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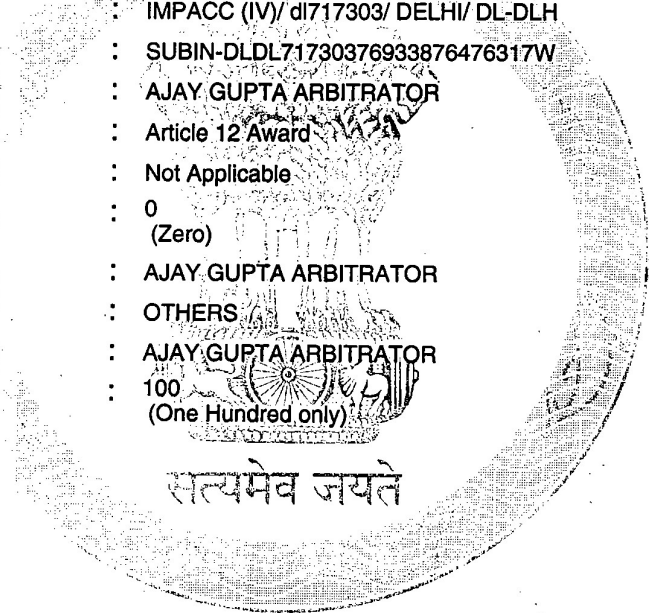
INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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e-Stamp

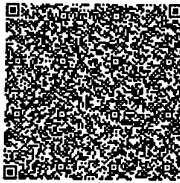
Certificate No.	: IN-DL58417064468153W
Certificate Issued Date	: 14-Mar-2024 03:27 PM
Account Reference	: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730376933876476317W
Purchased by	: AJAY GUPTA ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AJAY GUPTA ARBITRATOR
Second Party	: OTHERS
Stamp Duty Paid By	: AJAY GUPTA ARBITRATOR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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INDRP ARBITRATION CASE No.1831
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

Canva Pty Ltd.

Vs.

Jun Yin

DISPUTED DOMAIN NAME: "canva.com.in"

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ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

CANVA Pty Ltd.
110 Kippax St Surrey Hills
NSW 2010 [AUSTRALIA].

... Complainant

VERSUS

JUN YIN HUAIYINQU HUANG HE HUA YUAN
6-8-101 Huaian Jiangsu 223300 [CHINA]. ... Respondent

Disputed Domain Name: "canva.com.in"

1. THE PARTIES

- 1.1 The Complainant Canva Pty Ltd. in this arbitration proceedings is an online graphic design platform, and its contact address is 110 Kippax St Surrey Hills NSW 2010 [AUSTRALIA].
- 1.2 The Complainant's authorized representative in this administrative proceeding is Safenames Ltd address: Safenames House, Sunrise Parkway, Linford Wood, Milton Keynes, MK14 6LS [UNITED KINGDOM].
- 1.3 The Respondent, in this arbitration proceeding, is Jun Yin Address : Huaiyinqu Huang He Hua Yuan 6-8-101, Huaian, Jiangsu [CHINA] as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. THE DOMAIN NAME & REGISTRAR

- 2.1 The disputed domain name is "canva.com.in" and the Registrar with which the disputed domain name is registered is Dynadot, LLC: Address : P.O. Box 345 San Mateo CA 94401 [UNITED STATES].

3. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the

resolution of the disputes under the .IN Dispute Resolution Policy and Rules framed thereunder.

3.2 The history of this proceeding is as follows :

In accordance with Rules 2(a) and 4(a), NIXI on 13.03.2024 formally notified the Respondent of the complaint along with a copy of the complaint & annexures, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, IN Domain Resolution Policy and the Rules framed thereunder. That I submitted the Statement of Acceptance and Declaration of Impartiality and Independence dated 13.03.2024 to NIXI.

3.2.1 That commencing the arbitration proceedings an Arbitration Notice Dated 14.03.2024 was emailed to the Respondent on 14.03.2024 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days i.e. by 23.03.2024. The Complainant complying with the directions of this tribunal, sent the hard copy of complaint to the respondent on 19.03.2024 and also submitted proof of the dispatch on 22.03.2024.

3.2.2 This panel vide its Arbitration Notice dated 14.03.2024 directed the Respondent to file the reply of complaint if any, within 10 days of the notice i.e. by 23.03.2024 but the Respondent failed to file the reply of the complaint, however this panel in the interest of justice again gave one more opportunity to the Respondent via its



email dated 24.03.2024 to file the reply of the complaint by 28.03.2024.

3.2.3 However, despite the receipt of Notice Dated 14.03.2024 , copy of the complaint and reminder dated 24.03.2024 sent via email , the Respondent neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 29.03.2024 the respondent was proceeded ex parte.

THE RESPONDENT'S DEFAULT

3.3 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "canva.com.in".

3.4 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

3.5 The Respondent was notified of this administrative proceeding per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

3.6 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent

was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint. The INDRP 'Rules' paragraph 12 states, "In the 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 the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite sufficient time and repeated opportunities given in this regard and was proceeded ex parte.

4. BACKGROUND OF THE COMPLAINANT & ITS SUBMISSIONS ABOUT THE TRADEMARK "CANVA", ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION, DOMAIN NAMES AND WEBSITE :

- 4.1 The Complainant submits that the Complainant, Canva Pty Ltd, is an online graphic design platform founded in 2012 by Melanie Perkins, Cliff Obrecht, Cameron Adams, and users of the Complainant's services have thousands of images and templates to choose from when creating graphic designs. The Complainant's CANVA offerings relate to many uses and contexts (e.g., for presentations, social media posts, and a range of print products). The online platform is easy to use, intuitive and utilizes a 'drag-and-drop' methodology. The Complainant submits that as a result, its services have achieved significant reputation and acclaim.
- 4.2 It is submitted that the Complainant was valued at \$40 billion in September 2021 and currently has more than 100 million active users per month (MAUs) with customers across 190 countries.

- 4.3 The Complainant submits that, it offers services from its main website, www.canva.com. Third-party Internet traffic statistics indicate that the Complainant's main website received an average of more than 500 million visits per month between November 2023 and January 2024.
- 4.4 The Complainant submits that it offers its services, as a basic package, for free. The Complainant also offers a paid version named 'Canva Pro' which, used by millions of individuals across the globe, has many more features and design Capabilities.
- 4.5 The Complainant submits that the CANVA brand is well known around the world. The Complainant's services are offered exclusively online, which make them inherently global. It is further submitted that within its first year, the Complainant had 750,000 users and had raised \$3 million in seed funding.
- 4.6 The Complainant submits that it also received recognition for having famed venture capitalist Guy Kawasaki join the company in 2014. It is further submitted that the Complainant's online platform is available in approximately 100 languages. The Complainant markets its offerings to users based in various jurisdictions through the use of region-specific sites.
- 4.7 The Complainant submits that it launched its app for the iPad in 2014, which grew access to CANVA services. The Complainant's app is available on both the App Store and Google Play; it has been downloaded more than 100 million times on Google Play. It is submitted

that additionally, the Complainant's business has grown through the acquisitions of Zeetings, Pexels and Pixabay.

4.8 The Complainant submits that it also offers a 'design school', which provides tutorials, courses and events. The 'design school' helps businesses and graphic designers perfect their work, with courses such as 'Print Advertising', 'Canva Design Skills for Students' and 'Getting started with Canva for Education' offered. The Complainant submits that it also maintains blogs and learning resources on design, marketing, branding and photography. It is further submitted that within the field of graphic design, the CANVA mark has achieved considerable acclaim, and it is frequently featured in third-party lists collating the best online graphic design tools available.

4.9 The Complainant further submits that, it utilizes the CANVA term as part of its brand logo and the Complainant has established a strong social media presence, with millions of followers and subscribers. The Complainant submits that it uses the CANVA mark to promote its services under this name, in particular on

- Facebook: <https://www.facebook.com/canva/>
- Instagram: <https://www.instagram.com/canva/>
- X (f.k.a Twitter): <https://twitter.com/canva>
- Pinterest: <https://www.pinterest.co.uk/canva/>

TRADEMARKS OF THE COMPLAINANT

4.10 The Complainant submits that, it holds a number of registered trademarks for the CANVA term, and has submitted the list of trademarks registered by it, and

has also filed the Copies of the relevant registration certificates & E-register details of the Complainant's Trademark Rights.

THE COMPLAINANT'S DOMAIN NAME & WEBSITE

4.11 The Complainant submits that it is also the holder of numerous exact-match domain names, under both gTLD and ccTLD extensions and some of the registrations by the Complainant are, <canva.co.in>, <canva.in>, <canva.biz>, <canva.club>, <canva.fi>, <canva.us> and <canva.cn>.

5. THE ISSUES INVOLVED IN THE DISPUTE

5.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"Types of Disputes

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

- 5.2 The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.
- 5.3 Respondent has no rights or legitimate interests in respect of the disputed domain name.
- 5.4 The disputed domain name has been registered or is/is being used in bad faith.
- 5.5 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.



6. PARTIES CONTENTIONS

- 6.1 **The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

COMPLAINANT

- 6.2 The Complainant submits that, the Complainant owns registered trademarks for CANVA in numerous jurisdictions, including India. The Complainant has also highlights the goodwill and recognition that it has attained under the name CANVA, which is a distinctive identifier associated with the Complainant's goods and services.
- 6.3 The Complainant submits that it satisfies the identity/confusing similarity requirement of the first INDRP element. It is submitted that the Disputed Domain Name incorporates the Complainant's CANVA mark exactly, without alteration or addition.
- 6.4 The Complainant submits that as established in other 'in' arbitrator decisions, the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identity/confusing similarity. In this regard the Complainant has relied on decision in case of Zippo Manufacturing Company Inc. v. Zhaxia, Case No.INDRP/840, where the arbitrator noted that: *'... the Respondent has picked up the mark ... without changing even a single letter ... when a domain name wholly incorporates a complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy'*.



6.5 The Complainant further submits that the '.com.in' ccTLD extension should be disregarded under this first element test, as it is merely a technical requirement to identify domain names in India.

RESPONDENT

6.6 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATIONS

6.7 This panel observes that the Complainant has common law as well as statutory rights in its trade mark "**Canva**". It is also observed by this panel, that the Complainant has successfully secured registrations for its Canva mark in many countries including in India. The Complainant has proved that it has trademark rights and other rights in the mark "**Canva**" by submitting substantial documents in support of it.

6.8 It is further observed by this panel that the trademark "**CANVA**" in the Disputed Domain Name "**canva.com.in**" comprises the Complainant's trademarks in its entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant. It is further observed by this panel that suffix "**.com.in**" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

6.9 This panel, therefore, is of opinion that the disputed domain name "**canva.com.in**" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to the

Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is identical and confusingly similar to the trademark “**canva**” of the Complainant.

7. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME. -

COMPLAINANT

7.1 The Complainant submits that the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name and further submits that paragraph 6 of the INDRP Policy sets out a list of circumstances in which a respondent may demonstrate that it has a right or legitimate interest in a domain name and states that any of the following circumstances, in particular, but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights to or legitimate interests in the Disputed Domain Name :

- (a) before any notice to the Registrant of the dispute, the Registrant’s use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights; or

(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.

7.2 The Complainant submits that its legal right to the Disputed Domain Name based on its statutory protection of the CANVA mark by way of trademark registrations in multiple jurisdictions, including India. The Complainant also relies on the recognition it has acquired through its use of the CANVA mark prior to the Disputed Domain Name's registration in May 2023. It is further submitted that to the best of the Complainant's knowledge, the Respondent does not own any recognized rights in CANVA, neither by way of trademark registration nor any other protected right.

7.3 The Complainant submits that to rebut any possible legitimate interest held by the Respondent in this matter, the Complainant outlines objections to each of the provisions laid out under Paragraph 6 of the INDRP:

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

7.4 The Complainant submits that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a bona fide offering of goods or services. The Disputed Domain Name currently resolves to a website where the Domain Name is advertised for sale at a price of USD 800, and previously USD 1,500.



This evidence sufficiently shows that the Respondent's primary purpose for the Domain Name's registration is to generate undue profit based on the Domain Name's value as a trademark. It is submitted that such use does not confer a genuine offering of goods or services. In this regard the Complainant has relied on the decision of ZipRecruiter Inc. v Li, Chenggong, Case No.INDRP/1105).

- 7.5 The Complainant submits that the Respondent previously used the Disputed Domain Name to display Pay-Per-Click (PPC) advertisement links that redirect users to websites to third-party websites and websites that offer services competitive to the Complainant, while still offering the Domain Name for sale (banner at top of the web page). For example, some of the PPC links direct Internet users to third-party sites which offer graphic design services. The Complainant submits that it is a well-established principle under the UDRP that a respondent's use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark, or otherwise mislead Internet users. It is submitted by the Complainant that this principle has also been addressed numerous times in INDRP disputes and refer to the case of Urban Outfitters Inc. Vs GaoGou/Yerect International Limited, Case No.INDRP/624: a) 'The fact that the Respondent's website carries nothing but sponsored links of other competitor websites and is merely a PPC parking page further proves that the Respondent is just a cyber-squatter.').

(b) the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights;

7.6 The Complainant submits that, it is a commonly held principle in domain disputes that a respondent's mere registration of a domain name is insufficient to establish rights or legitimate interests and refer to the case Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No.D2000-1244). It is submitted by the Complainant that to the best of the Complainant's knowledge, the Respondent does not have any protected rights, registered or unregistered, in the CANVA term. As such, the Respondent cannot claim to be commonly known by it. The Complainant submits that this principle has been affirmed in previous INDRP decisions and refer to the case of, Mozilla Foundation Vs Lina/Doublefist Limited, Case No. INDRP/934: *'... it is a settled position that if the Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that the respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest.'*) .INDRP Complaint - <canva.com.in>

(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.

7.7 The Complainant reiterates that the Disputed Domain Name has been used to resolve to a PPC landing page,

displaying links to third-party and competing entities. The Respondent is also using the Disputed Domain Name to list it for sale at a purchase price of USD 800 to USD 1,500 which is clear evidence that the Respondent intends to generate substantial monetary revenue through the sale of the Disputed Domain Name based on its value as a trademark. Therefore, this does not amount to noncommercial or fair use of the Disputed Domain Name in respect of Paragraph 6(c) of the INDRP Policy.

- 7.8 The Complainant submits that the Respondent will not be able to invoke a right or legitimate interest in the Disputed Domain Name

RESPONDENT

- 7.9 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATIONS

- 7.10 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 7.11 This panel observes that the Complainant by placing documents/records and evidence in the form of annexures along with the complaint has been able to prove that the Complainant is doing its business under the marks 'canva'. The Complainant by virtue of its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has



acquired the exclusive right to the use of the 'Canva' in respect of its services.

7.12 It is observed by this panel that Respondent has failed to rebut the allegations of the Complainant that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

7.13 It is observed by this panel that respondent has failed to rebut the allegations of the complainant that the Disputed Domain Name has been used to resolve to a PPC landing page, displaying links to third-party and competing entities, and the Respondent is also using the Disputed Domain Name to list it for sale at a purchase price of USD 800 to USD 1,500 which is clear evidence that the Respondent intends to generate substantial monetary revenue through the sale of the Disputed Domain Name based on its value as a trademark. Therefore, this does not amount to noncommercial or fair use of the Disputed Domain Name in respect of Paragraph 6(c) of the INDRP Policy.

7.14 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

7.15 It is further observed by this panel that Para 6 of the IN Domain Name Dispute Resolution Policy(INDRP) states :

“Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

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

7.16 This panel observe that the respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b).

7.17 This Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name “canva.com.in”.

**8. THE REGISTRANT'S DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH :
COMPLAINANT**

9.1 The Complainant submits that the INDRP Policy, under Paragraph 7, sets out a list of circumstances that can be used to demonstrate that a domain name was registered or used in bad faith. Those circumstances,

in particular, but without limitation, if found by an INDRP arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith.

9.2 The Complainant submits that it holds prior rights which protect the CANVA trademark. The Complainant's earliest CANVA trademarks, registered in India, precede the registration of the Disputed Domain Name by five years. The Complainant further submits that anyone who has access to the Internet can clearly find the Complainant's protected CANVA trademark registrations on publicly accessible trademark databases (e.g., WIPO's Global Brand Database), and would have been able to find the above-referenced IN registrations through a search conducted prior to 14th May 2023, when the Disputed Domain Name was registered. It is also clear that top Google search results for CANVA, clearly pertain to the Complainant offerings.

9.3 The Complainant submits that in view of the above, it is clear that the simplest degree of due diligence would have otherwise made the Respondent aware of the Complainant's established rights in the CANVA term.

9.4 The Complainant submits that examples of bad faith listed under Paragraph 7 of the INDRP Policy specifically apply to the present matter.

(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.

9.5 The Complainant submits that the Respondent is engaging in bad faith in respect of Paragraph 7(a) of the INDRP Policy. The Complainant submits that the Respondent currently advertises the Disputed Domain Name for sale on the website for USD 800, but at the time of notification of the Complainant's trademark rights through a cease and desist letter, was listed for sale at USD 1,500 and such a price is far beyond what would reasonably be expected within the Respondent's out-of-pocket costs related to the Disputed Domain Name. It is submitted by the Complainant that while the offer for sale has not been made directly to the Complainant, the circumstances surrounding the registration and use of the Disputed Domain Name indicate bad faith and suggest the Respondent is aware of the value of the Disputed Domain Name as a trademark, as the term CANVA is distinctive and has no inherent meaning beyond its status as an already established brand of the Complainant. The Complainant has referred to the case, in *ZipRecruiter Inc., v. Li, Chengong*, INDRP/ 1105, the Respondent offered to sell the subject domain name to the complaining party for USD 11,000. The arbitrator in this case held that this was a 'sum well in excess of out of pocket expenses.').

9.6 The Complainant submits that it notes that it sent a cease and desist letter to the Respondent on 6th November 2023. This letter put the Respondent on notice of the Complainant's trademark and rights to



the Disputed Domain Name. The Complainant submits that the Respondent's disregard of the Complainant's trademark rights is further evidence of bad faith. Panelists and Arbitrators in various domain name disputes have stated that such behaviour infers bad faith intentions by the Respondent, such as under the UDRP in the case of Facebook, Inc. and Instagram, LLC v. C W / c w, c w, WIPO Case No. D2018-1159. In addition, under the INDRP, not responding to a cease and desist letter is a factor indicative of bad faith : Novartis AG v. Aravind R, Case No. INDRP/941: "examples of what may be cumulative circumstance found to be indicative of bad faith include [...] no response to the cease and desist letter").

(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.

9.7 The Complainant submits that the Respondent's pattern of bad faith registrations can be seen in previous UDRP decisions against them where the Respondent registered domain names which consisted of renowned brands, such as ADOBE, ORACLE, BANK OF AMERICA. In all of these cases, the panels determined that they have acted in bad faith. The Complainant submits that under the Policy, it is a general consensus that to establish a pattern of conduct, it requires more than one, but as few as two instances of abusive domain name registrations. The Respondent was involved in nine previous domain name disputes, all of which

resulted in the transfer of the domain(s) at issue to complaining parties. Therefore, the Complainant asserts that the Respondent has engaged in a pattern of abusive conduct against different marks.

9.8 The Complainant states that the Respondent has a portfolio of domain names that appear to be infringing on third-party trademarks. The Complainant further submits that Panel decisions have previously considered a Respondent to have engaged in a pattern of conduct where it involved *“the registration and possible use of many domain names that include third party trademarks in which the Respondent has no rights or legitimate interest...”* Kate Spade, LLC v. Ming Tuff, WIPO Case No.D2012-1907). Therefore, the Complainant submits that the Respondent has engaged in a pattern of bad faith behaviour.

(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.

9.9 The Complainant submits that the Respondent's use of the Disputed Domain Name, to display links to third-party sites and services which compete with the Complainant's CANVA offerings, constitutes further evidence of bad faith use within the meaning of Paragraph 7(c) of the INDRP Policy. This is because the Respondent is using the Disputed Domain Name to unfairly divert good faith Internet users, seeking the

Complainant's CANVA offerings, to sites and services which compete with such. The nature of PPC links enables the Respondent to commercially capitalise through such re directions, and thus through its unauthorised and unfair use of the CANVA mark. Findings of bad faith use have been made in prior cases where the Respondent has, as in the present matter, deployed PPC advertisements under a mark deceptively similar to the complaining party's brand (see, for example, Belmond Interfin Limited Vs. Chenggong Li, INDRP/1169).

9.10 The Complainant submits that the Respondent has clearly registered and used the Disputed Domain Name in order to target and commercially capitalise on the renown attached to the Complainant's distinctive and protected CANVA mark. This amounts to evidence of the Respondent's bad faith registration and use for INDRP Policy purposes.

RESPONDENT

9.11 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATION

9.12 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Complainant has statutory and common law rights in the mark 'Canva' and is also using the marks "canva" on the internet, in other domain names, and as a trading name prior to registration of disputed domain name.

9.13 This panel observe that given the distinctiveness and reputation of Complainant's trademark **Canva'**, the Respondent had constructive notice of the Complainant's services, its wide use on the Internet or otherwise. The Respondent's knowledge in this regard is an indicator of bad faith on its part in having registered the disputed domain name "canva.com.in". It is further observed by this panel that it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark 'canva'.

9.14 According to Paragraph 7 of the INDRP the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

- "(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for 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 over the Registrar's documented out of pocket costs directly related to the domain name; or*
- (b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or*
- (c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its*

Website or location or a product or services on its website or location.”

9.15 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant, that the Respondent is engaging in bad faith in respect of Paragraph 7(a) of the INDRP Policy as the Respondent is currently advertises the Disputed Domain Name for sale on the website for USD 800, but at the time of notification of the Complainant's trademark rights through a cease and desist letter, was listed for sale at USD 1,500 and such a price is far beyond what would reasonably be expected within the Respondent's out-of-pocket costs related to the Disputed Domain Name. The Respondent also failed to rebut the allegations of the Complainant that while the offer for sale has not been made directly to the Complainant, the circumstances surrounding the registration and use of the Disputed Domain Name indicate bad faith and suggest that the Respondent is aware of the value of the Disputed Domain Name as a trademark, as the term CANVA is distinctive and has no inherent meaning beyond its status as an already established brand of the Complainant.

9.16 It is further observed by this panel that the Respondent's use of the Disputed Domain Name, to display links to third-party sites and services which compete with the Complainant's CANVA offerings, constitutes further evidence of bad faith use within the meaning of Paragraph 7(c) of the INDRP Policy, and this is because the Respondent is using the Disputed Domain Name to unfairly divert good faith

Internet users, seeking the Complainant's CANVA offerings, to sites and services which compete with such. The Respondent further failed to rebut the allegations of the Complainant that the nature of PPC links enables the Respondent to commercially capitalise through such re directions, and thus through its unauthorised and unfair use of the CANVA mark.

9.17 The Complainant has rightly established that the Respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in Clause 7 (a) and (c) of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore, the Panel concludes that the registration by Respondent is in bad faith and has been done with intention to sale of the disputed domain name and also to attract internet users to earn monetary benefit. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/registered the domain name "canva.com.in" its favor in bad faith.

10 REMEDIES REQUESTED

10.1 The Complainant has prayed to this Administrative Panel for transferring the domain name 'canva.com.in' to the Complainant.

11 DECISION

11.1 The following circumstances are material to the issue in the present case :

11.1.1 Through its contentions based on documents/records and evidence, the Complainant has been able to establish that the mark "canva" is a well-established name in many countries including India. The Complainant has established that the trademark canva, is popularly known exclusively concerning the Complainant. The Complainant has also established that the "canva" is inherently distinctive of the services of the Complainant and has secured trademark protection by registering trademarks.

11.1.2 The Respondent despite giving the sufficient opportunity, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

11.1.3 The Complainant has rather has been able to prove by its contentions and records in the form of annexures, that the Respondent has not only put the Disputed Domain Name for sale on the website but also attempted to attract Internet users for profit which is evidence of bad faith. It is therefore established by the Complainant that the domain name by itself is being used for sale and attracting internet users for monetary benefits rather than any bona fide offering of goods/services thereunder. This panel while considering the complaint and records in the form of Annexures

submitted by the complainant, has concluded that there exist circumstances as stated in para 7 (a) and(c) of INDRP Policy.

11.1.4 Taking into account the nature of the disputed domain name and in particular, use of Complainant's mark "canva" in its entirety along-with ".com.in", which is confusingly similar, would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

11.2 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.


11.3 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name [canva.com.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name

is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name [canva.com.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated: March 30, 2024


AJAY GUPTA
Sole Arbitrator