NIXI Case No. INDRP/999:"Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site,



or the site of official authorized partners of the Complainant, while in fact it is neither of these. As a result, the panel said that the respondent lacks rights or legitimate interests in respect of the disputed domain name.

- 5.15 That the Complainant has submitted that that upon information and belief, Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services and, therefore, Respondent cannot establish rights or legitimate interests under Paragraph 6(a) of the INDRP. *The Respondent is not using the Disputed Domain Name in connection with an active website. As numerous panels have repeatedly said, “Passively holding a domain name does not constitute a bona fide offering of goods or services.”*

Philip Morris USA Inc. v. Gabriel Hall, WIPO Case No. D2015-1779.., L’Oréal v. Haya Manami, WIPO Case No. D2015-0924 (“The Domain Name points to an inactive page. Consequently, Respondent is not using the Domain Name in connection with a bona fide offering of goods or services...”).

- 5.16 It is submitted that, To Complainant’s knowledge, Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph 6(b) of the INDRP. The Whois record identifies the registrant of the Disputed Domain Name as “REDACTED FOR PRIVACY not as ‘APOLLO’ or any variation thereof. “This fact, combined with the lack of evidence in the record to suggest otherwise, allows the Panel to rule that Respondent is not commonly known by any of the disputed domain names or any variation thereof.” ***Alpha One Foundation, Inc. v Alexander Morozov, Forum Claim No. 0766380.*** In addition, given Complainant’s registration of the ‘APOLLO’ Trademark for more than 50 years in India, it is exceedingly unlikely that the Respondent is commonly known by this trademark.
- 5.17 Further, failed to use the Disputed Domain Name in connection with an active website, Respondent is not “making a legitimate noncommercial 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” pursuant to paragraph 6(c) of the INDRP. See, e.g .



See, e.g., *Verizon Trademark Services LLC v. Jeff Goodman / Goody Tickets LLC*, **WIPO Case No. D2015-1750** (finding no legitimate noncommercial or fair use where “Respondent is not currently resolving the disputed domain name to an active website” and the disputed domain name “incorporates Complainant’s well-known mark”); and *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, **WIPO Case No. D2013-1572** (finding no legitimate noncommercial or fair use where the disputed domain name “direct[s] to a page ‘under maintenance’”).

- 5.18** It is submitted that, Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Once such a prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, a Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, **WIPO Case No. D2003-0455**; *Belupo d.d. v. WACHEM d.o.o.*, **WIPO Case No. D2004-0110**.” It is submitted that the said threshold has been satisfied in the present instance.
- 5.19** In view of the above, the lack of rights or legitimacy of the Respondent in the impugned domain name *<apolloyres.in>*., when compared with the Complainant’s prior adopted, used and registered trademark, ‘APOLLO’ both in India as well as abroad, is conclusively established. The provisions of Paragraph 4(b) of the INDRP read with Rule 4(b)(vi) of the INDRP Rules of Procedure accordingly stand satisfied.
- 5.20** As per the Reply submitted by the respondent herein that the Respondent is not using the Disputed domain for bona fide offering of services and not making legitimate, non-commercial, and fair use of the Complainant’s trademarks as per the policy:

C. The Disputed domain name has been registered in bad faith:

- 5.21** The complainant submits that the Respondent has been in replied to email communication of the and accepted that the respondent is ready to forgo the domain name in favour of the complainant by the respondent.



- 5.22 The complainant has submitted that the Respondent's has subsequently adopted impugned name, 'APOLLO' along with the corresponding impugned domain name <apolloyres.in>., can be seen to be incorporating the Complainant's trademark 'APOLLO' in its entirety, in respect of an identical and therefore conflicting line of business, in the absence of any manner of express authorization or license from the Complainant, being the prior adopter, user and registered proprietor of the well-known trademark 'APOLLO' is nothing but a blatant and mala fide act to impinge and illegitimately ride upon the hard-earned reputation and goodwill of.
- 5.23 The complainant has submitted that the Respondent's bad faith is further established by the fact that Respondent has made no bona fide use of the disputed domain. As detailed above, the Disputed domain appears as click bait for the Complainant's web analytics service under the trademark 'APOLLO',
- 5.24 It is further submitted that given Complainant's established rights in its trademarks and the fact that the Disputed Domain Name is "*so obviously connected with*" Complainant given its registration of the 'APOLLO' Respondent's actions suggest "*opportunistic bad faith.*" *Research In Motion Limited v. Dustin Picov, WIPO Case No. D2001-0492*. In light of this long history of Complainant's trademarks 'APOLLO' and Complainant's significant international presence and brand recognition, "it is likely that the Respondent knew of the Complainant's mark, and has sought to obtain a commercial benefit by attracting Internet users based on that confusion." *Western Union Holdings, Inc. v. Manuel Rodriguez, WIPO Case No. D2006-0850* (finding bad faith and ordering the transfer of the domain name <casinowesternunion.com>)..

Bad faith also exists under the well-established doctrine of "passive holding" set forth in the landmark case *Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003*,⁵ given that, as shown in Annex 8, Respondent is not using the Disputed Domain Name in connection with an active website. As described by WIPO Overview 3.0, section 3.3: From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.



5.25 In the other matters the panels under the INDRP have adopted the passive holding doctrine., ***Morgan Stanley v. Gayatri Technologies, NIXI Case No. INDRP-1653*** (finding bad faith where disputed domain name was not used in connection with an active website because “it is clearly more than a coincidence that the Registrant chose and registered a domain name that is confusingly similar to” complainant’s trademark); ***Paramount Pictures Corporation v. E-Marketplace Pty Ltd, NIXI Case No. INDRP-1584*** (finding bad faith where disputed domain name “does not host any active webpage”); ***Netflix, Inc. v. Ms. Neema Sharma, NIXI Case No. INDRP-216*** (transfer where “Respondent never hosted websites under the disputed domain names”); and ***M/S Genpact Limited v. Shri Manish Gupta, NIXI Case No INDRP-056*** (transfer where “respondent is holding the domain name... without hosting a proper website related to Respondent’s products”).

Contention of the Complainant:

- 5.26 Firstly the Complainant submits that the Respondent has used the Complainant’s well-known trademark ‘APOLLO’ as part of the impugned domain name **<apolloyres.in>**. in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amounting to a infringement of the complainant’s rights as are vested in the trade/service: mark ‘APOLLO’
- 5.27 Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant’s trade and service mark ‘APOLLO’ which insures and continue to insure its legitimate right to Complainant only.
- 5.28 The Complainant has a long and well-established reputation in the Complainant’s mark. By registering the disputed domain name with actual knowledge of the Complainant’s trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [***Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Info media, INDRP/93 (April 10, 2009)***].



5.29 The registration of the disputed domain name bearing the registered as a trade/service mark of the complainant is nothing but an opportunistic bad faith registration on the part of the Respondent.

5.30 It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

a) *Complainant's name was famous at the time of registration: Cho Yong Pil v. Sinwoo Yoon, WIPO-D2000-0310.*

b) *Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

c) *The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

d) *Thus, the Respondent is guilty of registering and using the disputed domain name <apolloyres.in>.in bad faith in terms of Para 7 of the INDRP.*

A. Contention of the Respondent:

5.32 The Respondent had filed response through email to the Complaint to the sole arbitrator office, and the Respondent clearly stated that the respondent / registrant has not illegally exploited or used the impugned domain name <apolloyres.in>.



6 Discussion and Findings:

6.1 The sole arbitrator is going to consider on submissions on record and analyze whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy. It is evident that the Respondent knowingly chose to register and use the disputed domain name *<apolloyres.in>*.

6.2 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

[b] The issues involved in the dispute:

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

6.3 Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

6.4 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complaint filed by a complainant to the .IN Registry, in compliance with this Policy and Rules there under.



According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

- 6.5** The mark "APOLLO" has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations:

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that :the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

- 6.6** As the Respondent must have got report from the domain registrar showing all the existing registered domain report that the complainant is already owner of domain name and mark 'APOLLO' **the respondent has failed in its duty while registering the domain name <apolotyres.in>.**



- 6.7 Despite of knowing fully the respondent use of registration of the impugned domain name will adversely affect the Complainant's goodwill and reputation and its right to use said India specific domain name. Secondly, as the Respondent failed to clarify his stand with regard why he chose to use of India specific domain names as the Respondent is based in US, on what basis the Respondent has registered the Indian domain name linked to India by doing so, the Respondent has also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.
- 6.8 The Respondent / Registrant has failed in his responsibility as vigilant registrant, discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <apolloyres.in>., is clearly a identity theft, identical with or deceptively similar to the Complainants' "APOLLO" mark. Accordingly, the undersigned has concludes that the Complainant has satisfied its first element as required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

- 6.9 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 6.10 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.
- 6.11 The Respondent has submitted its detailed reply and admitted the respondent has registered many domains and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name.



Further, the Respondent is not commonly known by the disputed domain name and has made illegitimate commercial use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name <apolloyres.in>. For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered or is being used in bad faith.

6.12 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.13 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith: *"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name;*

or the Respondent 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 Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."



- 6.14** Considering the reply submitted by the Respondent / Registrant in the case and the pleadings including evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with its business geographically location or otherwise with the disputed domain name and It has clearly registered the disputed domain name in order to prevent the Complainant, as the Respondent has failed to justify his registration of domain name as the Respondent is based in US, on what basis the Respondent has registered the Indian domain name linked to India, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.
- 6.15** The respondent is not using presently impugned domain name, as impugned domain name <*apolloyres.in*>.is associated exclusively with the complainant, y the trade and public in India as well as all over the world. As such there will be no business loss, if the domain name <*apolloyres.in*>. is transferred back to the complainant.
- 6.16** Further the Respondent / Registrant has prevented the Complainant, who is the prior owner of the service mark “APOLLO” from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark “APOLLO” .

Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

7. DECISION

- 7.1** The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein.



7.2 The Complainant has given sufficient evidence to prove its trademark rights on the disputed domain name thereby having prior registration of trademark. Further; the Respondent's registration of the domain name is dishonest and malafide knowingly that complainant is a prior registrant.

- . Secondly, as the Respondent has failed to clarify as the Respondent is based in US, on what basis the Respondent has registered the Indian domain name linked to India by doing so, the Respondent has also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

7.3 The Respondent / Registrant has failed in his responsibility as vigilant registrant, discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <*apolloyres.in*> is clearly a identity theft, identical with or deceptively similar to the Complainants' "APOLLO" mark. Accordingly, the undersigned has concludes that the Complainant has satisfied its first element as required by Paragraph 4 of the INDRP.

The Respondent / Registrant have clearly registered the disputed domain name <*apolloyres.in*> in order to enjoy reputation and goodwill of the complainant thus prevent the Complainant in registering in domain name, who is the prior owner and user of the said trademark from reflecting the said trademark in a corresponding domain name in India.

7.4 The Respondent / Registrant have not given any reasons other then claiming it "APOLLO" as a common word to register the domain name <*apolloyres.in*>.that is rightfully owned by the Complainant much of domain name in with the respondent herein as the respondent belongs to UK therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.



[Relevant WIPO decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. SanchaiAree D2002-0358; Consorzio del FormaggioParmigianoReggiano v. La casa del Latte di Bibulic Adriano D2003-06611

- 7.5 It is a settled proposition that the registration of a domain name incorporating trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision.

Some notable cases reaffirming this proposition are INDRP decision in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve ClicquotPonsardin, MaisonFortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163 and Adidas-Solomon AG v. Domain Locations Case No D 2003 04*

- 7.6 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a 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, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Thus it is very much clear that the Respondent / Registrant has registered the disputed domain name in bad faith and 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.

[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupod.d. v. WACHEM d.o.o. D2004-01101



- 7.7 That as per pleadings placed before me clearly established that the Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant have no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 7.8 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304

- 7.9 The decision of a 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 prior to 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 the business identifier. A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood of confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."



- 7.10 It was observed that *“it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights”* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

In the present dispute as well, the Respondent, in registering the disputed domain name, has done so in clear violation of the exclusive rights of the Complainant in the FAIRMONT name and mark. *In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)* The WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163* has been held that registration of a domain name, so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

- 7.11 As per pleadings submitted by the Registrant / Respondent's in this case, it is very much clear that the registration and use of the Domain Name *<apolloytyres.in>* is abusive and is not in good faith. The Registrant / Respondent have no legitimate right or interest in respect of the domain name in any manner.

In my considered view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy thus able to prove his complaint. In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name *<apolloytyres.in>.be* transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI

NEW DELHI DATE 13th of January 2024