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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY
(Appointed by the National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <lushnaturals.in>

IN THE MATTER OF

Cosmetic Warriors Limited
29 High Street, Poole
Dorset, BH15 1AB,
UK

..... Complainant

-----versus-----

Sarika Nagrale
Lush Naturals,
301, Garuda nest,
Rd no 6, PJR Enclave, Chandan,
Hyderabad – 500050, AP

Email: lushnaturals.in@wix-domains.com

..... Respondent

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1. The Parties

The **Complainant** in this arbitration proceeding is **Cosmetic Warriors Limited**, at the address: 29 High Street, Poole, Dorset, BH15 1AB, United Kingdom.

The **Respondent** in this arbitration proceeding is **Sarika Nagrale, of Lush Naturals**, of the address: 301, Garuda nest, Rd no 6, PJR Enclave, Chandan, Hyderabad – 500050, Andhra Pradesh as per the WHOIS records.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <LUSHNATURALS.IN> with the .IN Registry. The Registrant in the present matter is 'Sarika Nagrale' as per the WHOIS records, and the Registrar is **Tucows Inc.**

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The procedural history of the matter is tabulated below:

Date	Event
January 15, 2025	<p>NIXI sought consent of Ms. Lucy Rana to act as the Sole Arbitrator in the matter.</p> <p>The Arbitrator confirmed her availability and gave her consent vide email on the same date and provided the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure.</p>
January 24, 2025	<p>NIXI handed over the Domain Complaint and Annexures thereto to the Arbitrator.</p> <p>The Arbitrator directed Counsel for the Complainant vide email on the same date to provide the following:</p> <p style="padding-left: 40px;">A. Revised Power of Attorney mentioning the title/ designation of the authorized signatory and resubmit the revised Power of Attorney;</p> <p style="padding-left: 40px;">AND</p> <p style="padding-left: 40px;">B. Revised annexures in accordance with the Rule 4 of the INDRP Rules of Procedure.</p>

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January 31, 2025	<p>Complainant's Counsel requested the Arbitrator for the following:</p> <ul style="list-style-type: none"> A. Reducing annexures - Clarity on the acceptable Annexure limit B. Time limit - Additional three weeks' time to provide revised annexures C. Filing amended Complaint - Approval for re-filing the amended Complaint and annexures <p>The Arbitrator then granted the Complainant's Counsel vide email on the same date a final and non-extendable period of additional ten (10) days, to re-file the amended domain complaint (including the revised Power of Attorney mentioning the full title/ designation of the authorized signatory) along with the revised annexures (which should not exceed 150 pages).</p>
February 09, 2025	<p>Complainant's Counsel provided the amended domain complaint (incorporating the revised Power of Attorney) as well as revised annexures.</p>
February 10, 2025	<p>The Arbitrator directed the Complainant's Counsel to serve a full set of the domain complaint as filed, along with annexures, upon the Respondent by email as well as physical mode (in case Complaint had already not done so) and provide proof of service within seven (7) days.</p>
February 13, 2025	<p>Complainant's Counsel vide email, confirmed having served the documents upon the Respondent via email as well as courier.</p> <p>The Arbitrator accordingly commenced arbitration proceedings vide email on the same date in respect of the matter. Respondent was granted time of fourteen (14) days, to submit a response, i.e. by February 27, 2025.</p>
February 28, 2025	<p>As no response was received from the Respondent within the stipulated time period, in the interests of justice, the Arbitrator granted a final extension of five (05) days to respond to the complaint.</p>
March 07, 2025	<p>As no response was received from the Respondent, Arbitrator concluded proceedings and reserved the present award.</p>

4. Factual Background – Complainant

The Counsel for the Complainant, on behalf of the Complainant in the present matter, has, inter alia, submitted as follows:

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- i. That the Complainant licenses its rights in the mark **LUSH** to Lush Ltd in many countries worldwide, allowing Lush Ltd to conduct retail and manufacturing services on its behalf, with all goodwill accruing back to Cosmetic Warriors.
- ii. That the Complainant is a leading cosmetics manufacturer specializing in “hand-made” cosmetic products made from fresh fruits and vegetables, the finest essential oils and safe synthetics without using any animal tested ingredients.
- iii. That the mark **LUSH** was first adopted internationally as a trade name in 1995, pursuant to a competition organized by the Complainant through its first newsletter and catalogue. Since then, the mark **LUSH** has been continuously and extensively used in connection with the Complainant’s worldwide business, which has expanded rapidly from a single store in Poole, Dorset (England) to over 850 shops in 50 countries across the globe. Besides the exclusive stores, it also operates its business through websites in many countries worldwide, including but not limited to, the United Kingdom, Canada, Australia, Italy, Japan, Sweden, Hong Kong, Switzerland, Hungary, Germany, New Zealand and the United States of America. In this regard, the Complainant has annexed excerpts from their website (including archives) detailing the geographical reach of the business and its history as Annexure 2.
- iv. That the Complainant has used the well-known trade mark **LUSH** in respect of its products in India since at least the year 2004. Between 2004 and 2013, the Complainant operated several exclusive stores for its **LUSH** products in various cities in India, such as Mumbai and Delhi, as well as the India-specific website, www.lushindia.com. Even though its physical stores in India closed in 2013, the Complainant has continued to sell its products to customers in India through its website, www.lush.com, through mobile applications such as “LUSH FHC” and “LUSH LABS”, and through e-commerce platforms.
- v. That the Complainant owns numerous country-specific domain names comprising the mark **LUSH**, including but not limited to www.lush.com/uk/, www.lushindia.com, and www.lush.in. The domain www.lush.com was registered by the Complainant on 12 November 1995 and is valid until 11 November 2033. The website is accessible to, and has been accessed by, users of the internet in India. In this regard, the Complainant has annexed copies of the WHOIS extract for the said domain names which are valid and registered, alongside the relevant domain name certificates as Annexure 10.
- vi. That the Complainant’s website provides information regarding the Complainant, its activities and products, and is accessed by customers worldwide, including in India. Between 2017 and 2023, over 291,000 users from India alone visited the Complainant’s website. In this regard, the Complainant has annexed document that contains data detailing the number of visitors from India to the Complainant’s website between 2014 and 2019, and to the Complainant’s UK-specific website between January 2014 and May 2022 as Annexure 3.



- vii. That the Complainant's **LUSH** branded products are also available through popular third-party online retail/e-commerce stores (albeit without the Complainant's endorsement or involvement). In this regard, the Complainant has annexed excerpts from their official website, as well as screenshots of historical pages from www.lushindia.com sourced from the Wayback Machine as Annexure 4.
- viii. That the Complainant enjoys an enviable reputation and goodwill worldwide with respect to its products under the **LUSH** mark. In this regard, the Complainant has annexed excerpts of certain articles evidencing the media attention to the Complainant's products, promoted under the well-known mark **LUSH**, received in India and internationally as Annexure 5.
- ix. That the Complainant has obtained trade mark registrations for the mark **LUSH** in several countries worldwide including in India.
- x. That the Complainant's products bearing the **LUSH** marks have been sold on an extensive scale all over the world either by itself or through its licensees for over two decades. Since its incorporation, the Complainant has generated worldwide sales and revenue figures for goods sold under the mark **LUSH** that exceed several hundred thousand pounds.
- xi. That the products under the **LUSH** mark have been sold in India since at least 2004 and have been well received by customers in India. From 2005 to 2013, when **LUSH** operated physical stores in India, sales of the Complainant's products consistently exceeded several hundred thousand pounds.
- xii. That from the period 2014 to 2023, the Complainant made total gross sales of over GBP 69,000 in India through sales made via its website, and mobile applications, etc.
- xiii. That the Complainant has also built up a significant presence on social media over the years and enjoys a large following on social media platforms. For example: X (formerly Twitter) (@LushLtd – 173,200 followers), Facebook (395,000 followers and 414,000 likes for the main Lush United Kingdom page), and Instagram (635,000 followers) as of February 2025. The Complainant's YouTube channel was created in 2006 and has enjoyed over 8 million video views by internet users around the world. The **LUSH** North America YouTube page also has over 410,000 subscribers and has had over 83 million views as of February 2025. All these pages and applications are accessed by millions of internet users worldwide, including in India.
- xiv. The Complainant has been vigilant in taking action against third parties who adopt the mark **LUSH** without its authorization. In the same vein, the Complainant had also instituted a domain recovery proceeding before National Internet Exchange of India against the domain name <magiclush.in>. It is pertinent to add that the domain name

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<magiclush.in> offered *inter alia* various cosmetic and beauty products falling under Class 3, which is the core class of interest to the Complainant. The same category of products are also offered by the Respondent in the present matter. Vide the said award, the Learned Arbitrator **recognized the mark LUSH as well-known and** opined that *“the Respondent is hosting a website which is offering products identical/similar to those of the Complainant. As such, the intent of the Respondent appears to be to commercially gain from the reputation of the Complainant's mark and thus, the registration of domain name containing the well-known mark LUSH of the Complainant is in bad faith”*.

5. Contentions And Legal Grounds Submitted By The Complainant

In support of the requirements laid under Paragraph 4 of the INDRP (combined with the relevant Rules of Procedure), the Complainant has submitted that:

- i. The Complainant is the statutory rights owner of the **LUSH** mark in India and internationally. Pursuant to the extensive use and reputation of the mark “**LUSH**” both internationally and in India, the mark “**LUSH**” is associated exclusively with the Complainant and its business activities.
- ii. The disputed domain name incorporates the Complainant’s registered mark “**LUSH**” in its entirety, therefore gives an unmistakable impression of a nexus with the Complainant, when no such nexus exists. The mark “**LUSH**” is the essential and dominant element of the disputed domain name, as the word ‘naturals’ is descriptive in the beauty and cosmetic industry and is commonly used to indicate products made from natural ingredients, serving as a standard and expected descriptor in the industry. When this is considered, the disputed domain name is virtually identical and certainly confusingly similar to the Complainant’s prior mark **LUSH**.
- iii. The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has created the website (corresponding to the disputed domain name) merely to mislead consumers.
- iv. The Respondent is not connected or affiliated with the Complainant in any manner. The Complainant has not authorized nor permitted the Respondent to apply for, register, or use the disputed domain name, which contains the Complainant’s registered mark “**LUSH**” in its entirety.
- v. The Respondent has no possible justification for the adoption and use of the disputed domain name, particularly in relation to a website selling beauty and cosmetic products, such as soaps, bath salts, and similar products, which are core products of interest to the Complainant. The Respondent’s use of the disputed domain name appears to be driven by an unlawful intention to wrongfully gain and take undue advantage of the

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Complainant's intellectual property rights, as well as the reputation and goodwill enjoyed by the Complainant in its mark **LUSH**.

- vi. The Respondent claims to have commenced use of the trade mark **LUSH NATURALS** in 2019, by which time the Complainant's mark was already in use in India and had gained popularity in the relevant circles.
- vii. Since the Respondent is trading in goods that are identical to those of interest to the Complainant, it is highly likely that it was aware of the Complainant and its business and adopted the mark **LUSH NATURALS**, along with the disputed domain name, solely to trade-off the Complainant's painstakingly built goodwill in the **LUSH** mark. As such, the disputed domain name has been registered and is being used in bad faith.
- viii. The Respondent's actions, specifically the registration of the disputed domain name and the creation of a website likely to cause confusion amongst actual and potential consumers of the Complainant, clearly violate the Complainant's statutory and common law rights. These actions are also detrimental to the public interests.

6. Reliefs claimed by the Complainant (Paragraphs 10 of the .IN Policy and 3(b)(vii) of the .IN Rules)

The Complainant has requested for cancellation of the disputed domain name <LUSHNATURALS.IN>.

7. Respondent's Contentions

The Respondent has not filed any response to the submissions of the Complainant.

8. Discussion and Findings

As mentioned in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, a Complainant is required to satisfy the below three conditions in a domain complaint:

- i. The disputed domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights; and
 - ii. The Respondent has no rights and legitimate interest in respect of the domain name; and
 - iii. The disputed domain name has been registered or is being used either in bad faith or for illegal/ unlawful purpose.
- i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights (Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)**

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- In the present domain dispute, the Complainant has furnished information about their trademark rights over the mark **LUSH** in several countries of the world including in India.
- The Complainant has also provided details of various domain names, comprising its **LUSH** trademark.
- The Complainant has also submitted that the disputed domain name incorporates the Complainant's registered mark "**LUSH**" in its entirety and hence is confusingly similar to the Complainant's trademark.
- The Complainant has further submitted that the mark "**LUSH**" is the essential and dominant element of the disputed domain name, as the word 'naturals' is descriptive in the beauty and cosmetic industry and is commonly used to indicate products made from natural ingredients, serving as a standard and expected descriptor in the industry. Therefore, the disputed domain name is virtually identical and certainly confusingly similar to the Complainant's prior mark **LUSH**.
- The Complainant has also made submissions and provided evidence in respect of its prior adoption and use, as well as reputation in its **LUSH** trade mark.

Accordingly, it may be stated that the disputed domain name <**LUSHNATURALS.IN**> is confusingly similar to the Complainant's **LUSH** trademark, and incorporates the same in entirety.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademarks, under Paragraph 4(a) of the INDRP has been established.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)**

As per paragraph 6 of the Policy, a Registrant may show legitimate rights and interests in a domain name, by demonstrating any of the following circumstances:

- (a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights; or*
- (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.*

In this regard, in the absence of any rebuttal from the Respondent, and in light of the assertions below of the Complainant, the Arbitrator accepts the Complainant's

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assertion, that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(b) of the INDRP.

- The Respondent's registration of the disputed domain name is much subsequent to the Complainant's adoption of the **LUSH** mark.
- The brand **LUSH** is exclusively associated with the Complainant and no one else.
- That the Complainant has not authorised, licensed or otherwise allowed the Respondent to make any use of its **LUSH** trade mark, in a domain name or otherwise.
- That the Respondent cannot legitimately claim that it is commonly known by the disputed domain name in accordance with the paragraph 6(b) of the .IN Policy.

As such, Respondent, by choosing not to respond to the Complaint, has failed to satisfy the conditions enshrined in paragraph 6 of the INDR Policy. As held by numerous prior panels, including recently in *Amundi v. GaoGou* (Case No. INDRP/776), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests, and once such case is established, then it is the Respondent upon whom there is the burden of proof, to demonstrate rights or legitimate interests in the disputed domain name. In this regard, if the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(b) of the Policy.

In the present domain dispute, the Respondent has not joined the arbitral proceedings, despite being duly served with the domain complaint, and consequently, not come forward with any assertion or evidence to show any bonafides. Thus, as mentioned above, in view of the lack of assertions on part of the Respondent, coupled with the other contentions put forth by the Complainant, the Arbitrator accepts the Complainant's assertion, that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(b) of the INDRP.

iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) of the .IN Domain Name Dispute Resolution Policy)

In this regard, Complainant has *inter alia* contended the below points regarding Respondent's bad faith:

- The Respondent has no prior right and no authorization to use the trademark **LUSH**.
- The Respondent's awareness that the trademark **LUSH** is popular and famous world over including in India. The Complainant has been using the trademark **LUSH** extensively and continuously since the year 2004 in India. Therefore, the Respondent had constructive notice of the Complainant and its rights in the mark **LUSH**.
- The Respondent's registration and use of the disputed domain name is solely with intention to mislead people into believing that the disputed domain name is associated with the Complainant.

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In this regard, it is pertinent to reiterate that the Respondent has not submitted any reply or rebuttal to the Complainant's contentions, or any evidence in support of its bona fide registration or use of the disputed domain name.

In view of the consolidated submissions of the Complainant, including the above, specifically regarding the relevance of paragraph 7(c) of the .IN Policy in the present domain dispute, the Arbitrator finds that the Respondent's registration and use of the disputed domain name prima facie appears to constitute conduct as mentioned in paragraph 7(c) of the Policy, namely "*(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*".

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.

9. Decision

Based upon the facts and circumstances, the Arbitrator allows the prayer of the Complainant and directs the .IN Registry to cancel the domain <**LUSHNATURALS.IN**>.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana, Sole Arbitrator

Date: March 21, 2025.

Place: New Delhi, India.