



## 1. The Parties

The Complainant , in these administrative proceedings is IMAX Corporation, 2525 , Speakman Drive Mississauga, Ontario L5K1B1 CANADA. The Complainant is represented by Mr. J.V. Abhay , C/o. Shardul Amarchand, Mangaldas & Co Amarchand Towers, 216, Okhla Industrial Estate, Phase III, New Delhi - 110 ( Email: j.abhay@amsshardul.com, Phone: +91 11 41590700; +91 11 40606060). The Respondent is Goutam Sontakke, D47, Shewalkar Garden, Gopal Nagar, Nagpur, Maharashtra – 440022, India (Email: goutamsontakke@gmail.com, phone: +91 9503579699)

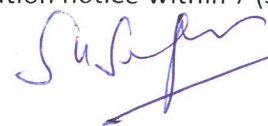
## 2. Domain Name and Registrar

- (i) The disputed domain name is <imaxprojector.in>.
- (ii) The Registrar with whom the domain name is registered is Endurance Digital Domain Technology LLP HD-016, WeWork Nesco IT Park, Building 4, Western Express Highway, Goregaon East, Mumbai, Maharashtra – 400063, India (compliance@edtpl.in)

## 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 June 06, 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 June 06, 2024 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on June 07, 2024 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven)



days. On June 07, 2024, the Complainant submitted proof of delivery of complainant through email and on 17.06.2024 the proof of delivery of complaint hard copy to the Respondent was also submitted by the Complainant. The Respondent did not submit any response to the arbitration notice dated 07.06.2024 within the stipulated time. On 17.06.2024, the Respondent was given another opportunity and directed to submit his response. The Respondent failed to submit any response to the arbitration notice even after subsequent directions dated 17.06.2024. The Respondent was given final opportunity on 22.06.2024 and directed to file his response within 3 (three days) to the arbitration notice issued by this panel. The Respondent has failed to submit any response to arbitration notice dated 07.06.2024 and subsequent directions dated 17.06.2024 and 22.06.2024. 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**

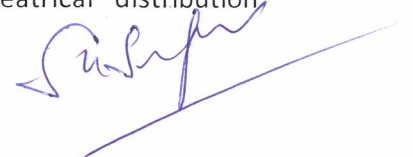
The Complainant submitted that the Complainant (which hereinafter includes its group/subsidiary/affiliated companies having rights, titles, or interest in or to use of the IMAX trade marks) IMAX Corporation, is a company incorporated and existing under the laws of Canada. The Complainant further submitted that the Complainant is a global leader in entertainment technology, specializing in immersive motion picture technologies. The Complainant further submitted that Complainant is the inventor and developer of revolutionary films, movies and screening technologies and is engaged in every aspect of large format cinema, including theatre design, operation and licensing; invention, development, manufacture, sale and leasing of 2-D and 3-D equipment, such as cameras and projectors; film financing, development, production; theatre sound development and leasing, and related goods and services manufactured/licensed by Complainant ('Complainant's Goods and Services').

The complainant further submitted that the Complainant is the exclusive owner of all rights, titles, and interest in over 300 trade mark registrations, pending applications, trade names and service marks in many jurisdictions for the well-known marks comprising of IMAX including *inter alia* IMAX, THE IMAX EXPERIENCE, AN IMAX EXPERIENCE, and IMAX PRIVATE THEATRE-formative marks. The Complainant further submitted that the mark "IMAX" is a coined word with no meaning, and has been registered by Complainant across jurisdictions, *inter alia* in Canada, USA, EU, Pakistan, Bangladesh and India with the earliest registration of the mark in 1970 in Canada. The Complainant further submitted that Complainant employs artistic depictions of the said mark including *etc.* for which it has applied for/ secured registrations globally including in USA, Canada, Singapore, Thailand, *etc.* The complainant further submitted that the in India, Complainant has secured registration for the IMAX Marks, details whereof are set out here under:

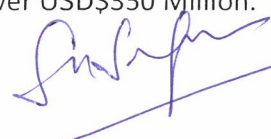
Trade Mark	Registration No./Date	Class/Goods	Status
IMAX	754336 March 7, 1997	Class 9: Developed motion picture films, video cassettes, audio and audio visual recordings; motion picture projectors, cameras, optical printers and film editing machines; motion picture screens, sound systems for use in motion picture theatres and other public performance theatres halls and auditoriums; motion simulation entertainment system comprising computer-operated moveable seats and a related motion picture display all included in class 9.	Registered upto March 7, 2027
IMAX	4311206 December 20, 2010	Class 9: Eyeglasses and sunglasses; 3D glasses; consumer electronics, namely audio, audio/video, recording equipment, parts, components, peripherals and accessories; games-playing components, parts and accessories and games for computers, TV, and in-home entertainment systems; home theatre and portable theatre equipment, parts, components, peripherals and accessories; pre-recorded CDs, pre-recorded DVDs, prerecorded HD DVDs and optical/video discs and entertainment and games in digital, film, optical/video disc, recorded, downloaded or streamed format. Class 41: Provision of games and entertainment in digital, online, downloaded, or streamed format.	Registered upto December 20, 2030

Trade Mark	Registration No./Date	Class/Goods	Status
IMAX PRIVATE THEATRE PLATINUM	3434165 December 17, 2016	Class 9: Home Theatre Systems.	Registered upto December 17, 2026
IMAX PRIVATE THEATRE PALAIS	3434166 December 17, 2016	Class 9: Home Theatre Systems.	Registered upto December 17, 2026
IMAX PRIVATE THEATRE PRESTIGE	3434167 December 17, 2016	Class 9: Home Theatre Systems.	Registered upto December 17, 2026

The Complainant further submitted that the Complainant also has pending trade mark application for 'IMAX' in India. The Complainant further submitted that the IMAX Marks are regarded as the gold standard in terms of technology, products, and services globally, with its adoption and use by Complainant dating back to 1967, much prior to the registration date of the impugned domain name. The Complainant further submitted that the IMAX Marks function as Complainant's flagship brand worldwide and form an integral part of its corporate name and trading style. The Complainant further submitted that the IMAX Marks have been promoted for over thirty years through Complainant's own website [www.imax.com](http://www.imax.com), which has information on its theatres, films, corporate profile, etc. which prominently bear its trade mark/name IMAX. The Complainant further submitted that the motion picture film format and cinema projection standards with which Complainant's IMAX Marks are used globally were developed by Graeme Ferguson, Roman Kroitor, Robert Kier, and William C. Shaw and is capable of recording and displaying images of far greater size and resolution than conventional film systems. The Complainant further submitted that the first IMAX film was a 17-minute promotional film called *Tora na ko* (Tiger Child/Japanese language/ 1970) directed by Donald Brittain for Expo'70, held in Osaka, Japan. The Complainant further submitted that only approved or licensed venues may display the IMAX Marks to promote films shot with IMAX cameras or shown through IMAX projection technology. The Complainant further submitted that the public recognizes the IMAX Marks as an indicator of the source of the quality, large format theatre experiences. The Complainant further submitted that today, Complainant's IMAX theatre network is amongst the most popular and successful theatrical distribution

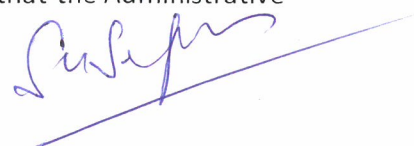


platforms for major Hollywood films globally. The Complainant further submitted that over 1 billion people worldwide have enjoyed the experience at Complainant's IMAX theatres till date and as of December 31, 2023, Complainant has over 1700 IMAX theatres in 90 countries and territories including India. The Complainant further submitted that as an example of how popular Complainant is – and how well-known Complainant's IMAX Marks are – is a Google search for the phrase "IMAX" resulted in about 505,000,000 hits. The Complainant further submitted that in India, Complainant introduced the IMAX format to Indian audiences in the early 2000s through the help of Adlabs Films Ltd., a leading film processing company, through its first IMAX dome theatre in Wadala, Mumbai in 2001, although Complainant's IMAX Marks were already well known in India much prior owing to the superlative quality of Complainant's Goods and Services and 'spill-over' of the immense reputation therein. The Complainant further submitted that in late 2019, Complainant brought laser technology into India delivering a higher resolution output, with sharper and brighter images and maintaining a deeper contrast. The Complainant further submitted that in 2023, IMAX theatres generated over USD\$23.14 million at the box office in India, a 23% increase from 2022. The Complainant further submitted that the Complainant has 30 IMAX theatres operating across India in Mumbai, Pune, Bangalore, Delhi etc., and several theatres and films have been launched in India on the IMAX format. The complainant further submitted that in April 2024, Complainant signed a deal with Miraj Cinemas to install three new IMAX theatres across India, including Mumbai and Jaipur. The Complainant further submitted that the IMAX Marks have been used extensively in India since the early 2000s, much prior to registration of the impugned domain name. The Complainant has submitted photographs of the signage bearing IMAX Marks at a few authorized IMAX theatres in India. The Complainant further submitted that since 1970, Complainant has produced/co-produced films that exhibit the IMAX Marks in their credits, and released and viewed in India. The Complainant submitted screen capture of the closing credits of the movie Avengers: Endgame filmed with IMAX cameras and released in IMAX theatres in India on April 26, 2019. The Complainant further submitted that revenues from royalties from IMAX theatres, the sale of licensed merchandise, equipment rental and leasing, and film distribution are significant. Since 2015, annual revenue of Complainant has been over USD\$350 Million.

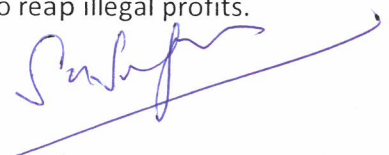


The Complainant further submitted that the Complainant uses the IMAX mark with theatre projectors manufactured by Complainant and distributed to theatres, museums, science centres and commercial destinations globally, including India. The Complainant further submitted that the IMAX Marks are promoted heavily online. The Complainant further submitted that the Complainant owns several domain names with "IMAX", including <imax.com> and <imaxenhanced.com> that advertise Complainant's Goods and Services. The Complainant further submitted that millions of unique visitors have visited Complainant's official website at <imax.com>, with an average of over a million visitors each month. The Complainant further submitted that the Complainant is active across social media platforms where Complainant's Goods and Services bearing the IMAX Marks are prominently displayed. The Complainant further submitted that the business profile of Complainant on Facebook has over 5.3 million "likes" and followers, its Twitter/ X profile has over 646.3 thousand followers, its Instagram account has over 875 thousand followers with the India specific account having over 42.5 thousand followers. The Complainant further submitted that online videos uploaded to its official YouTube channel have received over 120 million views worldwide with over 383 thousand subscribers. The Complainant further submitted that by ensuring that the IMAX Marks are used in connection with high quality and technologically superior goods and services, and by carefully selecting distributors, partners, sponsors and licensees, the IMAX Marks enjoy substantial goodwill and reputation worldwide, including India. The Complainant further submitted that the IMAX Marks are distinctive and solely associated with Complainant alone and are entitled to absolute protection against misappropriation and misuse by third parties in any manner whatsoever.

The Complainant submitted that the Complainant addressed a cease and desist notice dated August 12, 2021 to Registrant/its business partner/associate to immediately cease all use of the IMAX Marks on its domain name 'imaxprojector.com'. However, the Registrant/its business partner/associate did not reply to the said notice. The Complainant further submitted that Complainant had initiated proceedings under the Uniform Domain Name Dispute Resolution Policy ("UDRP") against Registrant/its business partner's/associate's domain name 'imaxprojector.com' on March 30, 2023 bearing Case No. D2023-1390. The Complainant further submitted that the Administrative



Panel *vide* its Decision dated May 17, 2023 found that the said domain name was confusingly similar to the IMAX trade mark/name, and noting the bad faith on part of Registrant/its business partner/associate in procuring registration for the said domain, ordered transfer of the said domain to Complainant. The Complainant further submitted that Complainant thereafter became aware of the impugned domain name 'imaxprojector.in'. The Complainant further submitted that a review of the associated website revealed it is nearly identical to the website formerly associated with the now transferred 'imaxprojector.com' domain name. The Complainant further submitted that the impugned website also advertises products for sale that are identical to those of Complainant. The Complainant further submitted that the Registrant has dishonestly attempted to secure rights in the identical/deceptively similar mark "IMAX HOME THEATRE" bearing No. 4697317 on October 11, 2020 in respect of identical Class 9 for 'Homecinema systems', which are identical to the goods in which Complainant holds prior and superior statutory rights. The Complainant further submitted that the Complainant subsequently filed a Notice of Opposition against the said application on April 19, 2024. The Complainant further submitted that per the WHOIS records pertaining to the domain 'imaxprojector.in', it was registered on September 18, 2023 and the Registrar of the impugned domain is Endurance Digital Domain Technology LLP ('Registrar'). However, the details of Registrant of the domain name have been redacted for privacy and are unavailable. The Complainant further submitted that the impugned domain name hosts a website using the mark "IMAX HOME THETRE" which is deceptively similar to Complainant's IMAX Marks, without Complainant's authorization or consent and promotes Registrant's products including projectors, speakers and speaker systems, monitors, *etc.* which are identical to Complainant. The Complainant further submitted that Registrant has created business profiles on social media websites bearing the said mark, against which Complainant has initiated take down requests. The Complainant further submitted that absent any alternate route to address Complainant's grievance of unauthorized use of its IMAX Marks, the Complainant has approached this Honourable Tribunal. The complainant further submitted that there is no *iota* of doubt that the impugned domain name is deceptively similar to and incorporates Complainant's IMAX Marks/name/domain names and has been registered with a view to reap illegal profits.





## **The Respondent**

The Respondent is Goutam Sontakke , D47, Shewalkar Garden, Gopal Nagar, Nagpur, Maharashtra – 440022, India (Email: goutamsontakke@gmail.com, phone: +91 9503579699). The Respondent has registered the Disputed Domain Name <imaxprojector.in> on September 18, 2024. The Respondent had earlier also registered disputed domain <imaxprojector.com> which was transferred back to the Complainant as per the direction of UDRP administrative panel decision dated May 17, 2023.

## **Legal Grounds**

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

### **Complainant's Contentions**

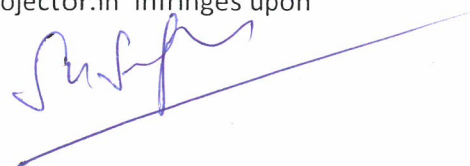
The Complainant contended that the Clause 3(b) of the INDRP enjoins Registrant to ensure that 'to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party'. The Complainant further contended that the following in support of Clause 4(a) of the INDRP and Clause 4(b)(vi) of the INDRP Rules of Procedure that Registrant's domain name is identical with/confusingly similar to trademark/s in which Complainant has rights. The Complainant further contended that the Registrant's impugned domain name 'imaxprojector.in' is deceptively similar to, and completely incorporates the Complainant's trade mark IMAX, which is registered in numerous countries, including in India. The Complainant further submitted that Registrant has registered the impugned domain name with a mala fide intention to trade upon the immense goodwill and reputation enjoyed by Complainant in its well-known IMAX Marks and thereby gain undue mileage. The Complainant submitted that this is apparent from the fact that Complainant has adopted the said mark/name/domain subsequent to it, in respect of identical goods, without any justification. The Complainant further submitted that the impugned domain name has been applied for after Registrant/its business affiliates were cautioned by way of a legal notice in August 2021. The Complainant further submitted that Registrant has sought registration of the impugned domain after Complainant had already lodged UDRP proceedings against its identical domain name 'imaxprojector.com' to ride on the coattails



of Complainant's reputation and goodwill. The Complainant contends that the conduct of Registrant violates the rights of Complainant in its famous and registered IMAX Marks and is tantamount to infringement and passing off. The Complainant further submitted that the impugned domain name has no meaning or significance independent of Complainant's IMAX Marks. The Complainant further submitted that given the repute and well-known nature of Complainant's IMAX Marks, Registrant's use of the same in respect of identical goods, services, and business clearly establishes that Registrant registered the same with full knowledge of Complainant, its business activities and intellectual property. The Complainant further submitted that the impugned domain name 'imaxprojector.in' is identical to, inter alia, the following domain names registered in the name of Complainant:

S. No.	Domain Name	Creation date
1.	imax.com	October 27, 1989
2.	imaxenhanced.com	June 27, 2018

The Complainant further submitted that the impugned domain name 'imaxprojector.in' is identical to the domain name 'imaxprojector.com', which was subject of the successful UDRP complaint described above, and now owned by Complainant by way of the Administrative Panel's decision dated May 17, 2023. The Complainant further submitted that the impugned domain name 'imaxprojector.in' was created on September 18, 2023 in the name of Registrant, whereas Complainant's domain 'imax.com' was created on October 27, 1989. The Complainant further submitted that the Complainant's earliest registration for the IMAX Marks dates back to 1970 in the USA, and subsequently the said marks were registered in various jurisdictions such as the United States of America, the United Kingdom and in 1997 in India, which is prior to the creation of the impugned domain name by Registrant. The Complainant further submitted that Complainant's adoption of the IMAX Marks is much prior to Registrant's registration of the impugned domain name 'imaxprojector.in'. The Complainant further submitted that Complainant has prior rights in the trade mark/domain name comprising IMAX Marks vis-à-vis the Registrant. The Complainant further submitted that as Registrant's domain name which is deceptively similar and incorporates Complainant's mark and much subsequent to Complainant's adoption, the registration of the impugned domain name 'imaxprojector.in' infringes upon



Complainant's prior rights in the IMAX Marks.

### **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 submitted that Clause 6 of the INDRP states as under:

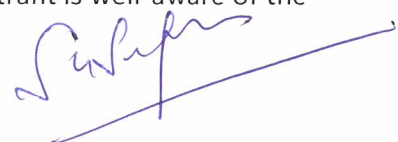
#### **" 6. Registrant's Rights to and Legitimate Interests in the Domain Name**

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 the purposes of 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 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."

The Complainant further submitted that Registrant has to establish one or more of the above circumstances to assert proprietary rights over the impugned domain name. The Complainant further submitted that Registrant cannot take refuge in any of the referred conditions which is unequivocally demonstrated herein below:

As regards Clause 6(a), the Complainant submitted that given the renown of Complainant's IMAX Marks, its widespread use and repute throughout the world, including India and the factum of Registrant offering products, services, and business identical to the business of Complainant, it is clear that the Registrant is well-aware of the



said mark. The Complainant further submitted that the impugned domain has been applied for after Complainant's legal notice in August 2021 and Registrant has dishonestly sought registration of the impugned domain in September 2023, after Complainant succeeded in the UDRP proceedings against its identical domain name 'imaxprojector.com' in May 2023. The Complainant further submitted that Registrant's use of the IMAX as a part of the impugned domain and purportedly offering of identical goods, services, and business as that of the Complainant despite knowledge of Complainant's famous IMAX Marks, clearly evidences its mala fide. The Complainant further submitted that the sole intent of Registrant from the very outset is to usurp the goodwill and reputation vesting in Complainant's IMAX Marks and to make undue gains and cannot be termed to be bona fide. The Complainant further submitted that it is trite law in respect of domain name proceedings that use which intentionally trades on the fame of another cannot constitute a 'bona fide' offering of goods and services. The Complainant further submitted that the mere fact that Registrant has used the domain name to set up a website is not sufficient to show that it has a right/legitimate interest or is bona fide offering goods or services. The Complainant further submitted that whilst there exists a website, its use of the domain name is still mala fide. The Complainant further submitted that in view of Registrant's conduct, by no stretch of imagination, can it be said to be making a bona fide offering of goods or services before any notice of this dispute or at any point in time whatsoever.

Regarding Clause 6(b), the Complainant submitted that Registrant is not commonly known by the impugned domain name and is not authorized or licensed to use Complainant's IMAX trademarks or to apply for any domain name incorporating the trade mark. The Complainant further submitted that Registrant has dishonestly sought registration of mark "IMAX HOME THEATRE" which is deceptively similar to Complainant's IMAX Marks, which has also been duly opposed by Complainant. The Complainant further submitted that Complainant enjoys immense reputation and goodwill, in its IMAX Marks, which have become well-known and are associated with it and none else. The Complainant further submitted that Registrant cannot claim to have been commonly known by the domain name for any reason/s whatsoever.

With respect to Clause 6(c), the Complainant submitted that Registrant is not making any



legitimate non-commercial or fair use of the domain name and the registration of the impugned domain is aimed to wrongfully gain from the immense goodwill and reputation of Complainant's IMAX Marks by offering similar goods, services, and business in which Complainant has established reputation, to dishonestly trade upon Complainant's business. The Complainant further submitted that thus, the Registrant is indulging in (i) unfair use of the domain name with an intention to reap profits therefrom; and (ii) tarnishing the goodwill and reputation enjoyed by Complainant's famous IMAX Marks. The Complainant further submitted that Registrant, therefore, cannot justify any legitimate interest in the domain name 'imaxprojector.in', especially since Registrant/its business affiliates are already well aware of the statutory and proprietary rights of Complainant by way of a legal notice in August 2021, and subsequent UDRP proceedings in March 2023 against the domain name 'imaxprojector.com', which was vide order dated May 17, 2023 directed to be transferred in favour of Complainant. The Complainant further submitted that such conduct, therefore, makes it evident that Registrant's use of the impugned domain name does not give rise to any rights or legitimate interests. The Complainant further submitted that Registrant has no prior rights or legitimate interests in the impugned domain name as both the registration of the IMAX Marks and Complainant's own domain name 'imax.com' precedes the registration of the impugned domain name by many years. The Complainant further submitted that moreover, the Administrative Panel's decision in the UDRP proceeding finding Registrant had no legitimate interest in the 'imaxprojector.com' domain name precedes the registration of the impugned domain name.

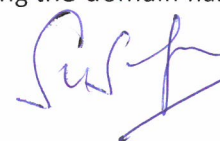
#### **Respondent's Contentions**

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 submitted that Clause 7 of the INDRP provides guidelines to the Arbitrator to adjudicate on the 'bad faith' of Registrant in registering the domain name and subsequent use thereof and the said clause states as under:

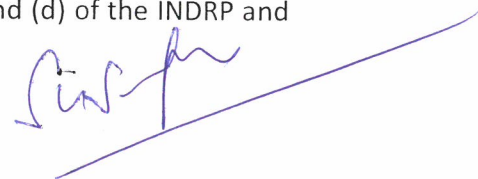


**“7. Evidence of Registration and use of Domain Name in Bad Faith**

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:

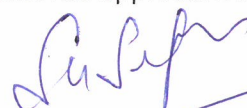
- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor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

The Complainant further submitted that Clause 4(b)(vi) of the INDRP Rules of Procedure states that Complainant needs to prove ‘why the domain name in question should be considered as having been registered and being used in bad faith.’ ‘Bad faith’ is a legal term which the Black’s Law Dictionary (Seventh Edition) defines as “dishonesty of belief or purpose also termed as mala fides”. The Complainant further submitted that its case is established under the circumstances covered in Clause 7 (b), (c), and (d) of the INDRP and Clause 4(b)(vi) of the INDRP Rules of Procedure:



In so far as Clause 7(b) is concerned, the Complainant submitted that it is beyond doubt that Registrant registered the impugned domain name with mala fide, knowing fully well of Complainant's goodwill/reputation as well as its registrations vesting in the IMAX Marks world over, including India. The Complainant further submitted that Complainant had addressed a legal notice to Registrant/its affiliate in August 2021, and subsequently, lodged UDRP proceedings against Registrant's/its affiliate's identical domain name 'imaxprojector.com' in March 2023, and by way of Decision of the Tribunal in May, 2023 the said domain was successfully transferred to Complainant. The Complainant further submitted that Complainant owns and manages several TLDs/ccTLDs comprising the IMAX Marks since the year 1989. The Complainant further submitted that the registration of the domain name 'imaxprojector.in' by Registrant has resulted in Complainant being prevented from reflecting its IMAX Marks in the corresponding domain name with the .IN Registry which is presently in the name of Registrant.

For the purpose of Clause 7(c), the Complainant submitted that the conduct of Registrant clearly establishes its *mala fide* and dishonest intention to attract internet users to its website by creating a likelihood of confusion with Complainant/its affiliates as to the source, sponsorship, affiliation or endorsement of Registrant's website, and the goods, services, and business promoted therein. The Complainant further submitted that the sole intent of Registrant is to seek an increase in the number of "hits" to its site by using the trademark IMAX as a domain name, and to pass off its goods, products, and business as originating from Complainant, causing wrongful gain to itself, and wrongful loss to Complainant. The Complainant further submitted that this clearly evidences bad faith. The Complainant further submitted that internet users desirous of accessing Complainant/its affiliates' website/s may get attracted to the impugned website thereby creating confusion and the risk of confusion is high as Registrant advertises and offers for sale identical goods, services, and business in the nature of projection systems, home theatre systems, etc. and thus customers would be misled into believing that 'imaxprojector.in' is owned and managed by Complainant and/or that the content hosted by Registrant has approval from



Complainant, when this is not the case. The Complainant further submitted that it is noteworthy that Registrant is aware of Complainant and its IMAX trade marks and despite the said fact is aiming to take advantage of the confusion amongst customers and bad faith on the part of Registrant is thus evident. The Complainant further submitted that it is apparent Registrant has obtained the impugned domain name which completely incorporates Complainant's IMAX mark, and is used to promote goods identical to those in which Complainant's IMAX marks are well known in order to disrupt the market and unfairly compete with Complainant. The Complainant further submitted that the impugned domain name falls within the contours of Clause 7(d) of the INDRP.

### **Respondent's Contentions**

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

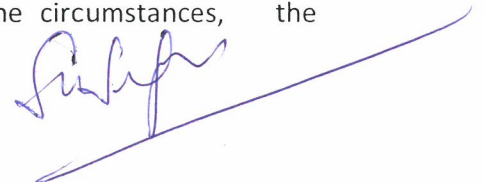
### **Respondent's Default**

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, IMAX Corporation, operating in many countries of the world since early 1970s. The Complainant is engaged in business of motion picture technologies. The Complainant operates in field of developing and screening movies, theatre design, 2D/3D equipment etc. The range of products and services of the Complainant are sold and serviced in many countries of the world. The Complainant is dealing with almost all aspects of motion picture technologies including cameras, projectors, film financing, theatre sound development. The Complainant is owner many trade mark registrations, trade names and service marks which are registered in many jurisdictions. The Complainant's marks 'IMAX' are well recognized, long and persistently used which has significant presence on social media platforms and internet world. The Complainant's marks are the well-known and easily associated with the Complainant by the consuming public across the world. The trademarks registered by the Complainant contain different variations of its well known mark "IMAX" including the imax experience and imax private theatre. The well known mark of the Complainant is distinct and is also registered in India since 1997. The Complainant is also owner of top level domain <imax.com> which was registered by the Complainant in 1989 decades before registration of disputed domain name by the Respondent in 2023. The Complainant is also hosting a website on its domain <imax.com> providing information about its goods and services. The Complainant is also owner of domains containing different variations of its well known mark 'IMAX'. The Complainant has many theatres across the globe and some of them also operating in major cities of India. The Respondent has registered the disputed domain name <imaxprojector.in> on September 18, 2023. The disputed domain name incorporates the well known mark 'IMAX' of the Complainant in its entirety. The addition of word 'projector' is insignificant and does little to make it different from the mark of the Complainant. The Respondent had earlier also registered domain name <imaxprojector.com> which was got transferred back to the Complainant as per directions of UDRP administrative panel decision dated 17.05.2023. However, the Respondent again registered the disputed domain name <imaxprojector.in> on



A handwritten signature in blue ink, appearing to be 'S. Subramanian', is written over a horizontal line that extends across the bottom right of the page.

September 18, 2023. The disputed domain is resolving to website offering products identical/similar to those offered by the Complainant. Clearly the Respondent is well aware of the Complainant's marks/domain and has intent to commercially gain from the popularity of the Complainant's marks. This panel also takes notice of the fact that the Respondent has not submitted any response to the notice issued by this panel so as to rebut the contentions of the Complainant.

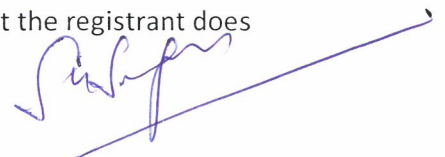
**The domain name < imaxprojector.in > is identical or confusingly similar to a trademark in which the Complainant has rights.**

The Complainant has been able to prove that it has trademark rights and other rights in marks 'IMAX' 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 <imaxprojecor.in> contains name which is identical and confusingly similar to mark 'IMAX' as the disputed domain name contains Complainant's mark completely. The Respondent has just added word 'PROJECTOR' while selecting the disputed domain name <IMAXPROJECTOR.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 'IMAX' was first registered by the Complainant in 1970 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 IMAX. 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



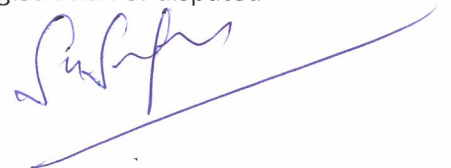
not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The Respondent could have invoked 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 'IMAX' of the Complainant. The Complainant has been the using the mark 'IMAX' for several years when the Respondent registered the disputed domain name in 2023. The panel finds that the Respondent has registered the disputed domain <imaxprojector.in> containing the well-known mark 'IMAX' 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 apparently identical to that of Complainant's website as it contains the well known mark IMAX of the Complainant. The Respondent is involved in business activities in direct completion 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.



### Decision

Based on the of 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 <imaxprojector.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 <imaxprojector.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 <imaxprojector.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.

June 27, 2024

  
Sudhir Kumar Sengar

Sole Arbitrator