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Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL69949687504032W
Certificate Issued Date : 05-Apr-2024 10:51 AM
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1798868392947979W
Purchased by : ALOK KUMAR JAIN
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : ALOK KUMAR JAIN
Second Party : Not Applicable
Stamp Duty Paid By : ALOK KUMAR JAIN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
INDRP Case No. 1824

Disputed Domain Name: <7ELEVENN .IN>

ARBITRATION AWARD

7-Eleven International LLC

Complainant

Versus

Daman Matt

Respondent

Alok Kumar Jain

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)
INDRP ARBITRATION
INDRP Case No. 1824**

Disputed Domain Name: < 7ELEVENN.IN >

ARBITRATION AWARD

Dated 15.4.24

IN THE MATTER OF:

7-Eleven International LLC
3200 Hackberry Road
Irving, Texas 75063
United States of America

Complainant

Versus

Damon Matt
Street: 6PVH+48 Sraem Sroem Road to Tem
City: Sra Aem
State / Province: Cambodia
Postal Code: 00000
Country: KH
Phone: 855.9679369
Email: mattdamon9528@gmail.com

Respondent

1. The Parties

As stated in the Complaint, the Complainant in these proceedings is **7-Eleven International LLC (7IN)**, a Delaware limited liability company, having its principal place of business at 3200 Hackberry Road, Irving, Texas 75063, United States of America and E-mail:

Alok Kumar Jain

ipr@archerangel.com. 7IN is owned by 7, Eleven Inc (“SEI”) (50%) and and SEJ Asset Management & Investment Company, a Japan company, (“SAM”) (50%). SEI is wholly owned by SAM. SAM is wholly controlled by Seven-Eleven Japan Co., Ltd., a Japan company, (“SEJ”). SEJ is wholly owned by Seven & i Holdings Co., Ltd., a Japan company, (“S&IH”). Therefore 7IN, SEI, SAM, SEJ and S&IH are all related entities with common ownership.

The Complainant’s authorized representative in these proceedings is: 1. **Sanjay Chhabra** ,Archer & Angel ,#5B, 5th Floor, Commercial Towers ,Hotel J W Marriott, Aerocity New Delhi - 110037 ,Tel: 91-11 4195 4195 ,Fax: 91-11 4195 4196 Email: schhabra@archerangel.com and 2. **Mr. Bidyut Tamuly** Archer & Angel ,K-4, South Extension Part-II ,New Delhi - 110049 India Tel: +91-11 41954195 ,Fax: +91-11 41954196 Email: btamuly@archerangel.com

- 1.1 Respondent in these proceedings i.e., the Registrant of the disputed domain <7eleven.in>, is **Damon Matt**. Having contact details as under:

Damon Matt
Street: 6PVH+48 Sraem Sroem Road to Tem
City: Sra Aem
State / Province: Cambodia
Postal Code: 00000
Country: KH
Phone: 855.9679369
Email: mattdamon9528@gmail.com

Alok Kumar Jain

2 **Domain Name and Registrar:-**

2.1 The Disputed Domain name is <www.7ELEVENN.IN>

The Disputed Domain Name is registered with Registrar NameSilo, LLC. The Registrar's contact information is as under:
Name Silo, LLC 8825 N. 23rd Ave Suite 100 Phoenix, Arizona
85021 USA

Email: support@namesilo.com

Procedure History

3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules") which were approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the said Policy and the Rules.

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

3.2. The Complaint was filed by the Complainant with NIXI against the Respondent . On 7.3.2024 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence same day as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI

notified the Parties of my appointment as Arbitrator *via* email dated 7.4.2024 and served by email an electronic Copy of the Complaint with Annexures on the Respondent at the email address of the Respondent.

3.3. I issued notice to the parties vide email dated 8.3.2024 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response within 10 days from the date of notice. No response was received from the Respondent till 3.11.2023. Therefore, on 19.3.2024, I granted further time to Respondent directing the Respondent to file response failing which the matter shall be decided on merit. The extra time given to the Respondent also expired. Respondent did not file any reply within the extended time or thereafter. On 8.4.24 I intimated the parties that now the matter will be decided on its own merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent on 7.3.2024 at the email provided by the Respondent with WHOIS, while informing the parties about my appointment as Arbitrator. Thereafter notice was sent vide email. All communications were sent to Complainant, Respondent and NIXI by the

Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint despite two opportunities.

3.5. Clause 8(b) of the INDRP Rules requires that 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.

3.6. Clause 12 of INDRP Rules provides that in event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law.

3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunities and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and

Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

4. Grounds for Arbitration Proceedings.

INDRP Policy para 4.Class of Disputes provides as under:

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

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

5. The Case of the Complainant :-

The Complainant stated that the Complainant . 7-Eleven International LLC ("7IN"), together with its parent / affiliated

companies i.e., Seven-Eleven Japan Co., Ltd. and 7-Eleven, Inc., operate the world's largest convenience store chain – operating, franchising and licensing convenience stores under the brand name '7-ELEVEN' with now over 80,000 stores around the world. Founded in 1927 in Dallas, Texas, as The Southland Corporation ("Southland"), the Complainant, through its predecessor Southland, pioneered the convenience store concept during its first years of operation, when it began selling milk, bread and eggs as a convenience to guests.

5.1 The Complainant's house mark and trading name '7-ELEVEN' was developed and adopted in 1946 – when the name of Complainant's stores was changed to '7-Eleven' – and has been in use continuously ever since, with various 7-ELEVEN formative trademarks (*hereinafter collectively '7-ELEVEN Marks' / 'Complainant's Marks'*).

5.2 Since the operation of its first store in the year 1946 under the name '7-ELEVEN', the Complainant has been selling a wide range of products at its convenience stores which have gained immense reputation and recognition worldwide. An excerpt from the book "*Oh Thank Heaven – The Story of the Southland Corporation*" by Allen Liles, corroborating the adoption of the 7-ELEVEN name by the Complainant as early as in 1946 – supported by illustrations – is enclosed as **Annexure 4**. In 1963, the Complainant's convenience stores began staying open 24 hours a day in Austin (Texas) and Las

Vegas (Nevada), United States of America. In a short span, the Complainant's stores expanded beyond its home country's borders. The first 7ELEVEN store of the Complainant outside of the United States of America opened in Canada in 1969, and two years later the Complainant expanded into Mexico as well. The first 7-ELEVEN store outside North America was built in 1974 in Japan. The Complainant focuses on meeting the needs of convenience-oriented guests by providing a broad selection of fresh, high-quality products and services at everyday fair prices, speedy transactions and a clean, friendly shopping environment. Additionally, Complainant is also one of America's largest independent gasoline retailers. The Complainant has been handsomely awarded and felicitated for its business under the 7-ELEVEN Marks. A complete list of such awards / honours is enclosed with complaint as **Annexure 5**.

5.3 It is further stated in the complaint that The Complainant (along with its affiliated / related companies) is the genuine proprietor of the '7-ELEVEN' name, logo, brand, and the 7-ELEVEN-Marks – including without limitation the globally registered trademarks '7-ELEVEN',

5.4 The Complainant stated that the complainant is the owner of numerous generic top-level domain names, the most prominent amongst them being <7-eleven.com> (registered since **October 21, 1997**) and in its entirety, comprises the Complainant's name and

registered trademark **7-ELEVEN**. Moreover, the Complainant also owns various other top-level as well as country-specific domain names, as representatively mentioned below. The Complainant's Mark **7-ELEVEN** – as both words and numerals – forms a prominent part of each of the Complainant's various domain names, thus augmenting the association of the **7-ELEVEN** Marks with the Complainant alone. A representative list of such domain names, along with a few WHOIS extracts, is enclosed as **Annexure 7**. The details of some domains for **7-ELEVEN** are tabulated in the Complaint.

5.5 The Complainant operates its corresponding website at www.7-eleven.com (registered since October 21, 1997), where information about the Complainant and its business operating under the **7-ELEVEN** Marks and the **7-ELEVEN** brand in general is freely available and accessible to millions of internet users (including in India), who may be current or potential consumers. Moreover, the Complainant also offers for sale electronics gadgets and related accessories such as Refurbished phones, Bluetooth earphones, flash drive, etc. on Complainant's at www.speakout7eleven.ca/accessories. As per the Google Analytics electronic data, the Complainant's official website is already immensely popular among Indians and experiences a large number of views from India alone. In 2019 alone over 65,000 Indian users viewed the www.7-eleven.com website, in over 81,000 different

sessions. In 2020, over 129,000 Indian users viewed the website. In 2021 over 203,000 users viewed the site in over 237,000 sessions. In 2022, over 141,000 Indian users visited the site in over 188,000 sessions in India. These numbers clearly indicate such viewers to be essentially the Complainant's potential, if not actual consumers.

India has been an important jurisdiction for the Complainant's business. The Complainant inaugurated its acclaimed **7-ELEVEN** stores (*about 20 or more*) in Mumbai. Complainant's **7-ELEVEN** Marks are extensively used on store hoardings, signage, pole sign, shopping bag, store banner, billboard etc., at its multiple stores

located in Mumbai, India. Illustrative photographs of the stores are annexed with Complaint as **Annexure 8**.

