



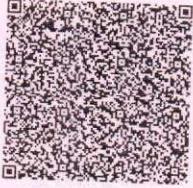
सत्यमेव जयते

INDIA NON JUDICIAL

Chandigarh Administration

e-Stamp

Certificate No. : IN-CH51294696285429W
 Certificate Issued Date : 31-Jul-2024 10:03 AM
 Certificate Issued By : chjeevanu
 Account Reference : NEWIMPACC (GV)/ chspicg07/ E-SMP KIOSK SEC-43/ CH-CH
 Unique Doc. Reference : SUBIN-CHCHSPICG0799727682339172W
 Purchased by : RAJESH KUMAR
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : SAJAL KOSER
 Second Party : Not Applicable
 Stamp Duty Paid By : SAJAL KOSER
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



Please write or type below this line

ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1873 OF 2024

DISPUTED DOMAIN NAME: <WHOLETRUTH.IN>

IRD 0021432321

Attention Alert:

- The authenticity of this Stamp certificate should be verified at www.shcilestamp.com or using e-Stamp Mobile App of Stock Holding Corporation of India.
- In case of any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
- The onus of checking the legitimacy is on the users of the certificate.
- In case of any discrepancy please inform the Competent Authority.

Fitshit Health Solutions Private Limited 4th Floor, A Wing, Krislon House, Krishanlal Marwah Rd, Saki Vihar Rd, Andheri East, Mumbai, Maharashtra, India, 400072 Through its Authorized Signatory

...Complainant

Versus

Raunak Nayak 14/27 Secondary Road, Durgapur Burdwan, West Bengal, India, 713204.

...Respondent

1. INTRODUCTION:

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain Dispute Resolution Policy (INDRP), and the INDRP Rules of Procedure framed there under.

2. PROCEDURAL HISTORY:

- i) In response to the email dated 06.06.2024, appointing undersigned as an Arbitrator in response to which vide email of the same day dated 06.06.2024, the undersigned submitted Statement of Acceptance and Declaration of Impartiality and Independence.
- ii) Thereafter, vide email dated 07.06.2024 from NIXI, undersigned received copies of the amended complaint alongwith the annexures, which were also emailed/sent to the Respondent at his email ID.
- iii) That thereafter, vide email dated 13.06.2024, Notice to the Respondent was issued in accordance with INDRP Rules of

Procedure calling upon the Respondent to furnish reply/response within 15 days from the date of this notice.

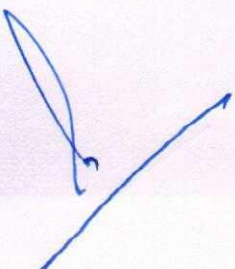
- iv) That as the Respondent did not file any reply/response within the stipulated period of 15 days and a couple of days thereafter, therefore, vide order dated 01.07.2024, the opportunity given to the Respondent to file reply/response, if any, to the Complaint was closed by order and the case was fixed for passing award, ex parte.

3. THE PARTIES, DOMAIN NAME AND REGISTRAR

The details of the parties i.e. the Complainant and the Respondent and the domain name as well as the Registrar are given in the opening paras of the Complaint.

4. Brief History of the Complainant as given in the Complaint.

- i) The Complainant, Fitshit Health Solutions Private Limited, is a company incorporated under the Companies Act, 2013, and includes its predecessors- in- interest, group companies including subsidiary companies and sister concerns, franchisees, licensees, affiliates, associates, dealers/ sub-dealers, retailers and distributors etc.
- ii) The Complainant with a mission to serve people with facts and wellness solutions had started a fitness blog in 2017, covering various health topics revolving around the idea of going from fat-to-fit which were published on The Quint and Medium.com. The said fitness blogs, now available on the website fitshit.in, also provide health and wellness tips, focusing on topics such as Diet & Body Basics, Intermittent Fasting, Myth Busters,



Fitness Hacks, Product Reviews and sheds light on transformational stories as well.

- iii) It has been further mentioned in the complaint that by the year 2019, the Complainant's blog garnered significant traction which lead the Complainant to launch their brand of healthy range of food products under the name/mark THE WHOLE TRUTH/Logo which is a 100% clean and simple alternative to commonly consumed packaged foods, offering a variety of healthy options from protein bars to chocolates and beyond. The Whole Truth products are made of homely ingredients and minimally processed dry fruits like cashews, almonds and dates, mixed with pure cocoa with raw, unadulterated whey for that extra boost of protein. The complainant's range of products have been tabulated in the complaint at page 4 and 5.
- iv) Further, according to the Complainant, with the motive to spread awareness amongst its consumers as well as the general public, has also started an initiative under the name THE WHOLE TRUTH ACADEMY which teaches the art of understanding the nutritional value of food and provides courses on Food & Nutrition.
- v) The Complainant has further submitted that it has registered the top-level domain name THEWHOLETRUTHFOODS.COM from where they are operating an interactive e-commerce website. The said website showcases information about wide range of THE WHOLE TRUTH products and customers can easily place orders for THE WHOLE TRUTH products and avail additional services therein. The said website is accessible globally and can be viewed by persons all over the world.

Snapshots of the website pages of the Complainant, prominently displaying the name/ mark THE WHOLE TRUTH/logo have been pasted at page 6 of the Complaint. Further, the domain Thewholetruthfoods.com was registered on May 05, 2020 snapshot of the WHOIS results of Thewholetruthfoods.com is annexed with the Complaint as Annexure C-2.

- vi) Complainant is the registered proprietor of the trade mark The Whole Truth/ and variations thereof is various classes, in India. Details of a few of its registrations over the The Whole Truth marks has been mentioned in para 7 to 12 of the Complaint. Further, Complainant has averred that the registrations mentioned in the Complaint are valid and subsisting. By virtue of the said registrations Complainant has the exclusive and statutory rights to use the said trade marks in respect of goods/services for which they have been registered. Copies of the registration certificates of some of the said trade mark registrations have been annexed as Annexure C-3 with the Complaint.
- vii) It is further case of the Complainant that it has also registered the trade mark "The Whole Truth" in different classes in various countries and details has been given in para 7 of the Complaint. The Complainant has also submitted that it has earned substantial revenue running into crores of rupees by sale of the Whole Truth products. Further, the Complainant has been spending substantial amount since its inception for promoting its brand The Whole Truth by means of print and electronic media. Details of revenue and sales promotion



expenditures for FY 2021 and FY 2022 have also been given in para 8 of the Complaint.

- viii) As per the Complaint, the Complainant's start up initiative The Whole Truth/logo has been covered by various print media houses. Details of some of the articles published over the years about Complainant and its products under the The Whole Truth/The Whole Truth marks have been given in para 9 of the Complaint. Further, in addition to Complainant's official websites, Complainant also uses the medium of social networking to promote its brand THE WHOLE TRUTH/logo and therefore, Complainant has been promoting its business on various social networking websites like Facebook (9.9K Followers as on May 09, 2024), LinkedIn (36K Followers as on May 09, 2024), Instagram (252K Followers as on May 09, 2024), YouTube (48.3K Subscribers as on May 09, 2024 and X (formerly Twitter) (4.5K Followers as on May 09, 2024).
- ix) Further, according to the Complaint, the Complainant's THE WHOLE TRUTH/logo products are available for sale on various popular online shopping websites in India, such as www.amazon.in, www.flipkart.com, www.blinkit.com, etc. It is pertinent to mention that with the internet, the Indian consumer's awareness of Complainant's products and the marks/names associated with them has been heightened considerably. Screenshots of Complainant's products as available on some e-commerce websites in India, finds mentioned in para 11 of the Complaint.
- x) Also, according to the Complainant, by virtue of continuous extensive use and quality of Complainant's products, Complainant's business has acquired substantial reputation in



the industry and its trade marks THE WHOLE TRUTH/logo are always associated with its business and products alone. Complainant's trade mark The Whole Truth/logo is well known and famous in India within the meaning of Section 2(1)(zg) of the Act. The Trade Marks Act, 1999 provides for protection of well-known marks in India.

- xi) Further, it has been mentioned in the Complaint that the Complainant makes every effort to protect its trade mark rights. Protection of Complainant's trademarks extends beyond registration activities to enforcement actions, which include sending cease and desist letters to infringers of the identical or marks similar to Complainant's trade marks. Further, according to the Complainant it has also taken successful domain recovery action (under the INDRP) against various domain names in India. Details of the decisions passed in favour of the Complainant by INDRP Panels have been mentioned in para 14 of the Complaint and the awards have been annexed as Annexure C-4.
- xii) It is further mentioned in the Complaint that it was recently brought to the Complainant's notice that a domain name, namely <WHOLETRUTH.IN> was registered on May 19, 2021 by the Respondent/ Registrant. An Internet search revealed that a parked page hosting several pay-per-click advertisements is being hosted at the said domain name. A snapshot of the said webpage has been copied in para 15 of the Complaint a dated copy of the said webpage has been annexed as Annexure C-5 with the Complaint. Further, according to the Complainant, as the domain name <WHOLETRUTH.IN> incorporates the Complainant's trade



name, registered trade mark and prior domain name, Complainant is constrained to file the present complaint, in order to safeguard its valuable Intellectual Property Rights.

5. GROUND TAKEN BY THE COMPLAINANT

The Complainant further submits that as required by the .IN Domain Name Dispute Resolution Policy, the three legal grounds are required to be established to fulfill the statutory requirements and in this regard the Complainant has made the following submissions:

A) The domain name <WHOLETRUTH.IN> is identical to a trade mark in which Complainant has rights (Paragraph 4(a) of the IN Policy)

- i) The Complainant is the registered proprietor of the trademark THE WHOLE TRUTH in many countries around the world, including in India, and has been continuously and exclusively using the same in relation to its business for many years. As stated in the preceding paragraphs, Complainant has continuously been in use of the brand since the year 2020, which is much prior to the date on which Respondent registered the domain <WHOLETRUTH.IN>. By virtue of long standing use and registration, Complainant's trademark THE WHOLE TRUTH qualifies to be a well-known mark and is bound to be protected.
- ii) The impugned domain name <WHOLETRUTH.IN> comprises of the Complainant's registered trade mark THE WHOLE TRUTH in toto and is identical to the prior registered domain THEWHOLETRUTHFOODS.COM, and is therefore visually, phonetically deceptively and

confusingly identical to the Complainant's prior registered trade mark THE WHOLE TRUTH as well as its existing domain containing the said name/mark.

According to the Complainant, it is a well-settled principle and has been held by numerous prior panels deciding under the INDRP that where the disputed domain name wholly incorporates the Complainant's trade mark, the same shall be sufficient to establish deceptive similarity. Some notable decisions in this regard are Kenneth Cole Productions v. Viswas Infomedia INDRP/093, Inter-Continental Hotels Corporation v. Jaswinder Singh (INDRP/278) and Starbucks Corporation v. Mohanraj (INDRP/118).

- iii) Further, according to the Complainant, the Hon'ble Supreme Court of India had, in the case of Saryam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., (2004Supp. (2) SCR 465) held that the domain name has acquired the characteristic of being a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. The Complainant has also relied upon various decisions and submitted that in the present dispute as well, the Complainant has acquired rights in the mark THE WHOLE TRUTH by way of trademark registrations, and by virtue of use as part of their domain names since much prior to the date on which the Respondent created the impugned domain <WHOLETRUTH.IN> incorporating the Complainant's registered trade mark as well as well as its existing domain containing the said

name/mark. Further, according to the Complainant, the evident identity between Respondent's domain name and Complainant's marks, domain names and brand name is likely to mislead, confuse and deceive Complainant's customers as well as the general lay public as to the source, sponsorship, affiliation or endorsement of Respondent's domain name. As evidenced in the preceding paragraphs, Complainant's rights over the marks THE WHOLE TRUTH significantly predate Respondent's registration of the impugned domain <WHOLETRUTH.IN>, which as per the WHOIS records, was only registered/created on May 19, 2021.

- iv) Further, according to the Complainant, mere omission of the word "The" from the disputed domain name does nothing to alleviate its deceptive similarity with the Complainant's well-established and well-known trademarks. As per the Complainant, as held by various INDRP panels over the years, such omission does not significantly affect the similarity. Further, as indicated in section 1.9 of the WIPO Jurisprudential Overview 3.0-"A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent."

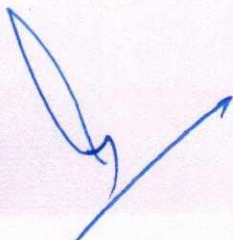
- v) The Complainant has also relied upon various decisions given by various panels as mentioned under this ground and finally submits that the condition of clause 4(a) of the INDRP is fully established and be held accordingly.

B) Respondent has no rights or legitimate interests in respect of the domain name (Paragraph 4 (b) and Paragraph 6 of the INDRP)

- i) To fulfill the second legal requirement, Complainant has submitted that Respondent has no rights or legitimate interests in the domain name <WHOLETRUTH.IN>. Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name THE WHOLE TRUTH and/or its phonetic equivalents/variations, and Respondent does not have any affiliation or connection with Complainant or with Complainant's goods under the name/mark THE WHOLE TRUTH. Complainant further submits that moreover, THE WHOLE TRUTH is a unique combination of terms coined by the Complainant, having no dictionary meaning, and the Respondent does not prima facie have any reason, to use the Complainant's well-known trade name/trading style and registered trademark. The same constitutes prima facie proof in favour of the Complainant under Paragraph 4 (b)- that the Respondent does not have any rights or legitimate interests in the domain name. In support of its case under this head, Complainant has placed Reliance upon decision in the

case titled CareerBuilder, LLC v. Stephen Baker, Case No. D2005-0251.

- ii) Further, according to the Complainant, the Respondent cannot assert that it has made or that it is currently making any legitimate non-commercial or fair use of the domain name, in accordance with Paragraph 6 of the IN Policy and the same is also corroborated by the fact that no website is currently operational from the said domain. Instead, a parked page featuring several pay-per-click (PPC) links, are currently featuring on the disputed domain name. It has been held by prior panels that use of such PPC links do not constitute legitimate right or interest and in addition is prima facie evidence of bad faith. Moreover, Complainant mentions that the Respondent is also ineligible to sustain their rights under the ambit of Paragraph 6 (b) of the INDRP, given the fact that the Respondent has held the impugned domain for 3 years, despite having no legitimate use thereof. Thus, they most certainly are not in any capacity commonly known by the impugned domain name <WHOLETRUTH.IN > and in no way have any claim under Paragraph 6 of the INDRP.
- iii) The Complainant further submits that it is also clear that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 6 (c) of the INDRP. Further, any use of the domain name <WHOLETRUTH.IN> in the future by Respondent is likely to create a false association and affiliation with the Complainant and its well-known trade



mark as well as brand name THE WHOLE TRUTH. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate non-commercial or fair use of the domain name in accordance with Paragraph 6 of the IN Policy.

- iv) Further, according to the Complainant, the Respondent herein has registered the disputed domain <WHOLETRUTH.IN> approximately 1 year after the creation/ registration of the domain name <THEWHOLETRUTHFOODS.COM> by Complainant as well as Complainant's use on the marks THE WHOLE TRUTH and its trademark registrations. Under the circumstances of this case, Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 6 (c) of the IN Policy since there is no apparent legitimate justification for Respondent's registration of the <WHOLETRUTH.IN> domain name, that is visually, phonetically, conceptually, deceptively and confusingly similar/identical to Complainant's trade name/mark and therefore, the continued ownership of the disputed domain name <WHOLETRUTH.IN> by Respondent, despite not having any legitimate or fair reason to do so, prevents Complainant from reflecting its trademark in the subject domain name. The Complainant has relied upon various decisions wherein, it has been held that use of the trademarks not only creates a likelihood of confusion with Complainants' marks as to



the source, sponsorship, affiliation or endorsement of its web site, but also results in dilution of the marks.

- v) Finally, Complainant submits that for the reasons stated in the foregoing paragraphs, it is not possible to conceive of any plausible use of the domain name <WHOLETRUTH.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known an prior registered trade mark THE WHOLE TRUTH. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and thus according to the Complainant, the conditions under the INDRP Paragraph 4 (b) stand suitably established.

C) The domain name was registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the IN Policy)

- i) Towards the compliance of abovementioned requirement, Complainant has submitted that in consideration of Complainant's reputation in India, where Complainant has extensive business operations (as demonstrated in the preceding paragraphs) as well as its reputation worldwide, and the ubiquitous presence of Complainant's mark THE WHOLE TRUTH on the Internet, Respondent must have been aware of Complainant's trademarks long prior to registering the domain name. In fact, considering that the disputed domain name <WHOLETRUTH.IN> as registered by Respondent incorporates Complainant's trade

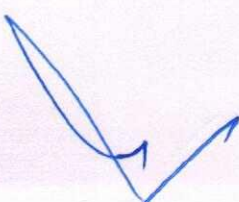


name/trademark and is nearly identical to the prior registered domain <THEWHOLETRUTHFOODS.COM>, reliance is placed on a prior decision of this Panel in M/s Merck KGaA v Zeng Wei INDRP/323 wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark, such registration of a domain name, based on awareness of a trademark is indicative of had faith registration."

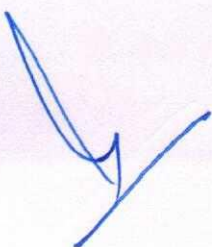
Hence, according to the Complainant, Respondent had no reason to adopt an identical name with respect to the disputed domain name except to create a deliberate and false impression in the minds of consumers and internet users that Respondent is somehow associated with or endorsed by Complainant, with the sole intention to ride on the massive goodwill and reputation associated with Complainant and to unjustly enrich from the same.

- ii) Furthermore, it has been mentioned in the Complaint that the mark THE WHOLE TRUTH is a unique combination of words coined by the Complainant, further aggravates the Respondent's bad faith, in as much as, the Respondent is using the nearly identical name with respect to the impugned domain name <WHOLETRUTH.IN>. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <WHOLETRUTH.IN> which incorporates the Complainant's mark WHOLE TRUTH as well as their domain name



<THEWHOLETRUTHFOODS.COM> in toto. The fact that the Respondent is currently using the domain name in relation to a parked page displaying advertisements/links, gives the unwavering impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold any legitimate interest in the domain name. Reliance has been placed upon this panel's decision in Flipkart Online Services Private Limited v. Azeem Ahmed Khan wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith".

- iii) Further, Complainant submits that in light of the aforesaid immense reputation of the Complainant's mark THE WHOLE TRUTH as well as its ubiquitous presence on the Internet, Respondent was, or should have been, aware of Complainant's trademarks long prior to registering the domain name. In view of the aforesaid, it is submitted that Respondent had constructive notice of Complainant's mark THE WHOLE TRUTH. Reliance has been placed upon decisions of various panels and concluded that the Complainant has established that the mark THE WHOLE TRUTH is distinctive and well known, and it is inconceivable that Respondent did not have prior knowledge of Complainant's aforesaid mark at the time of registering the disputed domain name. Owing to the fame attached to Complainant's mark THE WHOLE TRUTH, which is a result of extensive use and promotion in relation to its renowned products, and the fact that Complainant's goods are available on a pan-India basis,



it is implausible for Respondent to have registered the domain name for any reason other than to trade off the reputation and goodwill of Complainant's mark THE WHOLE TRUTH and that the facts and contentions enumerated above establish that Respondent's domain name registration for <WHOLETRUTH.IN> is clearly contrary to the provisions of paragraph 4(c) of the INDRP.

5. **RESPONSE/REPLY OF THE RESPONDENT:**

As already stated since the Respondent has not submitted any reply/response, thereby, legally speaking, the contents of the Complaint and the annexures thereto have gone unrebutted and unchallenged, giving them the status of being admitted which is the form of best evidence, however, as the Complainant is also legally required to prove its case even if the same is being decided ex-parte, therefore, the undersigned has carefully gone through the contents of the Complaint and supported documents.

6. **DISCUSSION/FINDINGS OF THE ARBITRATOR:**

From the pleadings supported by documents on record, the Complainant has been sufficiently able to prove its case and also fulfilled the essential ingredients of the INDRP Policy in the legal and factual grounds. The decisions cited also support the case of the Complainant. From the averments and documents on record as evidenced by the Complainant, it has been established that the complainant has sufficiently established its rights in and to the ownership of the THEWHOLETRUTH Trademarks and that the

Complainant has acquired the exclusive right to the use of the "The Whole Truth' mark." and also the Complainant has been able to prove that the mark "THE WHOLE TRUTH" is a well- established name in India and other countries. The Complainant has further established that the "THE WHOLE TRUTH", is popularly known exclusively concerning the Complainant and that the trademark "THE WHOLE TRUTH" is inherently distinctive of the products, services, and business of the Complainant. Further, as the mark THEWHOLETRUTH of the Complainant is well-known, the inclusion of the well- known mark "THEWHOLETRUTH" in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Disputed Domain Name) and 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 at large. Also, as the contents of the Complaint and documents annexed which have gone unrebutted, the Complainant has been able to prove the ingredients of sub paras (a) to (c) of Clause 4 of the INDRP dispute Resolution Policy. From the contents and grounds mentioned in the Complaint, it has been proved on record that the Disputed Domain name is confusingly similar to the trademark/domain name in which the Complainant has full rights. It has also been proved that the Respondent Registrant has no rights or legitimate interest in respect of the Domain name and also that the domain name has been registered by the Respondent malafidely as well as dishonestly and is being used in bad faith. The Complainant has been able to prove its case in terms of clause 4 of the INDRP Disputed Resolution Policy and it also falls within the ambit of Clause 7 of the said policy as and wherever applicable. Since, the Respondent has not chosen

to contest the present case, therefore, this Tribunal has no other alternative but to consider and accept the unrebutted contentions of the Complainant as made out in the Complaint which, however, are supported by the documents and legal pronouncements.

7. **CONCLUSION:**

In wake of the abovementioned facts, documents, response of the Respondent, discussions and findings given above, the present Complaint is allowed and the following award is being passed in favour of the complainant and against the Respondent.

8. **AWARD:**

In view of above, it is awarded that the disputed domain name <WHOLETRUTH.IN> be transferred to the complainant. Accordingly, the registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark <WHOLETRUTH.IN> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

9. **COST:**

In view of the facts and circumstances of the Complaint fully detailed in the Award, the cost of the proceedings are also awarded in favour of the Complainant and against the Respondent.


(Sajal Koser)
Arbitrator
01.08.2024