

1. The Parties

The Complainant in this administrative proceedings is Newcross Healthcare Solutions Limited , Waterside, Berry Pomeroy, Totnes, Devon TQ96LH (UK).The Complainant is represented by Asima Rana, DWF LAW LLP, 1 Scott Place, 2 Hardman Street, Manchester, M3 3AA, United Kingdom, (Email: asima.rana@dwf.law, Telephone: ++44(0)7907 979 376).

The Respondent is Amelia Gibbs, 335 Romford Road, London, E7 8AA, UK, (Telephone: +44-7882952723 , E-Mail: dotcommstudio@gmail.com, ameliagibbs@newcrosshealthcare.co.in)

2. Domain Name and Registrar

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

(ii) The Registrar with whom the domain name is registered is Key-Systems GmbH, Im Oberen Werk 1, Sankt Ingbert, Saarland 66386, Germany (Email: abuse@key-systems.net)

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 19, 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 19, 2023 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceeding on December 20, 2023 and the Respondent was directed to submit a response within 7 (seven) days. The Respondent did not reply to the notice within the stipulated time. The Complainant informed on 29.12.2023 that the hard copy could not be delivered and was returned to the Complainant. However, it is seen that no reverse notification was received by the Complainant while sending the complaint on one of the email address ameliagibbs@newcrosshealthcare.co.in whereas the complaint could not be delivered by the Complainant to the Respondent on other email address dotcommstudia@gmail.com as no reverse notification was received by the Complainant regarding failed delivery of email. It appears that Respondent is deliberating avoiding to



receive complaint's hard copy but the complaint is delivered through one of the email address available with the Complainant/arbitration panel. It is also seen that the communications sent by this panel to the Respondent are delivered on one of the email addresses available with this arbitration panel and therefore delivery of complaint to the Respondent is taken to be complete . The Respondent was further given 5 (Five) days' time through email dated 29.12.2023 to respond to the notice already served through email dated 20.12.2023. The Respondent failed to file any response even after expiry of extended time line. In fact the respondent has not filed any response till date.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical or confusingly similar to trademark or mark in which the Complainant has rights.
2. The Respondent has no rights or legitimate interests in the domain name.
3. The domain name has registered and used the domain name in bad faith.

5. Background of the Complainant

The Complainant submitted that the Complainant is a company registered in England and Wales on 1 April, 1996 with company number 03184321 and is a leading provider of agile workforce solutions in the healthcare sector, employing 20,000 healthcare workers across the United Kingdom (UK), working with carers and clients at grassroot levels. The Complainant further submitted that the Complainant holds contracts with the UK's major healthcare staffing frameworks, NHS Trusts, private hospitals and local authorities, providing highly trained nurses, care assistants and support workers to fill their healthcare worker needs across the UK to care for sick and vulnerable people and this includes providing specialist nurses and carers in care homes, hospitals, residential homes, schools, GP surgeries, sheltered housing, respite care, day centres and prisons, as well as specialist care at home for people with life limiting conditions. The Complainant further submitted that the Complainant has invested in a streamlined virtual recruitment and onboarding process through which it carefully selects its healthcare workers aimed at providing the best level of care to people. The Complainant further submitted that rigorous standards are applied when recruiting new staff, with candidates considered for their aptitude and suitability through a detailed process, involving initial screening, an in-depth interview with a Business Centre Manager or Team Leader at one of its branches, and references and checks. The Complainant



further submitted that further training is provided as required and each candidate must pass through the Complainant's induction programme and as a result of the Complainant's investment in the digitalization of its new starter training and induction materials, an applicant can complete its introductory training from home through the Complainant's online learning platform and healthcare training app "Newcross World". The Complainant further submitted that at all times since 1996, the Complainant has provided its services in the UK healthcare sector, under the distinctive mark "NEWCROSS HEALTHCARE" (the Mark) and the Mark appears on all the Complainant's corporate, promotional and advertising material, including on its website at www.newcrosshealthcare.com (the Complainant's Website). The Complainant further submitted that the Complainant's Website has been used since 2004 as a source of information for prospective healthcare workers and prospective clients looking for healthcare workers, and outlines details of its services and recruitment process and job vacancies. The Complainant further submitted that the Complainant's rigorous approach to assessing and reviewing its operations to ensure that it delivers the best possible service, has resulted in it receiving numerous awards and accreditations in several areas of business. The Complainant further submitted that in addition to the Complainant's Website, the Complainant has a number of social media accounts to promote its business and services, all registered under handles which include the Mark and this includes an X (formerly Twitter) account "@NewcrossHealth", a Facebook account "Newcross Healthcare" and an Instagram account "newcrosshealthcare", all of which provide news, updates and details of the Complainant's services in the healthcare sector. The Complainant further submitted that the Complainant has invested substantial sums in promoting its business and services under the Mark, with a total spend of around £6.9 million GBP over the past three financial years on marketing, advertising and promotion of its business and services under the Mark, and total sales of around £493.4 million GBP under the Mark over the same period. The Complainant further submitted that as a result of all of the above, the Complainant has acquired significant and substantial goodwill and reputation in the UK in the Mark in relation to the provision of agile workforce solutions and services in the healthcare sector. The Complainant further submitted that by reason of all of the above, the relevant public in the UK take the Mark when used in relation to such activities as



exclusively denoting the business of the Complainant and no other. The Complainant further submitted that the Complainant is the registered owner of registered trademark for the figurative mark "NEWCROSS HEALTHCARE" (the Registered Trademark): UK Trade Mark number UK 00003223514 dated 6 April 2017. The Registered Trademark is registered in respect of goods and services in classes 35, 39, 41 and 44.

The Respondent

The Respondent is Amelia Gibbs, 335 Romford Road, London, E7 8AA, UK, (Telephone: +44-7882952723, E-Mail: dotcommstudio@gmail.com, ameliagibbs@newcrosshealthcare.co.in). The Respondent has registered the nearly identical disputed domain name newcrosshealthcare.co.in on July 26 , 2023.

Legal Grounds

A. The Domain Name(s) is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Complainant's Contentions

The Complainant contended that the Disputed Domain Name is identical/confusingly similar to the Mark and confusingly similar to the Registered Trademark. The Complainant further contended that the Disputed Domain Name wholly incorporates the mark "NEWCROSS HEALTHCARE" in its entirety, with no additional elements. The Complainant further contended that that the relevant comparison is to be made with the Second-Level portion of the Disputed Domain Name, specifically "newcrosshealthcare" since the suffix extension "co.in" is merely a technical requirement for domain names in India . The Complainant has elide on Urban Outfitters Inc –v- Machang. INDRP Case No. 601/2014. The Complainant further contended that the INDRP does not explicitly state where the Complainant's trademark rights need to be registered, but merely requires rights to be present at the time of filing the INDRP complaint. The Complainant further contended that there have been numerous recent decisions of the INDRP where the complaining party has relied on UK and EUTM rights, which were held to be sufficient for the purposes of establishing "rights" in an INDRP dispute concerning the domain name. The Complainant has relied on What3Words Limited v Vinit Saxena INDRP Case No. 1229/2020. The Complainant further contended that in addition to the Registered Trade Mark, the Complainant owns earlier unregistered rights in the Mark in the UK and as a result of the extensive use the Complainant has made of the Mark in the UK over the



past 27 years the Complainant is the owner of substantial goodwill and reputation in the Mark in the UK, and accordingly owns unregistered/common law rights to the Mark in the UK. The Complainant further contended that it is the Complainant's position that the registration and use of the Disputed Domain Name by the Respondent is highly likely to constitute infringement of the Registered Trademark and the common law tort of passing off in relation to the Mark in the UK. The Complainant further contended that relevant members of the public (including the Complainant's existing and potential applicants, employees and clients) are likely to be misled into believing that the Disputed Domain Name and its use including any associated website, or any associated email address incorporating the Disputed Domain Name are in some way connected to and/or associated with the Complainant, contrary to the fact. The Complainant further contended that the likelihood of confusion on the part of the relevant public is only heightened by the fact that the Complainant promotes its services and business through the website www.newcrosshealthcare.com.

Respondent's Contentions

The Respondent has not submitted any response to the arbitration notice issued by this panel.

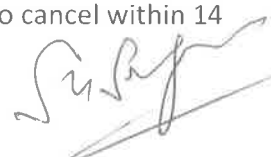
B. The Respondent has no rights or legitimate interests in the domain name.

Complainant's Contentions

The Complainant submitted that the Complainant has recently become aware of the registration by the Respondent of the Disputed Domain Name. The Complainant further submitted that on 2 August 2023, the Complainant received an email from an individual called "Santhoshi" sent to the Complainant's email address and the email referred to an Application Number with the writer stating that she had applied for a position at "newcross health care" and had received an email stating that she was a successful candidate, and further email correspondence progressing the application. The Complainant further contended that the writer had received an email from the email address international.recruitment@newcrosshealthcare.co.in with a conditional letter stating that she had to attempt an online exam. The Complainant further contended that the writer had concerns in relation to the email having being sent from a ".co.in" domain

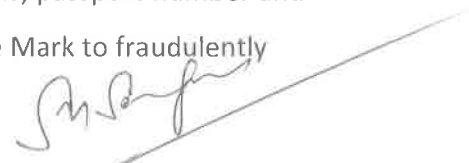


name and wrote to the Complainant to verify if the application was valid and genuine with a view to her proceeding further. The Complainant further contended that the Complainant responded to the email with some further questions in relation to the purported job offer. The Complainant submitted that Miss Bheema responded by stating that she had posted on Facebook that she was looking for a job and had received a response from a person to whom she replied, who made her aware of the job. The person who contacted her had the email address ameliagibbs@newcrosshealthcare.co.in and told Miss Bheema that she was the "residential supervisor at newcross health care". The Complainant further submitted that Amelia Gibbs is the name of the Respondent. The Complainant further submitted that Miss Bheema stated in her email to the Complainant that "she had been corresponding over email in relation to documents, licences and questions, resulting in receipt of the email on 2 August 2023 from international.recruitment@newcrosshealthcare.co.in stating that her application was successful and a conditional letter stating that she had to attempt an online exam. Noting that the email was being sent from a "co.in" domain name and Miss Bheema went to the Complainant's Website and noted that all of the email domain names referred to on there were ".com" email domain names, which prompted her to contact the Complainant to verify her application. The email attached a copy of the conditional letter (the Letter) which purported to be sent on the Complainant's official letter headed paper, and included the Complainant's registered office address at "Waterside, Berry Promeroy, Totnes, TQ9 6LH" and the Complainant's Mark and logo." The Complainant further submitted that the Letter addressed to Miss Santoshi Bheema in Edinburgh, UK and is dated 1 August 2023, and headed "Conditional Employment Offer". The Letter conditionally offers Miss Bheema the position of "Residential Support Worker – Southampton (ENG)" on behalf of the Complainant and sets out the academic and professional requirements that she has met, and the non-academic and non-professional conditions that she must meet, which includes "...the aptitude test conducted by Newcross Healthcare Solutions". The Letter states that Miss Bheema should email international.recruitment@newcrosshealthcare.co.in to accept the conditional offer. It goes on to state that if Miss Bheema wishes to cancel within 14

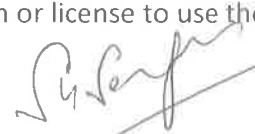
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days of accepting the offer then she must inform the "Newcross Healthcare – South Asia Centre". The Letter is signed off by "Philip Cliff, Deputy International Recruitment & Compliance Manager, Newcross Healthcare- South Asia Centre". The Complainant further submitted that on 2 August 2023 the Complainant received another email to its email address at info@newcrosshealthcare.com from an individual called Imran Javed who sought confirmation in relation to an offer letter he had received the day before. Mr Javed forwarded correspondence between himself and "International Recruitment" from the following email address international.recruitment@newcrosshealthcare.co.in dated 1st and 2nd August 2023 with the subject header "Newcross Healthcare- Conditional Offer INAS20115437 – Residential Support Worker (Hampshire).The Complainant further submitted that on 1 August 2023 Mr Javed had received an email from international.recruitment@newcrosshealthcare.co.in headed "Your Conditional Offer", referring to an Application ID number and an offer to join "Newcross Healthcare Solutions" subject to meeting the conditions in the attached offer letter. The Complainant further submitted that the email states at the end that the recipient must bring their original qualification certificate when they arrive at "Newcross Hampshire Centre in Southampton" and the email is signed off by "The International Recruitment Team". The Complainant further submitted that Mr Javed responded to the email asking for further details of the work, processing time and salary to which he received a further email from international.recruitment@newcrosshealthcare.co.in attaching various documents including the job description that was advertised, and signed off by "Nathan Turner, International Recruitment Team". The Complainant further submitted that there was further email correspondence the same day in relation to the online assessment test that Mr Javed was told he had to take. The Complainant responded to Mr Javed's email of 2 August 2023 requesting some further information, and he responded with a mobile phone screenshot of the message he had received in relation to the job that he had applied for (the Screenshot). The Complainant further submitted that the sender of the message requested that they be sent a one page resume over the mobile messaging service or by email to ameliagibbs@newcrosshealthcare.co.in with the subject line "Care Assistants and Support Workers (International) – San Jo 1745". The message stated that the employer

was "Newcross Healthcare Solutions UK" and that the recipient could obtain further details about them if he searched them over Google by name. The message also set out the website address for the Complainant's Website www.newcrosshealthcare.com for more details. The Complainant responded to Mr Javed on 2 August 2023 indicating that it was investigating the matter, to which Mr Javed responded by stating that he was now also being requested to pay the sum of \$500 to the Respondent by way of a "service fee". The Complainant warned Mr Javed not to pay the \$500 service fee to anyone. The Complainant submitted that it is clear from the Email Correspondence, the Letter that the Disputed Domain Name has been used by the Respondent as part of a sophisticated fraudulent scheme to impersonate the Complainant for commercial gain by (i) Fraudulent Email Addresses as international.recruitment@newcrosshealthcare.co.in and ameliagibbs@newcrosshealthcare.co.in incorporating the Mark which have no association with the Complainant, to communicate with members of the public and falsely present themselves as representing the Complainant; (ii) by False Conditional Job Offer: using the Mark to make false conditional job offers to members of the public on behalf of the Complainant under the guise of "The International Recruitment Team" and "Newcross Healthcare- South Asia Centre", neither of which exist and this includes sending conditional offer letters to members of the public falsely presented on the Complainant's official letterhead, incorporating the unauthorized use of the Complainant's branding, including the Complainant's Mark and logo, and falsely purported to be sent by the Complainant's "Deputy International Recruitment & Compliance Manager, Newcross Healthcare - South Asia Centre", where no such role or centre exists; (iii) by Engagement and Application Process: engaging with members of the public using the email domains international.recruitment@newcrosshealthcare.co.in and ameliagibbs@newcrosshealthcare.co.in to provide details of the job application process. This includes providing false information about the role, responsibilities and potential benefits associated with the job including provision of a working visa in the UK; (iv) by Data Request: using the email domains international.recruitment@newcrosshealthcare.co.in and ameliagibbs@newcrosshealthcare.co.in and the Mark to request sensitive personal information from members of the public such as personal details, passport number and qualification certificates; and (v) by Payment Request: using the Mark to fraudulently

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ask members of the public to make a payment of \$500 under the guise of a "service fee". This request for payment is entirely unauthorized and not something that the Complainant requests from prospective staff members as part of its recruitment process. The Complainant further submitted that the use of the Disputed Domain Name in the manner outlined above for illegal and fraudulent activity cannot refer rights or legitimate interests on a Respondent. The Complainant further submitted that the use of the Disputed Domain Name by the Respondent creates a likelihood of confusion with the Complainant and attempts to unduly profit from the Complainant's reputation and goodwill in the Mark. The Complainant further submitted that there is no evidence of the Respondent making a bona fide offering of goods or services or a legitimate non commercial or fair use of the Disputed Domain Name. The Complainant further submitted that the Disputed Domain Name does not resolve to an active website. The Complainant further submitted that there is no evidence of the Respondent making demonstrable preparations to use the Disputed Domain Name in connection with the bona fide offering of goods or services or for a legitimate noncommercial or fair use. The Complainant further submitted that the email correspondence with members of the public within a week of registering the Disputed Domain Name purporting to be sent by the Complainant, incorporating the Mark and sent from an email address incorporating the Disputed Domain Name, suggests that the Respondent registered the same with the specific intention of impersonating the Complainant as part of a fraudulent scheme and/or to tarnish the Complainant's business and the goodwill in its valuable Mark. The Complainant further submitted that in these circumstances, the Complainant submits that the Respondent's use does not constitute a bona fide offering of goods or services. The Complainant further submitted that when a simple Google search is conducted for the term "NEWCROSS HEALTHCARE" all of the results on the first page relate to the Complainant and its business and this demonstrates that the Respondent is not commonly known by the name "NEWCROSS HEALTHCARE" and is unlikely therefore to have acquired any legitimate rights or interest in respect of the Disputed Domain Name. The Complainant further submitted a screenshot of the Google search results page for the term "NEWCROSS HEALTHCARE". The Complainant further submitted that the Respondent is not entitled to any trademark, trade name or any other right in the name "NEWCROSS HEALTHCARE" and it has not sought any authorization or license to use the

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Mark from the Complainant and no license or permission to use the Mark or to apply or use any domain name incorporating the Mark has been granted by the Complainant to the Respondent. The Complainant further submitted that to the best of the Complainant's knowledge, the Respondent does not have any registered or unregistered trademark rights in connection with "NEWCROSS HEALTHCARE". The Complainant further submitted that there is no business relationship or affiliation between the Complainant and the Respondent to justify the use by the Respondent of the Mark or any mark confusingly similar thereto. The Complainant further submitted that there is no credible reason for the registration or use of the Disputed Domain Name other than to take advantage of the Complainant's goodwill and valuable reputation in the Mark and make a commercial and/or financial gain for itself.

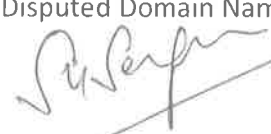
Respondent's Contentions

The Respondent has not submitted any response to the arbitration notice issued by this panel.

C. Domain Name registered and used in Bad Faith by the Registrant/Respondent

Complainant's Contentions

The Complainant contended that the registration and use of the Disputed Domain Name in bad faith can be established from the fact that the Respondent registered the Disputed Domain Name by adopting the Mark in its entirety, has gone on to use this as part of a sophisticated fraudulent scheme involving making false conditional job offers on behalf of the Complainant, unauthorized use of the Complainant's branding including the Mark, illicit data collection, and an attempt to extort money from unsuspecting members of the public. The Complainant further contended that bad faith is demonstrated through the Respondent's registration of the Disputed Domain Name, in knowledge of the Complainant's rights in the Mark, and with the primary purpose of using it unlawfully to capitalize on, or otherwise take advantage of the Complainant's trade mark rights by creating a likelihood of confusion with its Mark. The Complainant further submitted that the registration of the Disputed Domain Name was made with full knowledge of the Complainant, its business and its established reputation in the healthcare sector in the UK and it was intentionally registered by the Respondent with the purpose of profiting from the reputation of the Mark, creating a likelihood of confusion amongst members of the public by indicating that the Disputed Domain Name

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belongs to the Complainant. The Complainant further submitted that the Respondent's knowledge of the Complainant's rights can be presumed because of the Complainant's longstanding and extensive use of the Mark in the UK, including its use of the domain name "newcrosshealthcare.com" since 2004 to promote its business and services. The Complainant further submitted that the Respondent's knowledge of the Complainant is also clearly evident in its attempt to impersonate the Complainant, perpetrated by it in the correspondence it sent shortly after registering the Disputed Domain Name using the Complainant's name and registered office address, the Complainant's Mark and logo and referring to the Complainant's Website. The Complainant further submitted that the inclusion of such information in relation to the Complainant and its business in the correspondence sent by the Respondent leaves no doubt as to the Respondent's knowledge of the Complainant, its business and its rights in the Mark. The Complainant further submitted that the Respondent used the Disputed Domain Name shortly after registration to target members of the public, by impersonating the Complainant and creating a likelihood of confusion between itself and the Complainant. The Complainant further submitted that the Respondent did this by sending the correspondence deceiving the recipients into a false sense of security, and an incorrect assumption that the Respondent's communication and the conditional job offers were genuine and originating from the Complainant and this was a clear attempt by the Respondent to target and fraudulently mislead members of the public for commercial gain by profiting from the similarity between the Disputed Domain Name and the Mark, and taking undue advantage of the Complainant's reputation and goodwill in the Mark, and this clearly demonstrates bad faith on the part of the Respondent. The Complainant further submitted that on the available evidence, the only logical conclusion is that the registration and use of the Disputed Domain Name by the Respondent has been made in bad faith and if the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant, irreparable and insurmountable loss and damage will be caused to the Complainant.

Respondent's Contentions

The Respondent has not submitted any response to the arbitration notice issued by this panel.

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7. Discussion and findings

The Complainant is a company registered in England and Wales in 1996. The Complainant is a provider of workforce in the healthcare sector in United Kingdom (UK). The Complainant provides healthcare staff to trusts, private hospitals, local authorities, and needy persons. The Complainant has devised a stringent recruitment process and training schedule for healthcare staff. The Complainant has healthcare training app "Newcross World". The Complainant provides its services in the UK healthcare sector, under the distinctive mark NEWCROSS HEALTHCARE (the Mark). The Complainant uses its Mark in promotion and advertisement its healthcare services. The Complainant spends significant amount on promotion and advertisement of its mark and services. The Complainant has registered its mark in UK in different classes. The Complainant is also owner of top level domain www.newcrosshealthcare.com which was registered by the Complainant in 2004 which was registered by the Complainant in 2004 years before registration of disputed domain by the Respondent in 2023. The disputed domain name <newcrosshealthcare.co.in> contains 'newcrosshealthcare' in entirety which is the mark/domain of the Complainant. The Complainant is significantly present on major social media platforms such as Facebook, twitter and instagram. The Respondent as registered the disputed domain name <newcrosshealthcare.co.in> in July, 2023. The Respondent has sent emails impersonating as the Complainant to prospective candidates wishing to enroll as healthcare workers. The emails originate from the disputed domain name <newcrosshealthcare.co.in> registered by the Respondent. It is observed that fraudulent emails were sent within week of registration of disputed domain by the Respondent in July, 2023. The Respondent's intent is to profit from the popularity of mark/domain of the Complainant. The Complainant has not licensed or permitted the Respondent to use its mark/domain which were registered years before the registration of disputed domain by the Respondent in July, 2023. The Respondent has failed to rebut the contentions of the Complainant as he has preferred not to respond to the notice issued by this panel.

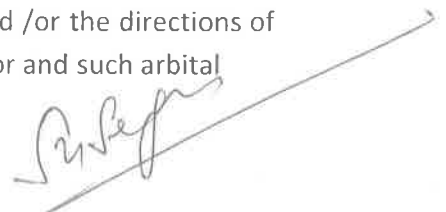
Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

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

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral



award shall be binding in accordance with the law.”

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant’s contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator’s decision is based upon the Complainant’s assertions, evidence and inferences as the respondent has not replied.

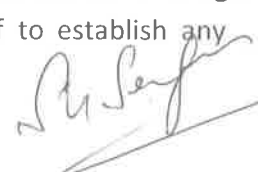
The domain name <newcrosshealthcare.co.in> is nearly identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks ‘NEWCROSSHEALTHCARE’ by submitting substantial documents. The mark is widely used by the Complainant in advertising and promotion & has a strong presence in internet world. The disputed domain contains name which is identical to mark/domain ‘NEWCROSSHEALTHCARE’ as the disputed domain contains Complainant’s mark/domain completely. Addition of (CCTLD) extension ‘co.in’ is insignificant and does little to make it different. There can’t be coincidence that the Respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level domain <newcrosshealthcare.com> was registered by the Complainant in 2004 years before registration of disputed domain by the Respondent on 2023. The Respondent has failed to reply to the notice issued by this panel to rebut the contentions of the Complainant.

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

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

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark ‘NEWCROSSHEALTHCARE’. The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant’s mark. The Respondent is not known by the mark and can’t have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contention of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. The Respondent has also failed to respond to the contentions of the Complainant. This panel is of the view that mere registration of domain name can’t establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any




legitimate interest falls on the respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered and is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating mark of the Complainant. The Complainant has been the using the mark for several years before the Respondent registered the disputed domain name in July,2023.The panel finds that the Respondent has used the mark/domain of the Complainant in disputed domain name giving impression that this domain is associated with or affiliated to the Complainant. The Respondent is impersonating as the Complainant to deceive gullible customers who may take the emails originating from the Complainant. The sole purpose of the Respondent is to create confusion to an ordinary internet user. The Respondent is using disputed domain to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark/domain is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has preferred not to reply to the notice issued in this arbitration proceedings.

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

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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 file any response to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/confusingly similar 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 <newcrosshealthcare.co.in> 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 08, 2024


Sudhir Kumar Sengar 8/1/24

Sole Arbitrator