It is stated that different courts and quasi-judicial forums around the world have explicitly held the Complainant's **7-ELEVEN** Marks as **well-known**, having gained immense goodwill and reputation, as evidenced by copies of formal orders (with English translations) are **Annexure 9**. It is stated that the Complainant's **7-ELEVEN** Marks have come to acquire the stature of **well-known** marks within the meaning of Section 2 (1) (zg) of Trademarks Act, 1999. Further, **NIXI** (National Internet Exchange of India) has also recognized the Complainant's rights in respect of the **7-ELEVEN** Marks. Documents in support of the above are annexed collectively with the complaint as **Annexure 10**.

Present Dispute

Alok Kumar Jain

5.7 In April 2023, the Complainant received repeated reports from India regarding operation of a fake business by the Respondent - conducted via a Domain Name, <7-elevenonline.top> and its corresponding website at www.7-elevenonline.top. The fraudulent business involved prompting customers to invest in renting '7 Eleven's online retail stores' to earn a daily income from such stores. Further checks into the Respondent's activities revealed:

A website requesting login details in the form of a mobile number & providing a link to download a mobile application named '7-eleven' using – as the application icon. A YouTube channel (*created on March 14, 2023*) under the Complainant's Marks was also identified wherein few videos were uploaded. **An individual claiming to be the "Regional General Manager of 7-eleven India" was seen giving out information on the said business.** The videos promoted investing in online services via the identified website, promising profit sharing the online store 10 part of it will be kept by the company towards funds for physical stores. Relevant webpages and screenshots in support of the above are annexed here as **Annexure 11.**

Thereafter, a UDRP Complaint under UDRP Case No.: D2023-2496 was filed by the Complainant seeking transfer of the Domain Name <www.7-elevenonline.top>, and an order was passed in favour of the Complainant - copy of the Arbitration Award is **attached as Annexure 12.**

Despite the above, the Respondent seems to have continued its fraudulent activities in a similar fashion via the present Disputed Domain Name <7elevenn.in>, which was identified recently by the

Complainant. During initial review, the interface and layout of the corresponding website at www.7eleven.in was similar to the one previously operating at www.7-elevenonline.top – as shown in the Complaint.

6 **Discussions and findings:**

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

4.Class of disputes:

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

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

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a),4(b) and 4(c) quoted above.

6.1 **Condition 4(a):) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**

6.1.1

I have gone through the complaint and perused all the documents annexed with the Complaint.

As per averments made in the Complaint, the Complainant is the proprietor of the trademark **7-eleven** mark and has been continuously and exclusively using the same in relation to their business since at least as early as 1946, i.e. almost 76 years prior to the date on which the Respondent registered the disputed domain name.

The Disputed Domain Name incorporates the Complainant's **7-ELEVEN** making the same conceptually, structurally and phonetically nearly identical to Complainant's registered **7-ELEVEN** Marks. The essential element of the Complainant's well known brand is its unique combination of numbers - SEVEN (7) followed by ELEVEN (11) with number 7 as a numeral bisected by 11 as a word. The numeral "7" is displayed with a slightly arched break between the top of the numeral and the leg of the numeral. This special combination has been copied in the Disputed Domain Name .

The Complainant has well-established rights in respect of the **7-ELEVEN** Marks, with the name and mark **7-ELEVEN** *per se* having been considered and formally declared as 'well-known' by courts and judicial forums around the world, including by the Indian Trade Marks Registry and NIXI (National Internet Exchange of India) (Annexure 9 and 10).

The Disputed Domain Name comprises of the Complainant's registered trademark 7-ELEVEN in its entirety, and in the same manner in which the Complainant uses its name and house mark in trade with the number 7 in numeral form and the number Eleven in word form. In this regard,

Complainant has referred to the decision passed in the Petitioner's favor in **7-Eleven Inc. v. Korneliusz Wietska – INDRP Case No. 1073**, wherein the disputed domain was **www.7-eleven.in** and the Ld.Arbitrator held that "..incorporating a trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name."

The Complainant has been continuously and extensively using the registered trademark 7-ELEVEN in commerce since its adoption in 1946 – and thus its rights in the 7-ELEVEN Marks are well established. Moreover, since the Disputed Domain Name has only been registered since April 2023, it is much later to the Complainant's common law and statutory rights in the 7-ELEVEN Marks globally as well as in India.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia*

INDRP/093. Further, a TLD/ccTLD such as “.in ” is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent’s domain name <7 ELEVENN.IN> from the Complainant’s trademark 7-ELEVEN. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. 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 has acquired rights in the trade mark 7-ELEVEN by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain

<7ELEVENN.IN> incorporating the Complainant's identical company name, trade mark and trade name 7- ELEVEN in toto. This evident identity between the Respondent's domain name and the Complainant's marks, domain names and company name incorporating 7-ELEVEN is likely to mislead, confuse and deceive the Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name.

The Respondent has not filed any response to the complaint as such all the averments of the complainant has remained un rebutted.

It is evident from above and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the 7-ELEVEN Trademarks.

A mere perusal of the disputed domain name '7 ELEVENN.IN' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark '7-ELEVEN' in its entirety. it is well established that the mere addition of the Country Code Top Level Domain '.in' does not add any distinctive or distinguishing element.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name <7

ELEVENN.IN> of the Registrant is identical to the trademark 7-ELEVEN of the Complainant and the domain names of the complainant.

- 6.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest** The Complainant stated in the complaint that the Respondent has no legitimate interest in the domain name <7ELEVENN .IN>. The Complainant stated that the mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In Deutsche Telekom AG v. Phonotix Ltd. (WIPO Case No. D2005-1000), it has been held that *“Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy”*. The Respondent is using the Disputed Domain Name, for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s Trademarks Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name. **Facebook, Inc. vs. Domain Admin, Whois Privacy Corp.** WIPO Case No. D2016-1832 wherein it was observed *“Given the widespread reputation of the Complainant’s trademark, the Panel does not consider that the Respondent could actively use the disputed domain names in a legitimate way. Any use of the disputed domain names*

would likely result in misleading diversion and taking unfair advantage of the Complainant's right.

It is averred that the Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its 7-ELEVEN Marks. The Complainant relies on the case of **Marriott International, Inc. v. Thomas, Burstein and Miller, WIPO Case No. D2000-0610** "*no 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.*" The inclusion of the well-known mark '7eleven' in the Disputed Domain Name in its entirety, suggests that the intention of the Respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent. The panel also held in **Orange Brand Services Limited vs P.R.S. Reddy <orangesms.in> - INDRP/644** "*...the disputed domain name incorporates the "Orange" mark, a mark in which the Complainant has the sole and exclusive right and that has become well known owing to the Complainant's efforts*" and also held that "*It is also a well settled principle that the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant*

Decision: The Ritz Carlton Hotel Company LLC v Nelton! Brands inc., INDRP/ 250J”

The inclusion of the well-known mark ‘7eleven’ in the Disputed Domain Name reflects the mala fide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516** wherein it was held *“It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark”.*

The Complainant enjoys exclusive rights in the mark ‘7-ELEVEN’ qua its specific products and services – including those under Classes 09, 14 & 35. The mark 7-ELEVEN does not indicate in any manner goods or services relating to its business. In fact, a general search for the term ‘7-ELEVEN’ on the popular search engine Google directs to websites which either belong to the Complainant or to third parties providing information on the Complainant’s business under the mark 7-ELEVEN, thereby augmenting the indisputable association between the Complainant and its 7ELEVEN Marks and lending the 7-ELEVEN Marks an additional layer of

distinctiveness in commerce. Extract of the Google search in support of the above submission is enclosed as **Annexure 13**.

There is no justification for the Respondent's registration and/or use of the Disputed Domain Name. By virtue of dishonest adoption and *malafide* intent of the Respondent, as established above, there is no scenario wherein the Respondent can claim to make legitimate non-commercial or fair use of the domain name.

In the **WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0")**, the consensus view has been adopted that "*While the overall burden of proof rests with the complainant, 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, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP...*".

Arvik Kumar Jain

The Complainant herein has amply established a *prima-facie* case for the absence of rights or legitimate interests in the Disputed Domain Name in favour of the Respondent.

The Respondent's mere registration of the Disputed Domain Name does not establish rights or legitimate interests in a domain name so as to avoid the application of paragraph 4(a)(ii) of the Policy. Support for this contention can be drawn from **Potomac Mills Limited Partnership v. Gambit Capital Management, WIPO Case No. D2000-0062** and **Orange Brand Services Limited v. Ancient Holdings, LLC, Wendy Webbe, WIPO Case No. D2014-0397**.

The Respondent has not filed any response as such the facts stated in the complaint had remained unrebutted. Further the Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary the Complainant has established that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark **7-ELEVEN**.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the

opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3

Condition 4(C): the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from

Alok Kumar Jain

reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The Complainant is vested with worldwide statutory and common law rights in its 7ELEVEN Marks since the year 1946 in multiple classes including Classes 09, 14 & 35. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the grave likelihood of creating confusion in the minds of the public. It is probable that consumers searching for the Complainant's 7-ELEVEN stores and products online or the merchandise offered by them may perceive the Disputed Domain Name to be an India-specific domain name of the Complainant. The Complainant submits that this is the Respondent's desired outcome and is in itself evidence of its bad-faith and *mala-fide* intentions.

The Disputed Domain Name was adopted/ registered by the Respondent on March 01, 2023 which is much subsequent to the

Complainant's adoption and use of the 7ELEVEN Marks and despite being aware of the Complainant's well-known trade mark and trade name and the goodwill attached to the same. Such conduct of the Respondent clearly reflects its dishonesty and shows the mala-fide intention of the Respondent. Registration of a domain name containing a well-known mark is strong evidence of bad faith. Reliance is being placed on **Confédération nationale du crédit mutuel v. Yu Ke Rong** (WIPO Case No. D2018-0948) wherein the Administrative Panel opined that "Given the reputation and fame of the Complainant's trademark and the Complainant's prior registration of almost identical domain names, the registration of the disputed domain name is clearly intended to mislead and divert consumers to the disputed domain name. Even a cursory Internet search would have already made it clear to the Respondent that the Complainant owns a trademark in CREDIT MUTUEL and uses it extensively... In the Panel's view, this clearly indicates the bad faith of the Respondent, and the Panel therefore rules that the Respondent registered the disputed domain name in bad faith." Further reliance is being placed on **Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager** (WIPO Case No. D2011-1951), wherein it was held that "*it is clear in this Panel's view that, at the time the disputed domain name (<mchelin.com>) was registered, Respondent had actual knowledge of Complainant's preexisting rights in the*

MICHELIN trademark. The Panel, therefore, concludes that Complainant has established that Respondent registered the disputed domain name in bad faith". In the present case, at the time of registration of the Disputed Domain Name <7eleven.in>, the Complainant had been known by its business / corporate / trade name 7-ELEVEN for nearly seventy-seven years. Even so, the Respondent chose to register the Disputed Domain Name so as to misappropriate the Complainant's 7-ELEVEN Marks in an unabashed and unauthorised manner. Thus, a finding of bad-faith registration of the Disputed Domain Name is irrefutable and must follow.

Reliance is also being placed on an arbitral order passed in favour of the Complainant in **7-Eleven, Inc. v. Korneliusz Wieteska INDRP Case No. 1073** wherein the

Independent Arbitrator opined that "*The Panel is prepared to accept the Complainant's contentions that its 7-ELEVEN and other related trademarks and the corresponding business are famous. With regard to Famous Names, successive UDRP panels have found bad faith registration because Complainant's name was famous at the time of registration: WIPO/D2000-0310 [choyongpil.net]*". In the present case, as aforementioned, the adoption, use and registration of the trademark 7ELEVEN by the Complainant not only significantly precedes the registration of the Disputed Domain Name but also the mark and the corresponding business have been adjudicated 'famous' and

36.

'well known' by various judicial authorities worldwide - including India. Therefore, it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

Given the adoption and use of the Disputed Domain Name more so incorporating the Complainant's well-known mark post its widely publicized commercial launch in India, it can be inferred Respondent had actual knowledge of Complainant's rights in the **7-ELEVEN** Marks at the time of registering the Disputed Domain Name. Actual knowledge of a complainant's rights in a mark prior to registering a nearly identical domain name can evidence bad faith under Policy.

In this regard the decision of prior Panel in *M/s Merck KGaA v Zeng Wei 1NDRP/323* can be referred wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, hut 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 Respondent had no reason to adopt an identical name/ mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

The bad faith of the Registrant is further evident from the fact that Using the Disputed Domain Name for displaying links for commercial gain is clearly in bad faith.

It is relevant to refer to following cases:

In Samsung Electronics Co. Ltd v. Vishal Didwania INDRP/141) wherein the rights of the complainant Samsung Electronics Co. Ltd. in the trading name and trademark SAMSUNG were protected from the unlawful adoption of the domain name www.samsung.in and the disputed domain name was ordered to be transferred to the complainant.

Similarly in the case of PepsiCo .. Inc. v Mr. Wang Shiwng (fNDRP/400) wherein the rights of PepsiCo .. Inc. in the reputed PEPSI marks were protected from the unlawful adoption of the domain name www.pepsi.in and the disputed domain name was ordered to be transferred to the Complainant.'

In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint , I find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

7

Decision

- 7.1. In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the

Arok Kumar Jee

Complainant's well-known '7-ELEVEN' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi
Dated 15.4.2024

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator