

BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)
INDRP ARBITRATION
INDRP Case No. 1800

Disputed Domain Name: < WHOLETRUTH.IN >

ARBITRATION AWARD

Dated 3.2.2024

IN THE MATTER OF:

Fitshit Health Solutions Private
Limited
4th Floor, A Wing, Krislon House,
Krishanlal Marwah Rd, Saki Vihar Rd, Disputed Domain Name:
Andheri East, Mumbai, Maharashtra,
India, 400072

Complainant

Versus

longjian lljl168@126.com
China Anhui Anqing Yaoqiaozen
Xiancun Shewanzu 15#
Anqing, Anhui 246007, China

Respondent

1. **The Parties**

1.1 The Complainant in this administrative proceeding is Fitshit Health Solutions Private Limited, a company organized and existing under the Companies Act, 2013, having its registered address at 4th Floor, A

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Wing, Krislon House, Krishanlal Marwah Rd, Saki Vihar Rd, Andheri East, Mumbai, Mumbai, Mumbai, Maharashtra, India, 400072. The Complainant's authorized representative in this administrative proceeding is Arpit Kalra & Pranit Biswas S.S. Rana & Co., Advocates Registered Office Address: 317, Lawyers Chambers, High Court of Delhi, New Delhi – 110003, India Telephone: +91 11 – 40123000, 8448584675, 9311953442 Fax: +91 11 – 40123010 Email:inf@ssrana.com

1.2 Respondent in these proceedings is longjian168@gmail.com, China Anhui Anqing Yaoqiaozhen, Xiancun Shewanzu 15# , Anqing, Anhui 246007, China, Phone: (+86)15862438958 Email ID: lj168@126.com

2. Domain Name and Registrar:-

The disputed domain name <the wholetruth.in>, is registered with Godday.COM LLC, The abuse contact email for the Registrar is abuse@godaddy.com, care@services.godaddy.com .

1 Procedure History

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

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

- 3.2. The Complaint was filed by the Complainant with NIXI against the Respondent . On 26.12.2023 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the Parties of my appointment as Arbitrator *via* email dated 26.12.2023 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.
- 3.3. I issued notice to the parties vide email dated 27.12.2023 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response with in 10 days from the date of notice. No response was received from the Respondent within 10 days. On 10.1.24, I granted further time to respondent to file reply if any on or before 20.1.2024.However no response was received from the Respondent till 22.1.24.Thereafter On 23.1.24 I intimated the parties that now the matter will be decided on its own merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent on 26.12.2023 at the email provided by the Respondent with WHOIS, while informing the parties about my appointment as Arbitrator. Thereafter notice was sent vide same trailing email. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint.

3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.

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

3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunities and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent

has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

- 3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

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

Discussions and findings:

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

Clause 4 of the INDRP Policy provides as under:

4. Class of disputes:

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

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

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

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

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

1. It is averred in the Complaint that 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,.The Complainant with the motive to spread awareness amongst its consumers as well as the general public ,has also started an

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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. It is further averred that the domain **THE WHOLETRUTHFOODS.COM** was registered on May 5, 2020. The said website showcases information about wide range of **THEWHOLETRUTH** products and customers can easily place orders for the **THEWHOLETRUTH** products and avail additional services therein. The said website is accessible globally and can be viewed by persons all over the world. The Complainant is the registered proprietor of the Trade mark **THEWHOLETRUTH** and variations thereof in various classes in India as mentioned in the complaint and has been using the same much prior to registration of the impugned domain. Copies of trade mark registrations are annexed with the complaint. It is further stated that the Complainant has also registered the trade mark **THEWHOLETRUTH** in different countries as mentioned in para no.7 of the complaint.

It is evident that the Complainant has been continuously and extensively using the registered trademark **THEWHOLETRUTH** as is evident from above and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the **THEWHOLETRUTH**

Trademarks. It is further averred that the disputed domain name comprises of the complaints registered trade mark **THEWHOLETRUTH** in toto and is identical to the prior registered trade mark **THEWHOLETRUTHFOODS.COM** and is therefore visually, phonetically, deceptively and confusingly identical to the complainant prior registered trade mark **THEWHOLETRUTH**.

A mere perusal of the disputed domain name '**THEWHOLETRUTH.IN**' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark '**THEWHOLETRUTH**' in its entirety. The disputed domain name '**THE WHOLETRUTH.IN**' is identical to the '**THEWHOLETRUTH**' trade marks of the Complainant. It is well established that the addition of a TLD such as ".in" is not significant in determining whether the disputed domain name is identical or confusingly similar to the mark.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Therefore, it cannot

be said to distinguish the Respondent's domain name < **THEWHOLETRUTH.IN**> from the Complainant's trademark **THEWHOLETRUTH** or the domain name **THEWHOLETRUTHFOODS.COM**. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon 'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."

The Complainant has acquired rights in the trade mark **THEWHOLETRUTH** by way of trademark registrations, and by virtue of use since much prior to the date on which

the Respondent created the impugned domain < **THEWHOLETRUTH.IN**> incorporating the Complainant's identical company name, trade mark and trade name **THEWHOLETRUTH** in toto. Disputed domain name was registered on 17.1.2023.

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

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name < **THEWHOLETRUTH.IN**> of the Registrant is identical and or confusingly similar to the trademark **THEWHOLETRUTH** of the Complainant and domain name of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest**

The Complainant stated in the Complaint that the Respondent no rights or legitimate interests in the domain name 'THE WHOLE TRUTH.IN'. The Complainant has not authorized ,licensed or otherwise allowed Respondent to make any use of its registered trade mark and brand name. The Respondent does not have any affiliation or connection with

Complainant or with complainant 's good under the name /mark **THEWHOLETRUTH**. It is further averred in the Complainant that the **THEWHOLETRUTH** is a unique combination of terms coined by the Complainant , having no dictionary meaning. The Respondent has no reason to use Complainants well known trade name/trading style and registered trade mark **THEWHOLETRUTH**. Respondent is not 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 ,parked page featuring several pay per click(PPC)Links ,are currently featuring on the impugned domain name. And the Respondent has failed to prove the circumstances referred to in Clause 6 .

The Complainant has established its rights in the trade mark '**THEWHOLETRUTH**'. The mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In Deutsche Telekom AG v. Phonotic Ltd. (WIPO Case No. D2005-1000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.

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

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

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

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Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

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

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

Clause 7 of INDRP Policy provides as under:

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

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

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

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(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

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

A perusal of the complaint and the documents annexed with the complaint shows that the Complainant is vested with worldwide statutory rights in its **THEWHOLETRUTH** Marks much prior to the registration of disputed domain. 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.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, for the reasons stated in the complaint.

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Therefore from perusal of documents annexed with the complaint and the averments made in the complaint it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

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

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

The Respondent had no reason to adopt an identical name/ mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

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

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

Decision

In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'THEWHOLETRUTH' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

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

Delhi
Dated 3.2.2024

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator