



### **1. The Parties**

The Complainant, in these administrative proceedings, is Cosmetic Warriors Limited, 29 High Street, Poole, Dorset, BH15 1ABUK. The Complainant is represented by Aishwarya Menon, K & S Partners Chimes, 61, Sector 44, Gurugram, Haryana-122 003 National Capital Region, India. (Email: amenon@knspartners.com, Phone: +91 124 4708 777). The Respondent is Amit Mundra, Mundra Enterprise, 1-o-30 RC VYAS COLONY, BHILWARA, Rajasthan-311001, India (Email: enterprises.mundra@gmail.com, phone: (+91) 09166698822)

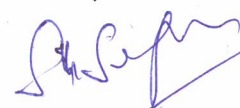
### **2. Domain Name and Registrar**

- (i) The disputed domain name is <magiclush.in>.
- (ii) The Registrar with whom the domain name is registered is GoDaddy.com, LLC.

### **3. Procedural History**

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows: On August 07, 2024, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on August 07, 2024 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on August 07, 2024 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. On August 08, 2024, the Complainant submitted that additional time of ten days may be allowed to them for submission of signed copy of amended complainant with




annexures. The Complainant submission was accepted by this panel , however, additional time of only seven days was granted to the Complainant for submission of required documents. On 16.08.2024, the Complainant submitted the signed copy of complaint with annexures. The Respondent failed to submit any response to the arbitration notice dated 08.08.2024 within the stipulated time. On 19.08.2024, the Respondent was given additional time of five days to submit his response to arbitration notice dated 08.08.2024. The Complainant submitted proof of delivery of Complaint to the Respondent through email dated 19.08.2024. The Respondent failed to submit any response to the arbitration notice even after subsequent directions dated 19.08.2024. The Respondent has in fact not filed any response till date.

#### **4. Grounds for Administrative Proceedings**

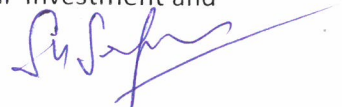
1. The disputed domain name is identical or confusingly similar to the trade mark in which Complainant has rights.
2. The Respondent has no rights or legitimate interests in respect of the domain name.
3. The domain name was registered or is being used in bad faith.

#### **5. Background of the Complainant**

The Complainant submitted that the Complainant is a leading cosmetics manufacturer specializing in "hand-made" cosmetic products made from fresh fruits and vegetables, the finest essential oils and safe synthetics without using any animal tested ingredients. The Complainant further submitted that by way of background, the mark LUSH was first adopted internationally as a trade name by Lush Ltd. in 1995 pursuant to a competition organized by the Complainant through its first newsletter and catalogue and since then, the mark LUSH has been continuously and extensively used in connection with the Complainant's worldwide business, which has expanded rapidly from a single store in Poole, Dorset (England) to over 880 shops in 52 countries across the globe. The Complainant further submitted that besides the exclusive stores, it also operates its business through websites in many countries worldwide, including but not limited to, the United Kingdom, Canada,



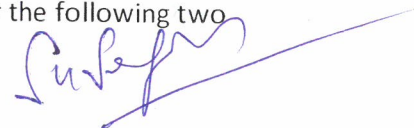
Australia, Italy, Japan, Sweden, Hong Kong, Switzerland, Hungary, Germany, Russia and the United States of America. The Complainant has attached a compilation of internet extracts from the Complainant's websites listing its geographical reach of business and products and tracing its history. The Complainant further submitted that the Complainant has used the well-known trade mark LUSH in respect of its products in India at least since the year 2004. The Complainant further submitted that it is relevant to state here that the Complainant had previously operated several exclusive stores for its LUSH products in India in various cities, such as Mumbai and Delhi, as well as the India-specific website, [www.lushindia.com](http://www.lushindia.com). The Complainant further submitted that even though all its physical stores in India closed in 2013, the Complainant has continued to sell its products to customers in India through its website, [www.lush.com](http://www.lush.com), through mobile applications such as "LUSH FHC" and "LUSH LABS" and through other e-commerce platforms. The Complainant further submitted that the said website also provides information regarding the Complainant and its activities and products and are accessed by internet users and customers across the world, including in India. The Complainant further submitted that between 2017 and 2022, over 200,000 users from India alone visited the Complainant's website, [www.lush.com](http://www.lush.com). To substantiate this claim, the Complainant has attached data detailing the number of visitors from India to the Complainant's website. The Complainant further submitted that additionally, the data for the period spanning mid-2021 to May 2022 for [www.lush.com](http://www.lush.com) is also provided. The Complainant has also attached printouts from the Lush website in the United Kingdom showing use of LUSH in connection with various products, alongside analytics data for the years 2014 - July 2017 evidencing the visibility of these products to consumers within this period (the personal names of users accessing this data have been redacted). The Complainant further submitted that the "revisions" screen after each website printout shows each time the product page was updated and includes the year. The Complainant further submitted that in addition, the Complainant's LUSH branded products are also available through popular online retail stores (albeit without the Complainant's endorsement or involvement). The Complainant further submitted that backed by a long-standing tradition of painstaking development, hard work, substantial investment and



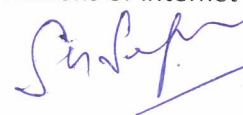
uncompromising adherence to the highest standards of quality, the Complainant today enjoys an enviable international reputation and goodwill with respect to its products under the LUSH mark. The Complainant has also attached copies of certain articles evidencing the unsolicited media attention received by the Complainant's products under the well-known mark LUSH in India and internationally. The Complainant further submitted that the Complainant has obtained trademark registrations for the mark LUSH in several countries worldwide. The Complainant further submitted that the LUSH mark is also registered in India. The Complainant has attached copies of the Indian registration certificates as well as corresponding extracts obtained from the online records of the TMO confirming the validity of the marks. The Complainant further submitted that it is noteworthy that the oldest registration for the mark LUSH in India dates back to the year 1998 in class 03. The Complainant has submitted the list of trade mark registrations owned by the Complainant in India as provided below:

S. No.	Trade Mark	Registration No.	Date of Filing	Class (es)	Status
1.	LUSH	813864	August 07, 1998	03	Registered and renewed up to August 7, 2028.
2.	LUSH	2085620	January 17, 2011	35	Registered and renewed up to January 17, 2031.
3.	LUSH	5663849	October 29, 2022	03	Registered and renewed up to 29 October 2032.

The Complainant further submitted that the Complainant's products bearing the LUSH marks have been sold on an extensive scale all over the world either by itself or through its licensees for over 20 years. The Complainant has attached the annual report and financial statements of the Complainant for the years 2020-22. The Complainant further submitted that over the past 20 years, the Complainant has generated worldwide sales and revenue figures for goods sold under the mark LUSH that exceed several hundred thousand pounds. The Complainant further submitted that products under the mark LUSH have been sold in India since at least 2004. The Complainant further submitted that over the following two



decades, the products have been extremely well received by customers in India and the same is obvious from the tremendous sales made by the Complainant and their licensees/sub-licensees in India. The Complainant further submitted that the sales of the Complainant's products under the mark LUSH for the period 2005 – 2013, when they operated physical stores in India, were consistently in excess of several hundred thousand pounds. The Complainant further submitted that from the period 2014 till 2022 the Complainant has made total gross sales of over GBP 65,000 in India by way of sales made through their website, mobile applications, etc. The Complainant further submitted that additionally, some LUSH products are listed for sale on third party platforms, such as ubuy.co.in and styledotty.com that can be accessed globally and specifically in India. The Complainant has attached data detailing the website sales of LUSH branded products to India from the Complainant's website in the United Kingdom which went live in Spring 2014. The Complainant further submitted that the Complainant has also built up a significant presence on social media over the years. The Complainant further submitted that keeping up with the latest technology and applications, the Complainant has also developed applications for mobile phones and tablets which allow users to access information about the Complainant's products and customers in some jurisdictions as well as review and purchase a range of products, including but not limited to (a) cosmetics for the body, face (including make-up) and hair; (b) perfumes; (c) spa treatments; (d) hair treatments and (e) lifestyle products. The Complainant further submitted that the LUSH app on Google Play has over 1,000,000 downloads. The Complainant further submitted that the Complainant enjoys a large following on social media platforms for example Twitter (@LushLtd – 177,000 followers and other Twitter pages), Facebook (over 398,000 followers and 416,000 'likes' for the main Lush United Kingdom page), Instagram (over 630,000 followers) as of June 2024. The Complainant further submitted that the Complainant's YouTube channel was created in 2006 and has enjoyed over 15 million video views by internet users around the world. The Complainant further submitted that the LUSH North America YouTube page also has over 408,000 subscribers and has had over 81 million views as of June 2024. The Complainant further submitted that all these pages and applications are accessed by millions of internet



users worldwide, including in India. The Complainant has attached a compilation of a few social media mentions for the LUSH mark internationally, including examples of influencers using LUSH products around the world. The Complainant has also attached extracts from randomly selected customer reviews, for the Complainant's products under the mark LUSH as well as Web Analytics data for the period of January 2023 – September 2023 which includes a pivot table (summary of data), data by stream (more detailed data) and source (a print screen of the reporting platform). The Complainant further submitted that in these days of extensive use of global communication networks and social media, reputation of a mark travels across national boundaries in a matter of seconds and users of the Internet worldwide, including in India, are exposed to and aware of such reputation and goodwill. The Complainant further submitted that the LUSH mark has also obtained the benefit of such spill-over reputation and goodwill which is in turn further strengthened by the interchange of millions of Indians who visit countries abroad, including the United Kingdom. The Complainant further submitted that the Complainant initiates legal actions against various infringers and violators of the intellectual property and goodwill in the name LUSH by way of cease and desist notices, oppositions etc. in respect of goods in its core class of cosmetics and personal care products and also in respect of other classes of interest such as classes 05 (medicinal products), 30 (food products), 32 (beverages), 22 (ropes, strings, sacks), 18 (luggage, carry bags), 20 (furniture, mirrors), 25 (clothing, headgear, footwear) and 35 (advertising, marketing and promotional services). The Complainant has attached a list of orders received in and outside of India in the Complainant's favor including undertakings received from third-party infringers. The Complainant has attached a judgment of the UK High Court (Chancery Division) in litigation involving the Complainant and Amazon. Wherein in the very first paragraph of the said judgment, the Hon'ble Court states that *"The Claimants, who I will call Lush, are the manufacturers and suppliers of cosmetics under the LUSH brand. LUSH is well known for its colourful soaps and also for its bath bombs"*. The Complainant has attached a favourable order received in an opposition filed by the Complainant before the USPTO against an entity called Luscious Ltd. The said order acknowledges that the Complainant's mark LUSH is very strong and widely known.



The Complainant further submitted that the Complainant's reputation and fame in the well-known mark LUSH is evidenced by the fact that it has won numerous awards and accolades for the same. The Complainant has attached a list of awards won by the Complainant since 2006. The Complainant further submitted that the Complainant has also been publishing product brochures under the name LUSH TIMES since 1995 internationally and from 2004 to 2013 in India. The Complainant further submitted that in addition to the above trademark registrations, the Complainant owns numerous, country-specific, domain names comprising of the mark LUSH, including but not limited to <https://www.lush.com/uk/en>. The Complainant further submitted that the said website is accessible to and in fact has been accessed by users of the internet in India. The Complainant further submitted that the Complainant has been very vigilant in taking action against third parties who unauthorizedly adopt the mark LUSH. The Complainant further submitted that in India, the Complainant has initiated close to 120 trademark oppositions against such parties. The Complainant further submitted that while several of such opposition proceedings are pending, such oppositions have also led many parties to abandon their marks and provide undertakings to the Complainant acknowledging its rights in the mark LUSH and agreeing never to use the same without authorization from the Complainant. The Complainant further submitted that in view of the international presence, including in India, there is enviable reputation, goodwill and public recognition associated with the well-known mark LUSH such that members of the public and trade would associate the trade name/trade mark exclusively with the Complainant's business and services only.

#### **The Respondent**

The Respondent is Amit Mundra, Mundra Enterprise, 1-o-30 RC VYAS COLONY, BHILWARA, Rajasthan-311001, India (Email: [enterprises.mundra@gmail.com](mailto:enterprises.mundra@gmail.com), phone: (+91) 09166698822). The Respondent has registered the Disputed Domain Name <magiclush.in> on April 09, 2023.





## **Legal Grounds**

**The registrant's domain name is identical or confusingly similar to the Complainant's LUSH marks:**

### **Complainant's Contentions**

The Complainant contended that the domain name in question < magiclush.in > incorporates the Complainant's registered mark "LUSH" in its entirety and is thus confusingly similar to rights for which the Complainant has registrations in India and globally. The Complainant further contended that statutory rights apart, the Complainant also enjoys common law rights in its mark "LUSH" in India due to the extensive use and pan India business activities going back almost two decades. The Complainant submitted that pursuant to such use and reputation of the mark "LUSH" both internationally and in India, the mark "LUSH" has come to be associated exclusively with the Complainant and its business activities. The Complainant further submitted that the disputed domain name gives an unmistakable impression of a nexus with the Complainant, which is certainly not the case.

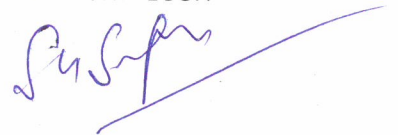
### **Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

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

### **Complainant's Contentions**

The Complainant contended that the Respondent has no rights or legitimate interests in the impugned domain name. The Complainant further contended that the Respondent has created the website (corresponding to the impugned domain name) merely to defraud consumers. The Complainant submitted that the Respondent appears to be Amit Mundra, from Bhilwara located in Rajasthan, India. The Complainant further submitted that the Respondent is not connected or affiliated with the Complainant in any manner and the Complainant has no knowledge of the Respondent. The Complainant further submitted that the Complainant has not authorized nor permitted the Respondent to apply for, register, or use the impugned domain name which contains the Complainant's registered mark "LUSH"



in its entirety. The Complainant further contended that the Respondent cannot possibly have any justification whatsoever for the adoption and use of the disputed domain name other than an unlawful intention to wrongfully gain and take unfair advantage of the intellectual property rights of the Complainant as well as the reputation and goodwill enjoyed by the Complainant in its mark "LUSH".

**Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

**C. The domain name was registered or is being used in bad faith.**

**Complainant's Contentions**

The Complainant contended that the Respondent's acts, in as much as they relate to the registration of the impugned domain name and creation of a fraudulent website, are not only in clear violation of the statutory and common law rights of the Complainant but also detrimental to the public interests.

**Respondent's Contentions**

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

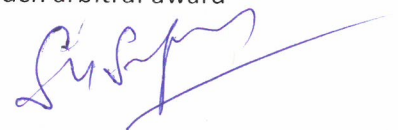
**Respondent's Default**

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

" In all cases, 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."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award



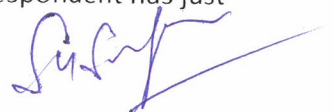
shall be binding in accordance with the law.” The Respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case as per INDRP Rules. The Rules paragraph 13(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant’s contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator’s decision is based upon the Complainant’s assertions, evidence and inferences as the Respondent has not replied.

### **7. Discussion and findings**

The Complainant, Cosmetic Warriors Limited, a UK based company, is operating in many countries of the world since 1995. The Complainant is engaged in business of hand made cosmetics which are available in more than 50 countries of the world. The Complainant is owner of mark ‘LUSH’ which was first registered by the Complainant in 1998 in India. The Complainant also operates in India where the Respondent is based. The Complainant is also the owner of top level domain <lush.com>. The Complainant operates its business through website hosted on its domain <lush.com>, apps and ecommerce platforms. The Complainant’s products are also available through popular third party online retail stores. The Complainant is significantly present on social media platforms such as twitter, facebook , instagram and you tube. Due to long use in many countries, the mark ‘LUSH’ are well known by relevant segment of consuming public. The Complainant has spent substantially in development of its quality products to achieve goodwill and reputation.

**The domain name < MAGICLUSH.in > is identical or confusingly similar to a trademark in which the Complainant has rights.**

The Complainant has been able to prove that it has trademark rights and other rights in marks ‘LUSH’ by submitting substantial documents. The mark comes under category of well known trademark. The mark is widely used by the Complainant in their business activities and has a significant presence in internet world. The disputed domain name <magiclushr.in> contains well known mark ‘LUSH’ completely. The addition of magic before mark ‘LUSH’ make it confusingly similar to mark ‘LUSH’. The Respondent has just



added word 'MAGIC' while selecting the disputed domain name <MAGICLUSH.IN> which is insufficient to make it different from the mark of the Complainant. There can't be coincidence that the Respondent has chosen domain name deceptively confusingly similar to the well-known mark of the Complainant. The mark 'LUSH' was first registered by the Complainant in 1998 decades before registration of disputed domain by the Respondent in 2023. This panel also takes notice of the fact that the Respondent has not submitted any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is identical and confusingly similar to the complainant's mark.

**The Respondent has no rights or legitimate interests in respect of the Domain Name.**

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark LUSH. The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name. This panel also takes notice of the fact that the Respondent has not submitted any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

**The Domain Name was registered or is being used in bad faith**

This can't be a coincidence that the Respondent registered disputed domain name fully



incorporating well known mark 'LUSH' of the Complainant. The Complainant has been the using the mark 'LUSH' for several years when the Respondent registered the disputed domain name in 2023. The panel finds that the Respondent has registered the disputed domain <magiclush.in> containing the well-known mark 'LUSH' of the Complainant completely giving impression that this disputed domain is affiliated to the Complainant. The sole purpose of the Respondent is to create confusion in mind of an ordinary internet user. The Respondent is hosting website on disputed domain which is offering products identical/similar to those of the Complainant. The Respondent's website looks deceptively identical to that of Complainant's website as it contains the well known mark LUSH of the Complainant. The Respondent is involved in business activities in direct competition to those of the Complainant. The intent of the Respondent appears to commercially gain from the reputation of the Complainant's mark. The registration of domain name containing the well known mark of the Complainant is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.

A handwritten signature in blue ink, consisting of stylized cursive letters, followed by a long horizontal flourish line extending to the right.

### Decision

Based on the contentions of the complainant, the attached documents, cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent is hosting a website on disputed domain <magiclush.in> which is involved in business activities similar to those of the Complainant. In view of the forgoing discussion, I am of the opinion that the disputed domain name <magiclush.in> is identical and confusingly similar to the Complainant's mark. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules, I direct that the Disputed Domain name <magiclush.in> be transferred to the Complainant with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

August 28, 2024

  
Sudhir Kumar Sengar 28/8/24

Sole Arbitrator