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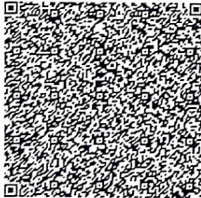
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Sheetal Vohra

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP CASE NO: 1695
ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW) ADVOCATE,
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION
POLICY (INDRP)**

IN THE MATTER OF:

Pentair Flow Services AG.

Address: Freier Platz 108200 Schaffhausen, Switzerland

E-mail: disputes@hssipm.com

Telephone: 0041582553550

...Complainant

Versus

International Postal Name: Feifei

International Postal Organisation: Doublefist Limited (Contact us:ymgroup@msn.com)

International Postal Street: Line 1 A3, JiaZhaoYe, JiangBei, Huicheng District,

International Postal Street Line 2: HuiZhou City, GuangDong Province, China (Arbitration documents

to

International Postal City: HuiZhou

International Postal State: Wisconsin

International Postal Postcode/Zip Code: 516000

International Postal Country: US

...Respondent

Sheetal Vohra

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

The Complainant in this administrative proceeding is Pentair Flow Services AG, a company incorporated and existing under the laws of Switzerland, which has filed the present complaint under rules framed under the INDRP.

The Complainant's authorized representative / counsel in this administrative proceeding is:

HSS IPM GmbH

E-mail: disputes@hssipm.com

Address: Hertizentrum 15. 6300. Zug, Switzerland.

Telephone: 0041582553550

The Power of Attorney in favor of Complainants authorized representative was filed with the amended Complaint and marked as **Annexure-1**.

2. RESPONDENT

The Respondent/Registrant of the Disputed Domain Name is Feifei. The details about the Respondent as provided in the Complaint are: International Postal Name: Feifei, International Postal Organisation: Doublefist Limited (Contact us: ymgroup@msn.com), International Postal Street: Line 1 A3, JiaZhaoYe, JiangBei, Huicheng District, International Postal Street Line 2: HuiZhou City, GuangDong Province, China (Arbitration documents to, International Postal City: HuiZhou, International Postal State: Wisconsin, International Postal Postcode/Zip Code: 516000, International Postal Country: US. A copy of the complete WHOIS details of the Respondent/Registrant as provided by NIXI was annexed with the amended Complaint and marked as **Annexure-2**.

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The Respondent, has not engaged any counsel / advocate in the present administrative proceeding and neither has the Respondent filed any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

II. THE DOMAIN NAME AND REGISTRAR:

The Disputed Domain Name is: <pentair.in>

The Disputed Domain Name is registered with IN Registry.

The accredited Registrar of the Disputed Domain Name is Dynadot LLC

III. PROCEDURAL HISTORY:

May 26, 2023	Date of Complaint
June 02, 2023	Sole Arbitrator appointed to adjudicate the dispute
June 02, 2023	Arbitral proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
June 21, 2023	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on June 02, 2023.

Hence this award is proceeded with on basis of the available pleadings and documents only.

IV. ABOUT THE COMPLAINANT AND THE PENTAIR TRADEMARK(S) OR SERVICE MARK(S) ON WHICH THE COMPLAINT IS BASED

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1. It was submitted that the Pentair Flow Services AG (*hereinafter, the “Complainant”*) is a business within the Pentair Group of companies (“Pentair Group”).
2. It was submitted that the Pentair Group was Founded in 1966, the Pentair Group is a leader in the water industry, composed of companies around the world, including Pentair Plc, Pentair Filtration Solutions LLC, Pentair Filtration, Inc, Pentair Inc, and the Complainant, among others. It was submitted that the official website of Pentair’s Group is found at www.pentair.com. Information about the complainant was filed as **Annexure - 3**.
3. It was submitted that the Pentair Group is located in approximately 135 locations in 26 countries, the Pentair Group's more than 11,000 employees are united in the unwavering belief that water's future depends on Pentair's Group. It was submitted that the Pentair Group’s 2022 net sales were approximately \$4.1 billion.
4. It was submitted that the brand PENTAIR is fanciful and distinctive and was coined by the company founders. It was submitted that in 1966, five men intent on manufacturing high-altitude balloons founded a company in suburban St. Paul, Minnesota, that they called Pentair, the Greek “penta” for the five founders and “air” for the products they planned to produce. It was submitted that the original business diversified quickly, with ventures in many varied industries, before ultimately becoming the leader in water-related products and services, including but not limited to high-quality pool and spa equipment, which the Pentair Group is today.

OVERVIEW OF TRADEMARK REGISTRATIONS: PENTAIR

5. It was submitted that the Complainant owns the registered trademark PENTAIR in numerous territories, including but not limited to:

COUNTRY	TM	REG. NO.	APP/REG DATE	OWNER	CLASSES

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INDIA	Pentair	2279674	2012-02-08	Pentair Inc. (part of the Pentair Group)	7 - pumps, namely, motor mounted pumps, belt driven pumps, portable utility pumps, jet pumps, submersible pumps, grinder pumps, etc. 9- electrical control units for controlling the operation of pool and spa lights, heaters, and pumps, pump accessories, etc. 11 - air purifying apparatus and machines, filters, water purifying apparatus and machines, water softening apparatus and installations, etc. 20 - fiberglass reinforced plastic containers, closures for containers, weatherproof non-metal electrical enclosures, etc.
INDIA	Pentair	2379830	2012-08-14	Pentair Flow Services AG	6 - common metals and their alloys, nonelectric cables and wires, pipes and tubes, etc. 7 - machine and machine tools,
INDIA	Pentair (& logo)	2380737	2012-08-16	Pentair Flow Services AG	valves, valve fittings, and parts and accessories therefor, etc. 9 - diagnostic apparatus and instruments, not for medical use, environmental sensors and detectors, etc. 11 - "apparatus for heating, refrigerating, drying, ventilating, water supply and sanitary purposes, water filtering apparatus, etc.

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					<p>17 - flexible pipes, not of metal, tape products for industrial and commercial use, etc.</p> <p>35 - "consulting in the fields of valves, temperature sensing heat tracing, heat management, pipelines, fluid and gas leak detection, and water and waste water systems.</p> <p>36 - "financing services, audit, asset management and inventory services, all relating to plant, equipment, and machinery.</p> <p>37 - "construction, repair, installation, maintenance, inspection, assessment diagnostic and integration services, all relating to water and waste water systems, pipelines, electronic monitoring equipment and apparatus, etc.</p> <p>40 - "treatment of materials, water treatment services, emissions monitoring services.</p> <p>41 - training in the fields of valves, temperature sensing, heat tracing, heat management, pipelines, fluid and gas leak detection, and water and waste water systems.</p> <p>42 - engineering consulting services, design, maintenance,</p>
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					support, calibration and monitoring services relating to systems for heating and cooling, sealing and corrosion protection systems, etc.
CHINA	Pentair (& logo)	11517821	2012-09-20	Pentair Flow Services AG	35 – business management consulting in the field of valves, temperature sensing and accompanying heating, thermal management, etc.
CHINA	Pentair (& logo)	3504734	2003-03-28	Pentair Flow Services AG	21 – brush, etc.
USA	Pentair	2573714	28-05-2002	Pentair Flow Services AG (last listed owner)	7 - pumps, namely, motor mounted pumps, belt driven pumps, portable utility pumps, jet pumps, etc.
USA	Pentair (& logo)	50003584	01-07-2012	Pentair Flow Services AG	35 - inventory control and consulting in the fields of valves, temperature sensing, heat tracing, heat management, pipelines, fluid and gas leak detection, and water and waste water systems
EUIPO	Pentair (& logo)	011008414	2012-07-02	Pentair Flow Services AG	6 - common metals and their alloys; nonelectric cables and wires; pipes and tubes; etc. 7 - machine and machine tools; valves, valve fittings, and parts and accessories therefor; etc.

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					<p>9 - diagnostic apparatus and instruments, not for medical use, environmental sensors and detectors, etc.</p> <p>11 - "apparatus for heating, refrigerating, drying, ventilating, water supply and sanitary purposes, water filtering apparatus, etc.</p> <p>42 - engineering consulting services, design, maintenance, support, calibration and monitoring services relating to systems for heating and cooling, sealing and corrosion protection systems, etc.</p>
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Copies of the trademark certificates and online statuses of the aforementioned trademark registrations were filed as **Annexure 4.1 – 4.9**. It was submitted that some PENTAIR trademark registrations around the world, including the US and China, where the Respondent might be located, according to the WHOIS details showing the inaccuracy of the details where the Respondent is located in the city of Huizhou (located in China) and the state of Wisconsin, USA.

6. It was submitted that the above trademark registrations, as well as other PENTAIR marks owned by Complainant, long predate the registration of the Disputed Domain Name. It was submitted that due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown worldwide.
7. It was submitted that the Pentair Inc, an affiliated company of Complainant, owns many PENTAIR related domain names including but not limited to www.pentair.com (Registered on 17.10.1996), www.pentair.net (registered on 25.12.2003) and www.pentair.org (registered on 03.11.2010). Copies of the Pentair

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Inc, an affiliated company of Complainant, which owns many PENTAIR related domain names including but not limited to www.pentair.com, www.pentair.net and www.pentair.org were filed as **Annexure 5.1. – 5.3.**

8. It was submitted that the Complainant and its affiliates use the domain names to connect to websites through which it informs potential customers about the PENTAIR mark, related brands, and products and services.
9. It was submitted that the trademark PENTAIR has been subject of past disputes concerning domain names under the UDRP Policy, e.g., CAC Case No. 102894 Pentair Flow Service AG v. Frank Peters concerning the domain name pentairr.com, CAC Case No. 102705 Pentair Flow Service AG v. Huang Jialong concerning the domain name PentairEverPure.com and CAC Case No. 104955 Pentair Flow Service AG v. Hassan Ahmed concerning the domain pentairulantikon.com. It was submitted that the Complainant prevailed in the aforementioned disputes.

The Complainant relied upon the following grounds in support of the Complaint and its claim that the disputed domain name has been adopted in *illegal manner*.

V. FACTUAL AND LEGAL BACKGROUND:

A. The Registrant's Domain Name is identical and/or confusingly similar to a name, trademark or service mark etc. in which the complainant has rights.

- i. It was submitted that the Disputed Domain Name identically and entirely incorporates Complainant's long-established registered trademark PENTAIR along with the .in country code top-level domain ("ccTLD"). It was submitted that the creation of a domain name that wholly incorporates the mark along with a ccTLD does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademarks. It was submitted that the addition of the ccTLD ".in" does not add any distinctiveness to the Domain Name. It was submitted that the identical reproduction of Complainant's trademark in the Domain Name creates the impression that Respondent is somehow affiliated with Complainant, and that Respondent is somehow doing

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business using Complainant's' trademark. It was submitted that in the past, multiple INDRP complaint decisions have held that when a disputed domain name wholly incorporates a trademark of a complainant, then the mere addition of the .IN domain code does not distinguish the domain from the mark. The Complainant relied upon INDRP cases Nike Inc v. Nike Innovative CV Zhaxia (Case No. INDRP/804) and Lego Juris A/s v. Robert Martin (Case No. INDRP/125).

- ii. It was submitted that the same reasoning should apply in the current case and the Disputed Domain Name should be considered identical to the Complainant's trademark PENTAIR. It was submitted that it prominently displays and wholly incorporates the PENTAIR trademarks as it contains the trademark in its entirety and dominant part. It was submitted that the "pentair.in" domain is identical to the PENTAIR mark and this factor under INDRP Policy must be satisfied.

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

It was submitted that for the purpose of Clause 6 of the .IN Domain Name Dispute Resolution Policy (INDRP), the following circumstances, in particular, but without limitation, shall be evidence of the Respondent not having rights or legitimate interests in respect of the domain name.

- i. It was submitted that the Disputed Domain Name is not being used, nor is there any evidence of demonstrable preparation to be used, in connection with a bona fide offering of goods or services. It was submitted that at the time of preparing this Complaint, the Disputed Domain Name resolved to a website with pay-per-click links showing related links such as "inground pools", "pools" and "a flow meter", Copy of the Disputed Domain Name's content was filed as **Annexure 6.1 & 6.2**. It was submitted that the all of the aforementioned related links refer to Complainant's business of high-quality pool and spa equipment. It was submitted that the Complainant is also concerned that there may be more malicious intent motivating the registration of the Disputed Domain Name, namely for the purpose of selling to the Complainant, as discussed below under

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the bad faith third element. it was submitted that the evidence shows the use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services as required.

- ii. It was submitted that there is no other evidence that Respondent has a history of using or is currently preparing to use the Disputed Domain Name in connection with a bonafide offering of goods and services. It was submitted that Complainant has become a distinctive identifier associated with the term “PENTAIR” and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant’s Group.
- iii. It was submitted that the Complainant has not found that Respondent is commonly known by the Disputed Domain Name or that it has any interest in the Domain Name or the major part of it. It was submitted that the WHOIS information within the WHOIS record is the only evidence that relates Respondent to the Domain Name. Copy of the term “PENTAIR” and “PENTAIR INDIA” in the Google search engine, the returned results point to Pentair’s Group and its business activity was filed as **Annexure 7.1-7.2**. It was submitted that the Respondent could easily perform a similar search before registering the Disputed Domain Name and would have quickly learned that Complainant owns the trademarks and that Complainant has been using its trademarks extensively.
- iv. It was submitted that the Complainant has not authorized, licensed or otherwise allowed Respondent to use any of its trademarks and Complainant does not have any other relationship or association or connection with Respondent. It was submitted that the previous panels have held that the lack of such authorization would be sufficient to establish a prima facie case regarding the respondent’s lack of rights or legitimate interests in the disputed domain name. It was submitted that in the case *Wacon Co. Ltd. v. Liheng*, (Case No. INDRP/634), where the Panel finds no legitimate interest where the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

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- v. It was submitted that as a final point on the issue regarding Respondent's legitimate use, there is no evidence whatsoever that the Respondent 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 PENTAIR trademark.

It was submitted that according to the evidence available to the Complainant, there is no indication that Respondent has any rights or legitimate interests in the Disputed Domain Name; therefore, this factor required by the INDRP Policy has been satisfied.

C. The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

The Disputed Domain Name was Registered in Bad Faith

- i. It was submitted that the Complainant's numerous PENTAIR trademarks in many territories around the world including India long predate the registration of the Disputed Domain Name and Respondent has never been authorized by Complainant to register the Disputed Domain Name. It was submitted that it is inconceivable that the unique and fanciful combination of the seven-letter-string that makes up the Complainant's mark "PENTAIR" in the Disputed Domain Name is not a deliberate and calculated attempt to improperly benefit from the Complainant's rights.
- ii. It was submitted that the trademark PENTAIR is registered by the Complainant in numerous territories and has been used by Complainant's group for several decades since the term was coined by the founders of the original business. It was submitted that the Complainant's PENTAIR mark is distinctive and widely known in its sector. It was submitted that the Pentair was named as one of America's best employers for women in 2022 by Forbes (<https://www.forbes.com/lists/best-employers-women/?sh=6d83ea62466c>) Pentair was awarded the 2022 ENERGY STAR® Partner of the Year – Sustained Excellence Award from the U.S. Environmental Protection Agency (EPA) and

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the U.S. Department of Energy (see https://www.energystar.gov/about/awards/2022_energy_star_award_winners) and in an industry survey, Pentair was named the Brand Most Used in a vote of industry professionals across the U.S.

- iii. It was submitted that the as mentioned above, when entering the term “PENTAIR” and “PENTAIR INDIA” in the Google search engine, the returned results point to Pentair’s Group and its business activity. It was submitted that points to a possible inference of knowledge and, therefore, of bad faith targeting. It is submitted that it is helpful to refer to WIPO Overview 3.0, as some aspects of the UDRP have similarities to the Policy. The Complainant has provided the relevant extracts of section 3.2.2 of WIPO Overview 3.0 are as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

- iv. The Complainant relied on the case of *Merck KGaA v Zeng Wei (INDRP/323)* where the Panel states the following:

“The choice of the domain name does not appear to be a mere coincidence but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent’s site, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy”

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- v. It was submitted that these reasons, it is reasonable to infer that Respondent knew or should have known of Complainant's mark at the time of registration.
- vi. It was submitted that the fact that the Disputed Domain Name comprises such a distinctive and widely-known mark (in its sector) is strongly indicative of the Respondent's bad faith.

The Disputed Domain Name is Being Used in Bad Faith.

- i. It was submitted that in an effort to amicably resolve the matter, Complainant initially contacted Respondent on February 11, 2023, via a Cease-and-Desist letter ("C&D"). In the C&D, Complainant advised Respondent that the unauthorized use of its trademark within the Disputed Domain Names violated its trademark rights and Complainant requested a voluntary transfer of the Disputed Domain Names. On February 14, 2023, a response was received from the following address "ymgroup@msn.com" replying the following: *"Hello, I understand your position on intellectual property. But this domain name is only for sale, and the price is only 3890 USD. We could transfer this domain name via Sedo.com (Germany). Best regards, Fei"*. Copy of full history of communications was filed as the **Annexure – 8**. It was submitted that the Respondent's offer to sell the Disputed Domain Name for an amount clearly in excess of out-of-pocket costs is evidence of bad faith under INDRP Policy Article 7(a) which states that for the purposes of Clause 4(c) of the INDRP, 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".

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- ii. It was submitted that the Disputed Domain Name resolves to a pay-per-click website showing links directly related to Complainant's business such as "inground pools", "pools" and "ball valve". It was submitted that the Respondent was never granted permission to register the Disputed Domain Name. It was submitted that the Respondent took advantage of Complainant's trademark by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's products, services, website or location.
- iii. It was submitted that the Complainant's point of view, the Respondent intentionally chose the Disputed Domain Name based on the widely registered and used trademark PENTAIR in order to try to generate more traffic to its own business. It was submitted that the Respondent uses the Disputed Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website. It was submitted that this conduct has been considered as bad faith under the INDRP Policy and other WIPO decisions have also arrived at the same conclusion, for example, *Philip Morris Incorporated v. Alex Tsypkin*, WIPO Case No. D2002-0946 and INDRP decisions such as *Merck KGaA v Zeng Wei (INDRP/323)* where the Panel stated:

"Under Paragraph 6(iii) of the Policy, if the registrant of the domain name dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely to attract Internet traffic of the Respondent's website and to mislead customers, which is considered bad faith registration and use of the disputed domain name. The Respondent in the present case is found to have registered the disputed domain name to get undue advantage from the goodwill associated with the Complainant's trademark, and as

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such is found to have registered and used of the disputed domain name in bad faith, as understood under INDRP Policy''.

- iv. It was submitted that the Complainant's trademark registrations long predate Respondent's Disputed Domain Name registrations and where the PENTAIR trademark has been registered in India since at least 2012. It was submitted that this constitutes bad faith due to the gap of more than ten years between the registration of the Complainant's trademarks and the Respondent's registration of the Disputed Domain Name. The Complainant relied on the case WIPO Case No. D2021- 1934 *Natixis v. Felix Anderson*, where the Panel found out the following:

''... In addition, a gap of more than ten years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name (containing the trademark) can, in certain circumstances, be an indicator of bad faith. (See Asian World of Martial Arts Inc. v. Texas International Property Associates, WIPO Case No. D2007-1415). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration by 15 years''.

It was submitted that this factor under INDRP Policy has been satisfied.

It was submitted that in conclusion, to summarize, the Complainant's trademark PENTAIR has been used since 1966 and is a well-established mark in water treatment, including in the swimming pool and spa industries, around the world, including the US and China where the Respondent might be located, according to the WHOIS details showing the inaccuracy of the details where the Respondent is located in the city of Huizhou (located in China) and the state of Wisconsin, USA. It was submitted that the Respondent bears no relationship to the Complainant and its trademarks and the Disputed Domain Name has no other meaning except for referring to Complainant's name and trademarks, where the addition of the ccTLD ".in" does not add any distinctiveness to the Domain Name. It was submitted that the use of the ccTLD does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademarks. It was submitted that the Disputed Domain Name is not being used in connection with a bona fide offer of goods or services. It was submitted that at the time of preparing this Complaint, the Disputed Domain Name resolved to a

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website with pay-per-click links showing related links such as “inground pools”, “pools” and “a flow meter”. Bad faith registration and use of the Disputed Domain Name may be inferred from the C&D response where the Respondent offers the Disputed Domain Name for sale. Last but not least, the gap of more than ten years between the registration of the Complainant’s distinctive trademarks and the Respondent’s registration of the Disputed Domain Name.

The Complainant finally requested that the disputed domain name be transferred to the Complainant.

V. PARTIES CONTENTIONS:

A. COMPLAINANT

- i. The Disputed Domain Name <**pentair.in**> is identical and/or confusingly similar to the well-known PENTAIR trademarks of the Complainant as well as domain names owned by Complainant’s affiliated company, Pentair Inc, details of which are given in the Complaint. The trademark registrations, as well as other PENTAIR marks owned by Complainant, long predate the registration of the Disputed Domain Name. That due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown worldwide.
- ii. The Disputed Domain Name <**pentair.in**> entirely incorporates Complainant’s long-established registered trademark PENTAIR along with the .in country code top-level domain (“ccTLD”).
- iii. Respondent has no legitimate interest in the Disputed Domain Name <**pentair.in**>;
- iv. The adoption / use of the Complainant’s well-established registered mark PENTAIR as part of the Disputed Domain Name or in any manner whatsoever by the Respondent has been done intentionally to attract for commercial gain, internet users to the website and create confusion and deception.

Shruti Wale

- v. The Pentair trademark is a well-established mark and is associated with the Complainant alone and none else.
- vi. The use of PENTAIR trademark in the Disputed Domain Name is without due cause and has been done to take unfair advantage of the distinctive trademark and reputation.
- vii. The Disputed Domain Name <**pentair.in**> has been registered in bad faith with dishonest intention only to mislead the innocent public and used for dishonest purposes.
- viii. The adoption of the Disputed Domain Name is not for non-commercial purposes and does not fall within the ambit of 'fair use'.
- ix. The Disputed Domain Name resolves to a pay-per-click website showing links directly related to Complainant's business such as "inground pools", "pools" and "ball valve". The Respondent was never granted permission to register the Disputed Domain Name by the Complainant.
- x. Respondent's offer to sell the Disputed Domain Name for USD 3890 i.e. an amount clearly in excess of out-of-pocket costs is evidence of bad faith under INDRP Policy Article 7(a) which states that for the purposes of Clause 4(c) of the INDRP.

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:

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The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

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

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also gone through documents filed by the Complainant with the Complaint. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually deceptively similar to the trademarks and domain names of the Complainant over which the Complainant, who is prior adopter, prior user and registered proprietor of the well-established PENTAIR word and has absolute and sole rights. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name <pentair.in> and hence the same needs to be transferred to the Complainant. I hold that the company name / trade name / trade mark / house mark / domain name PENTAIR and has exclusively and solely become associated and recognized with the Complainant. I hold that due to such exclusive association of the PENTAIR trademarks with the Complainant, and also considering the numerous prior registered domain names of the Complainant containing the PENTAIR marks, the Complainant alone has the right to utilize the PENTAIR trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the Pentair trademark and the same is associated only with the Complainant.

A. The Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark etc. in which the complainant has rights.

Shubai Wale

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name <pentair.in> is identical and / or confusingly similar to the Pentair trademarks in which the Complainant has unquestionable rights for the following reasons:

- i. I find that the Disputed Domain Name identically and entirely incorporates Complainant's long-established registered trademark PENTAIR along with the .in country code top-level domain ("ccTLD"). I find that the creation of a domain name that wholly incorporates the mark along with a ccTLD does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademarks. I find that the addition of the ccTLD ".in" does not add any distinctiveness to the Domain Name. I find that the identical reproduction of Complainant's trademark in the Domain Name creates the impression that Respondent is somehow affiliated with Complainant, and that Respondent is somehow doing business using Complainant's trademark. I find that in the past, multiple INDRP complaint decisions have held that when a disputed domain name wholly incorporates a trademark of a complainant, then the mere addition of the .IN domain code does not distinguish the domain from the mark as held in *Nike Inc v. Nike Innovative CV Zhaxia (Case No. INDRP/804)* and *Lego Juris A/s v. Robert Martin (Case No. INDRP/125)*.
- ii. I find that the same reasoning should apply in the current case and the Disputed Domain Name should be considered identical to the Complainant's trademark PENTAIR. I find that it prominently displays and wholly incorporates the PENTAIR trademarks as it contains the trademark in its entirety and dominant part. I find that the "pentair.in" domain is identical to the PENTAIR mark and this factor under INDRP Policy must be satisfied.

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

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Respondent has no right or legitimate interest in the disputed domain name <pentair.in> for the following reasons:

Shubai Wala

I find that for the purpose of Clause 6 of the .IN Domain Name Dispute Resolution Policy (INDRP), the following circumstances, in particular, but without limitation, shall be evidence of the Respondent not having rights or legitimate interests in respect of the domain name:-

- i. I find that the Disputed Domain Name is not being used, nor is there any evidence of demonstrable preparation to be used, in connection with a bona fide offering of goods or services. I find that at the time of preparing this Complaint, the Disputed Domain Name resolved to a website with pay-per-click links showing related links such as “inground pools”, “pools” and “a flow meter”. I find that all of the aforementioned related links refer to Complainant’s business of high-quality pool and spa equipment. I agree with the Complainant’s concern that there may be more malicious intent motivating the registration of the Disputed Domain Name, namely for the purpose of selling to the Complainant, I find that the evidence shows the use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services as required.
- ii. I find that there is no other evidence that Respondent has a history of using or is currently preparing to use the Disputed Domain Name in connection with a bona fide offering of goods and services. I find that Complainant has become a distinctive identifier associated with the term “PENTAIR” and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant’s Group.
- iii. I agree with Complainant’s contention that the Respondent is not commonly known by the Disputed Domain Name nor that it has any interest in the Domain Name nor the major part of it. I find that the WHOIS information within the WHOIS record is the only evidence that relates Respondent to the Domain Name. Copy of the term “PENTAIR” and “PENTAIR INDIA” in the Google search engine, the returned results point to Pentair’s Group and its business activity as can be seen from **Annexure 7.1-7.2**. I find that the Respondent could easily have performed a similar search before registering the Disputed Domain Name and would have quickly learned that Complainant owns the trademarks and that

Shruti Wale

Complainant has been using its trademarks extensively.

- iv. I find that the Complainant has not authorized, licensed or otherwise allowed Respondent to use any of its trademarks and Complainant does not have any other relationship or association or connection with Respondent. I find that the previous panels have held that the lack of such authorization would be sufficient to establish a prima facie case regarding the respondent's lack of rights or legitimate interests in the disputed domain name as held in the case of *Wacon Co. Ltd. v. Liheng*, (Case No. INDRP/634), where the Panel found no legitimate interest where the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.
- v. I find that regarding Respondent's legitimate use, there is no evidence whatsoever that the Respondent 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 PENTAIR trademark.
- vi. I find that as a final point on the issue, the bad faith of Respondent is established from the fact that upon being issued by a cease and desist letter, the Respondent has tried to transfer the disputed domain name for a consideration of USD 3890.
- vii. I find that according to the evidence available to the Complainant, there is no indication that Respondent has any rights or legitimate interests in the Disputed Domain Name; therefore, this factor required by the INDRP Policy has been satisfied.

D. The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

The Disputed Domain Name was Registered in Bad Faith

Shubai Wala

I hold that the Respondent has registered the disputed domain name in bad faith as per Paragraph 7(c) of the INDRP for the following reasons:

- i. I find that the Complainant's numerous PENTAIR trademarks in many territories around the world including India long predate the registration of the Disputed Domain Name and Respondent has never been authorized by Complainant to register the Disputed Domain Name. I find that it is inconceivable that the unique and fanciful combination of the seven-letter-string that makes up the Complainant's mark "PENTAIR" in the Disputed Domain Name is not a deliberate and calculated attempt to improperly benefit from the Complainant's rights.
- ii. I find that the trademark PENTAIR is registered by the Complainant in numerous territories and has been used by Complainant's group for several decades since the term was coined by the founders of the original business. I find that the Complainant's PENTAIR mark is distinctive and widely known in its sector. I find that the Pentair was named as one of America's best employers for women in 2022 by Forbes (<https://www.forbes.com/lists/best-employers-women/?sh=6d83ea62466c>) Pentair was awarded the 2022 ENERGY STAR® Partner of the Year – Sustained Excellence Award from the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (see https://www.energystar.gov/about/awards/2022_energy_star_award_winners) and in an industry survey, Pentair was named the Brand Most Used in a vote of industry professionals across the U.S.
- iii. I find that the as mentioned above, when entering the term "PENTAIR" and "PENTAIR INDIA" in the Google search engine, the returned results point to Pentair's Group and its business activity. I find that points to a possible inference of knowledge and, therefore, of bad faith targeting.

Shubai Wala

- iv. I find that these reasons, it is reasonable to infer that Respondent knew or should have known of Complainant's mark at the time of registration.
- v. I find that the fact that the Disputed Domain Name comprises such a distinctive and widely-known mark (in its sector) is strongly indicative of the Respondent's bad faith.
- vi. I find that according to the evidence available to the Complainant, there is no indication that Respondent has any rights or legitimate interests in the Disputed Domain Name; therefore, this factor required by the INDRP Policy has been satisfied.
- vii. I find that the Disputed Domain Name resolves to a pay-per-click website showing links directly related to Complainant's business such as "inground pools", "pools" and "ball valve". I find that the Respondent was never granted permission to register the Disputed Domain Name. I find that the Respondent took advantage of Complainant's trademark by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's products, services, website or location.
- viii. I find that the Respondent intentionally chose the Disputed Domain Name based on the widely registered and used trademark PENTAIR in order to try to generate more traffic to its own business. I find that the Respondent uses the Disputed Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website. I find that this conduct has been considered as bad faith under the INDRP Policy and other WIPO decisions have also arrived at the same conclusion, for example, *Philip Morris Incorporated v. Alex Tsyarkin, WIPO Case No. D2002-0946* and INDRP decisions such as *Merck KGaA v Zeng Wei (INDRP/323)*

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- ix. I find that the Complainant's trademark registrations long predate Respondent's Disputed Domain Name registrations and where the PENTAIR trademark has been registered in India since at least 2012. I find that this constitutes bad faith due to the gap of more than ten years between the registration of the Complainant's trademarks and the Respondent's registration of the Disputed Domain Name.
- x. I find that the Complainant has been successfully been able demonstrate that PENTAIR is a well-established trademark used since 1966 and is a well-established mark in water treatment, including in the swimming pool and spa industries, around the world, including the US and China where the Respondent might be located, according to the WHOIS details showing the inaccuracy of the details where the Respondent is located in the city of Huizhou (located in China) and the state of Wisconsin, USA. I find that the Respondent bears no relationship to the Complainant and its trademarks and the Disputed Domain Name has no other meaning except for referring to Complainant's name and trademarks, where the addition of the ccTLD ".in" does not add any distinctiveness to the Domain Name. I find that the use of the ccTLD does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademarks. I find that bad faith registration and use of the Disputed Domain Name are established from the C&D response where the Respondent offers the Disputed Domain Name for sale for USD 3890.
- xi. Finally, in light of the above submissions, I hold that it is overwhelmingly clear that the Respondent's registration of the disputed domain name <**pentair.in**> has been registered in bad faith, without sufficient cause and is intended to take advantage of the Complainant's immense reputation and prominent presence on the internet in order to confuse the public to the detriment of the Complainant.

In view of all the above facts and well-known legal precedents, I find and hold as under:

- That the disputed domain name of the Respondent is identical and confusingly similar to the Complainant's PENTAIR trademarks.

Shubai Wala

- That the use of the disputed domain name <pentair.in> is likely to lead to enormous confusion *qua* its origin due to the use of the Complainant's trade mark PENTAIR as a whole in the disputed domain name being phonetically, visually and structurally identical to the Complainant's trademark PENTAIR.
- That the disputed domain name was registered in bad faith by the Respondent.
- That the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that a website / disputed domain name is operated or endorsed by the Complainant, when such would not be the case.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- That there is also an imminent likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name.
- That the Respondent does not have any affiliation or connection with the Complainant and company name / trade name / trade mark / domain name PENTAIR consequently it is inconceivable that the Respondent's adoption of the <pentair.in> which is identical to the Complainant's PENTAIR amongst other trademarks and domain names with PENTAIR can be seen as merely coincidental.
- That bad faith registration and use of the Disputed Domain Name are established from the C&D response where the Respondent offers the Disputed Domain Name for sale for USD 3890.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its Complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent <pentair.in> to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 21st day of June, 2023.

Sheetal Vohra

DR. SHEETAL VOHRA

Sole Arbitrator

Date: 21/06/2023