



मध्य प्रदेश MADHYA PRADESH

BS 195203

BEFORE THE ARBITRATOR RAJESH BISARIA

UNDER THE

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

[NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)]

**ARBITRAL AWARD**

**Date-28.12.2022**

**Disputed Domain Name: WWW.WHIRLPOOL.NET.IN**

**INDRP Case no -1628**

**THE PARTIES**

**(1)**

The Complainant is **Whirlpool Properties, Inc.**, 500 Renaissance Drive, Suite 101 Saint Joseph, Michigan 49085, United States of America, **Phone:** +91.995.8918.715 **Fax:**+91.11.2656.2546, **Email:**[domains@algindia.com](mailto:domains@algindia.com)

The Respondent is **DRUVAAN Softech** , Client Department, DRUVAAN Softech 24, Mahadevnagar Society, Ring Road, Nr. Vishwakarma Arcade, Majura Gate, Surat, Gujarat- 395002, **Phone:**(+91) .3020651, **Email:**[client@druvaan.com](mailto:client@druvaan.com)

## **THE DOMAIN NAME AND REGISTRAR**

(2)

- (a) This dispute concerns the domain name bearing ROID-D2181634-IN and is identified as **http:// www.whirlpool.net.in**
- (b) The disputed domain name: **http:// www. whirlpool.net.in** is registered with Registrar Endurance Digital Domain Technology LLP on 07.03.2006 and expiry date 07.03.2023

## **PROCEDURAL HISTORY**

(3)

The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	10.11.2022
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and NIXI .	11.11.2022
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 11.11.2022)	20.11.2022
Complainant's response by submitting their Statement of Claim. Soft copy	15.11.2022
Hard copy	19.11.2022
Due date of submission of Statement of Defense by Respondent (instructed by mail dated 11.11.2022)	05.12.2022
Respondent's response by submitting their Statement of Defense against the due date of submission as 05.12.2022 & upto 11.12.2022	Not submitted
Complainant's response by submitting their Rejoinder. (Statement of Defense not submitted by Respondent )	Not required





Complainant's response by submitting proof of delivery of complaint along with all annexure to Respondent - Soft copies vide their mail dated 15.11.2022, delivered on 15.11.2022 and NIXI mail dated 10.11.2022 was delivered to Respondent on 10.11.2022. Hard copies was sent to Respondent by speed post dated 15.11.2022 and delivery report to me vide mail dt 25.11.2022. In the tracking (delivery report) of Speed post, on 18.11.2022, it is mentioned that 'Items returned to addressee left without instructions' and the same were received back by Complainant on 23.11.2022.'	10.11.2022 15.11.2022  15.11.2022 18.11.2022
Communicated by AT mail dated 11.12.2022 that the 'Respondent failed to submit the required documents within the time limit ie 05.12.2022 & even upto 11.12.2022 , therefore the Respondent lost their right to entertain it. The proceeding of this case was kept closed for award and the matter would be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy'.	11.12.2022
The language of the proceedings.	English

## **FACTUAL BACKGROUND**

### **(4) The Complainant:**

**Whirlpool Properties, Inc.,** 500 Renaissance Drive, Suite 101 Saint Joseph, Michigan 49085, United States of America.

#### **Authorized Representative of the Complainant:**

Name: Sheja Ehtesham& Ashwani Balayan

Address: ALG India Law Offices LLP 244, Vedanta Apartments, Plot No. 6C Sector 23, Dwarka, New Delhi - 110 077, India

E-mail: domains@algindia.com



Telephone: +91.995.8918.715

Fax- +91.11.2656.2546

**Preferred Mode of Communication:**

Electronic-only material

Method: E-mail

Address: domains@algingia.com

Contact: Sheja Ehtesham& Ashwani Balayan

**Material including hardcopy (where applicable)**

Method: Postal Courier

Address: ALG India Law Offices LLP 244, Vedanta Apartments, Plot No. 6C Sector 23, Dwarka, New Delhi - 110 077.

Fax: +91.11.2656.2546

Contact: Sheja Ehtesham& Ashwani Balayan

**(5) The Respondent:**

DRUVAAN Softech , Client Department, DRUVAAN Softech 24, Mahadevnagar Society, Ring Road, Nr. Vishwakarma Arcade, Majura Gate, Surat, Gujarat- 395002.

**(6) Complainant's Activities:**

- (a) Founded on November 11, 1911 (through its predecessor-in-interest) as the first company to offer consumers an electric motor-driven wringer washer, the Complainant is presently one of the world's largest home appliance makers. As of 2021, Complainant had approximately \$22 billion in annual sales, 69,000 employees and 54 manufacturing and technology research centers throughout the world. The Complainant has been engaged in innovating, manufacturing, and marketing a wide range of home appliances (including washing machines, refrigerators, filters, etc.) for more



than a century. The Complainant also provides services in relation to its products. The Complainant's products and services are available in more than 170 countries around the world through its more than 100 subsidiaries and several dealers and distributors worldwide [Annexure 6].

- (b) In 1906, the WHIRLPOOL Mark was first adopted by the Complainant in respect of hand-operated washing machines. In 1938-39, the Complainant introduced the first wringer washer (with motorized agitation) under the WHIRLPOOL Mark. In 1948, the Complainant launched the first automatic washing machine under the WHIRLPOOL Mark. In 1949-50, the Complainant (then the Nineteen Hundred Corporation) adopted the WHIRLPOOL Mark, its signature brand, as part of its corporate name and trade name by changing the name of the company to "Whirlpool Corporation". Copies of relevant web pages are attached herewith as Annexure 7
- (c) The Complainant's flagship WHIRLPOOL Mark is used extensively in relation to its products and services, as well as the key, leading, prominent, and essential portion of its corporate name, business name, house mark, trade name and trading style in respect of various aspects of its operations and activities. The Complainant provides a range of products under the WHIRLPOOL Mark, including washers, dryers, refrigerators, air-conditioners, dishwashers, water filtration systems, water heaters, cooktops, ovens, microwaves, ventilation hoods, heaters, and dehumidifiers, etc. Some of the Complainant's popular products include Whirlpool Smart Cooktop, Whirlpool Front Load Laundry, Whirlpool Supreme Clean Dishwasher, etc. The Complainant markets and sells its products worldwide through physical retail stores as well as online retail stores. The Complainant also offers related services like maintenance, trouble shooting, customer care services, etc. under



the WHIRLPOOL Mark. Copies of relevant webpages are attached herewith as Annexure 8.

(d) In India, the Complainant also operates through its subsidiary 'Whirlpool of India Limited', headquartered in Delhi-NCR (which was incorporated in 1960) as well as through various authorized dealers and distributors. In the late 1980s, the Complainant entered into a joint venture with then TVS group and established the first Whirlpool manufacturing facility in Pondicherry for the washing machine category. In India, the Complainant's products under the WHIRLPOOL Mark were first launched in 1990s. In 1995, the Complainant acquired Kelvinator India Limited and marked its entry into the refrigerator category, and in the same year, the Complainant expanded its operations in India to not only washing machines and refrigerators but also to microwaves, ovens, air-conditioners and other appliances. Owing to trans-border reputation from long, extensive and uninterrupted worldwide use, however, the Complainant's WHIRLPOOL Mark had attained goodwill and reputation (amounting to "well-known" status) in India much prior to the actual launch of its products in India. The Complainant owns exclusive rights in the WHIRLPOOL Mark in relation to its offerings, and also as part of its corporate name. Copies of relevant web pages are attached herewith as Annexure 9 (colly).

(e) The Complainant's WHIRLPOOL Mark is a well-known and famous trademark worldwide. In India, the Complainant's WHIRLPOOL Mark was one of the first marks to be recognized as a "well-known trademark" by the Court (in 1996), as well as the Trade Marks Office (in its list of well-known trademarks in India). In the case of *N.R Dongre and Ors. v. Whirlpool Corporation and Anr. (1996)*, 5 SCC 714, the Supreme Court of India while upholding injunction against use of the mark Whirlpool by the Appellants, also held that the mark WHIRLPOOL has attained the status of "well-known trade



mark” as per Section 2(1)(zg) of the Trade Marks Act, 1999. The Complainant’s WHIRLPOOL Mark continues to enjoy the status of “well-known trademark”. Copies of the abovementioned decision and TM Office list of well-known trademarks are attached herewith as Annexure 10 (colly).

- (f) The Complainant also owns several domain name registrations that include the WHIRLPOOL Mark. A representative list of the registered domains is as follows:

<whirlpool.net> registered since January 16, 1999.  
<whirlpool.com> registered since December 10, 1998.  
<whirlpool.in> registered since February 14, 2005.  
<whirlpoolindia.com> registered since November 01, 2000.  
<whirlpoolcorp.com> registered since December 10, 1998.  
<whirlpool.co.uk> registered before August 1996.  
<whirlpool.ca> registered since November 9, 2000.  
<whirlpool.dk> registered since July 14, 1997.  
<whirlpool.fr> registered since February 16, 1999.  
<whirlpool.com.mx> registered since November 18, 1997

Copies of WhoIs records of these domain name registrations are attached herewith as Annexure 11 (colly).

- (g) The Complainant has expended considerable financial resources in its ‘WHIRLPOOL’ brand and enforcement of its rights therein worldwide against infringers over the years. The Complainant has a successful record of enforcing its rights in the WHIRLPOOL Mark in court actions (including in India), as well as domain name disputes under the Uniform Dispute Resolution Policy. For example, in *Whirlpool Properties, Inc. v. RobabehBehroozibavilOliyayi* (WIPO Case No. DIR2020-0026), the domain name <whirlpool.ir > was transferred to the Complainant, in *Whirlpool Properties Inc. v. Hui Erpu HK Electrical Appliance Co. Limited*, (WIPO Case No. 02008-



0293), the domain name <whirlpool-hk.com> was transferred in favour of the Complainant, etc. Relevant pages of the abovementioned decisions are attached herewith as Annexure 12 (colly).

- (h) The Complainant's popularity and international reputation under the WHIRLPOOL Mark can be gauged from the fact that the Complainant has won several awards and accolades for its products under the WHIRLPOOL Mark. The Complainant (through its parent Whirlpool Corporation) has been featuring in the Fortune 500 list for many years and is currently ranked 162. Whirlpool Corporation is also ranked 2 in the Fortune's list of world's most admired companies in home equipment/furnishing industry. In 2022, for the twelfth consecutive year, Whirlpool Corporation was recognized by Fortune Magazine as one of the World's Most Admired Companies. Whirlpool Corporation is currently ranked 798 in Forbes Global 2000 list and is also named in Forbes' 2022 list of World's Best Employers. Copies of relevant webpages are attached herewith as Annexure 13(colly)
- (i) The widespread prevalence of the Complainant's WHIRLPOOL Mark can also be gauged from the fact that the Complainant's WHIRLPOOL products have been extensively written about in various print media, publications, including journals, newspapers, magazines, etc. across jurisdictions and having circulations in India, such as in Harvard Business Review, The Hindu, Indian Express, Economic Times, among many others. Copies of some of the relevant webpages are attached herewith as Annexure 14 (colly).
- (j) Through long years of marketing, advertisement, promotion, and sales, WHIRLPOOL Mark has acquired a significant level of goodwill and reputation and is associated exclusively with the Complainant. A search on the Internet (on any of the popular search engines








including Google, Yahoo, Bing, etc.) for the word 'WHIRLPOOL' immediately reveals a direct and exclusive ownership of the mark by the Complainant. Representative prints of the search results are attached as Annexure 15 (colly).

**(7) Complainant's Trade Marks And Domain Names:**




- (a) The Complainant is the first and prior adopter, sole owner, registered proprietor, and first and exclusive user across several countries worldwide, including in India, of the well-known trademark WHIRLPOOL and several other WHIRLPOOL formative


marks including, but not limited to  ,  ,

 ,  etc., (all of which are hereinafter collectively, severally as well as jointly referred to as the "WHIRLPOOL Mark"). The Complainant has a number of trademark registrations and applications for the WHIRLPOOL Mark across various jurisdictions worldwide. In India, the Complainant owns trademark registrations for the WHIRLPOOL Mark since 1988 and the WHIRLPOOL Mark was recognized as a "well-known trademark" in 1996. A list of the Complainant's select trademark registrations for the WHIRLPOOL Mark in select jurisdictions, including in India, is as follows:

Mark	Registration No.	Date of Filing	Class(es)	Goods & Services
<b>INDIA</b>				
	494403	July 15, 1988	11	Refrigerators, freezers, combination refrigerator - freezers, air conditioners,



				dehumidifiers, ice - making machines, hot water dispensers, electric cooking ranges, stoves and cooktops, electric ovens and microwave ovens, gas cooking ranges, stoves and cooktops and gas ovens.
	494411	July 15, 1988	11	Refrigerators, freezers of all kinds, combination refrigerator freezers, air conditioners dehumidifiers ice making machines, hot water dispensers, electric cooking ranges stoves and cooktops, electric ovens and microwave ovens gas cooking ranges, stoves and cooktops and gas ovens.
	494407	July 15, 1988	9	Electric vacuum cleaners.
	656470	February 22, 1995	18	Canvas bags, leather bags, leather and imitations of leather, and goods made of these materials and not

				included in other classes, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery.
	3428072	December 07, 2016	37	Installation, assembly, repair and maintenance of appliances and apparatus for clothes washing machines, clothes drying machines, dishwashers, food waste disposers, food waste and trash compactors, motors including electric motors (except for land vehicles), compressors for refrigeration and air conditioning, electrically driven pumps; appliances and apparatus for heating, cooking, refrigerating, freezing, drying, air conditioning, air purifying, ventilating and water supply
<b>UNITED STATES OF AMERICA</b>				
WHIRLPOOL	581480	August 9, 1951	7	Dish washing machines; domestic laundry



				appliances; namely, washing machines, clothes drier machines, and ironing machines
WHIRLPOOL	626550	July 5, 1955	11	Refrigerators, and freezer chests
WHIRLPOOL	937550	October 13, 1971	7, 11	7: Clothes washing machines and clothes drying machines  11: Refrigerators, freezers, combination refrigerator-freezers [and water softeners]; Air conditioners, dehumidifiers, ovens, ranges, cooktops, and range exhaust hoods
<b>Whirlpool</b>	5618032	November 21, 2016	9	USB (universal serial bus) operating software; Computer application software sold as an integral component of clothes washing machines, namely, software for providing information on stains and other laundry issues and for providing technical assistance for use of the clothes washers; Computer application



				software...Computer application software for clothes washers, namely, software for creating custom laundry cycles and for controlling laundry cycles
<b>EUIPO</b>				
WHIRLPOOL	000095950	April 1, 1996	7, 11, 37	<p>7: Motors including electric motors (except for land vehicles); compressors for refrigeration and air conditioning...clothes washing machines, clothes drying machines, dishwashers...part and attachments for all the aforesaid goods included in class 7.</p> <p>11: Appliances and apparatus for heating, cooking, refrigerating, freezing, drying, air conditioning, air purifying, ventilating, water supply, parts and attachments...water filters and filtering systems; sanitary ware, including sinks, wash</p>

				<p>basins, bath, bidets and toilets; water purifying apparatus and installations...parts, fittings and accessories for the above-mentioned goods.</p> <p>37: Installation assembly, repair and maintenance of appliances and apparatus for clothes washing machines, clothes drying machines, dishwashers, food waste disposers...compressors for refrigeration and air conditioning...appliances and apparatus for heating, cooking, refrigerating, freezing, drying, air conditioning, air purifying, ventilating, and water supply.</p>
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Copies of the Registration Certificates/status pages of some of the aforementioned trademark registrations are attached as Annexure 5 (colly).

**(8) Respondent's Identity and activities :**

Respondent failed to submit required documents, so his identity and activities are not clear.



## **SUBMISSIONS BY COMPLAINANT**

**(9)**

Complainant submitted Domain name complaint with pages 1 to 21 and annexure from 1 to 19 . As per the INDRP Rules of Procedure, Clause 4(a) –

*The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted pleadings of around 5000 words and annexures of less than 100 pages, which is as per the above norms of the INDRP Rules of Procedure.

## **THE CONTENTIONS OF THE COMPLAINANT**

**(10) The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:**

- (a) The Complaint is based on the Complainant's prior, exclusive, and statutory rights in the WHIRLPOOL Mark, which have been sufficiently established in the preceding section [10]. Complainant owns rights in the WHIRLPOOL Mark since at least 1906 internationally and 1960 in India. The WHIRLPOOL Mark is sufficiently distinctive, unique, well-known, and registered. In *Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOUSTER* (WIPO Case No. D2010-0858) and *Inter-Continental Hotels Cooperation v. Abdul Hameed* (NIXI Case No. INDRP/278, February 10, 2012) it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. Copy of the decision is annexed as Annexure 16
- (b) The disputed domain name <whirlpool.net.in> is identical to the Complainant's WHIRLPOOL Mark, which is incorporated fully, as is,



with the ccSLD '.net.in'. It is submitted that the ccSLD/ccTLD element of a domain name has no distinguishing capability and it is a well-established principle that the ccSLD/ccTLD suffix in a domain name (such as ".net.in") should be disregarded for the purpose of comparison and similarity since it is a technical requirement of registration of domain names. Therefore, disregarding the ccSLD ".net.in", the disputed domain name <whirlpool.net.in> is identical to the Complainant's mark WHIRLPOOL. Following decisions are relied upon:

-*Williams Sonoma, Inc. v. Liheng* (NIXI Case No. INDRP/910, September 26, 2017), the panel held that *'This panel comes to a conclusion that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark'*.

-*Slickdeals LLC v. Srujan Kumar* (NIXI Case No. INDRP/907, September 12, 2017), the panel held that *'it is also well-established that the extensions in a disputed domain name does not affect a finding of similarity'*.

-*Oki Data Americas, Inc. v. ASD, Inc.*, (WIPO Case No. D2001-0903) panel held *"[T]he fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks"*.

- (c) Thus, it is submitted the disputed domain name is identical to the Complainant's WHIRLPOOL Mark as well as the domain name *www.whirlpool.com* and is confusingly similar to the WHIRLPOOL Mark. Thereby, the Complainant has fulfilled the requirements under the titled paragraph A.

**(11) The Respondent has no rights or legitimate interests in respect of the domain name:**





(a) The Respondent has no rights or legitimate interest in either the trademark WHIRLPOOL or in the disputed domain name <whirlpool.net.in>.

(i) Background of the unauthorized and illegitimate adoption / use / control of the disputed domain name <whirlpool.net.in>

In 2019, the Complainant first learnt about the disputed domain name <whirlpool.net.in> while issuing a Legal Notice to a company whose name unauthorizedly contained WHIRLPOOL and infringed the Complainant's trademark rights, namely "Whirlpool Engineering Services Private Limited" (WESPL) which infringing company is now struck off from the Register of Companies. The email address registered for WESPL featured the disputed domain name. Upon the Complainant issuing a Legal Notice in 2019, WESPL complied and wound up the infringing company. The current online status of WESPL in the Ministry of Corporate Affairs is reflected as 'Strike Off' [Annexure 17]. However, WESPL did not have the disputed domain name cancelled.

Another Legal Notice was issued by the Complainant to the individual directors of the struck-off company WESPL in April 2021, upon learning that the disputed domain name has been renewed again for 2 years. In their Reply dated May 12, 2021, the individuals under notice stated that "[W]e assure you we are in the process to take required steps in identifying and cancelling all the domain names or mark wherever used by us". In July 2021, the Complainant issued a further notice providing 6 months (viz. until January 2022) to comply and cancel the disputed domain name. Complainant did not receive any response to the said notice.

Presently, the Complainant neither has any knowledge of nor any means to confirm whether or not the individuals (who were erstwhile Directors of struck-off company WESPL) own, control, or manage the disputed domain name. In the interest



of transparency, however, the Complainant deemed it appropriate to disclose this information upfront to the Registry and the Hon'ble Arbitrator.

In any case, neither WESPL nor any its director have any legitimate right or interest in the WHIRLPOOL Mark or the disputed domain name. In case the disputed domain name is still owned, controlled, or managed by any of the directors, the lack of her/his rights and legitimate interests in the disputed domain name is evident from the above facts.

(ii) Respondent never authorized by Complainant to use the WHIRLPOOL Mark in relation to any goods or services. The Complainant has never authorized or licensed the Respondent to use the WHIRLPOOL Mark in any way or for any purpose. The Respondent does not have any association, affiliation or past dealing with the Complainant. The Respondent therefore has no reason to adopt "whirlpool" as part of the disputed domain name <whirlpool.net.in>. Following decision is relied upon:

- *Compagnie de Saint Gobain v. Com-Union Corp*, (WIPO Case No. D2000-0020), while transferring the domain name <saint-gobain.net>, the panel held "*Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks or to apply for any domain name incorporating any of those marks...it appears that Respondent has not registered nor used the name "Saint-Gobain" as a trademark, nor has it ever been known by this name... Panel therefore finds that Respondent has no right or legitimate interest in the Domain Name*".

(iii) The Respondent is NOT making any legitimate, non-commercial, or fair use of the Disputed Domain Name: The domain <whirlpool.net.in> was registered on March 6, 2007 and does not resolve to any active website. There is no known legitimate, non-commercial, or fair use of the disputed domain name by the Respondent. Even the erstwhile known use of the



disputed domain name by the WESPL was unauthorized and illegitimate, which is evident from the fact that WESPL immediately conceded and complied with Complainant's Legal Notice to cease and desist from using WHIRLPOOL Mark.

It is evident from the above that the Respondent does not have any legitimate interest or rights in the disputed domain name.

Respondent is not commonly known by the Disputed Domain Name and does not have any trademark rights in the Disputed Domain Name: The Respondent appears to be engaged in website development and domain registration services [Annexure 18]. Respondent does not have any trademark rights in the WHIRLPOOL Mark. Even WESPL did not have trademark rights in WHIRLPOOL Mark. Complainant is not aware of any trademark registration for WHIRLPOOL Mark in the name of the Respondent or WESPL.

- (b) Thus, it is submitted that the Complainant has established a *prima facie* case of Respondent's lack of legitimate rights and interests in the domain name, thus, shifting the burden on the Respondent to show rights or legitimate interests in the domain name [refer *Emirates of Emirates Group v. Zhan Yun* (NIXI Case No. INDRP/606)].

**(12) The domain name was registered and is being used in bad faith:**

- (a) Bad faith is implicit in the registration of the disputed domain name without any legitimate interest therein. Bad faith in the Respondent's registration of the disputed domain name is evident from the following:

(i) Respondent had prior knowledge of the Complainant's WHIRLPOOL Mark, and the domain name was registered in bad faith: Irrespective of the currently named Registrant /



Respondent, the disputed domain name was likely registered / owned, unauthorizedly, by or at the instance of WESPL. The WESPL's prior and actual knowledge of the Complainant's WHIRLPOOL Mark is evident and undeniable. Accordingly, the disputed domain name was registered in bad faith.

Notwithstanding the above, it is submitted that the Complainant's WHIRLPOOL Mark is a well-known trademark in India, which has garnered impeccable reputation and goodwill owing to its longstanding and continuous use across the world, including in India. Therefore, it is unlikely and inconceivable that the Registrant did not have knowledge, constructive if not direct, about the Complainant's earlier, registered, and well-known WHIRLPOOL Mark. Registration of a domain name based on awareness of a Complainant's trademark rights is recognized as bad faith registration. In *Lego Juris v. Robert Martin*, (NIXI Case No. INDRP/125, February 14, 2010), it was held that '*The Respondent ought to have been aware when he registered the disputed domain name that such registration would impede the use of the domain name by the legitimate owner of the trademark: such practice is found to be bad faith*'. Also, in *Consitex S.A. Lanificio Ermenegildo Zegna & Figli S.p.A. Ermenegildo Zegna Corporation v. Mr. Lian Ming* (WIPO Case No. DWS2003-0001), it was held that ignoring the existence of a famous trademark at the time of registering a domain name imputes bad faith on part of the Respondent. [Annexure 19].

(ii) *The disputed domain name is being used unauthorizedly and in bad faith:*

In light of the fact that the directors of WESPL, who appears to own, control, or manage the disputed domain name, had already agreed to cancel the unauthorizedly adopted domain name in May 2021, the continuous use of the domain name is obviously in bad faith. WESPL's dissolution and closure of





operations pursuant to Complainant's Legal Notices amounts to an admission of the fact that its operations pertaining to the disputed domain name were infringing and illegal, and of the fact that the disputed domain name was registered and being used in bad faith through the Respondent, to benefit from the goodwill and reputation vesting in Complainant's WHIRLPOOL Mark. WESPL's partial compliance of the Complainant's Legal Notices also amount to its acknowledgement of the Complainant's sole and exclusive rights over the WHIRLPOOL Mark. Despite WESPL's acknowledgement of Complainant's rights and its assurances that it will cease all use of the WHIRLPOOL Mark, including as part of the disputed domain name, it continues to be active and used unauthorizedly. There is no legitimate or authorized use of the domain name by the directors of WESPL or the current Registrant / Respondent.

(iii) Masked / Redacted / fictitious particulars in WhoIs records:

Respondent's particulars, including name, address, email, phone number, etc. provided in the WhoIs records appear to be masked, redacted, and fictitious. See *Philip Morris USA Inc. v. Domains by Proxy / Ray A Board* (WIPO Case No. D2016-0840) where panel held "*...when registering the Disputed Domain Name, the Respondent shielded its identity by using a masking service. This is an indication of bad faith registration and use under the Policy.*".

- (b) Furthermore, the Complainant is the Registrant of the domain names <whirlpool.net>, <whirlpool.in> among many other domain names that incorporate the WHIRLPOOL Mark as the significant part of the domain along with different Top Level Country Codes. This is bound to give rise to consumer confusion as to whether the disputed domain name <whirlpool.net.in> is associated with the Complainant.



(c) In view of (i) Complainant's registered and common law rights in the WHIRLPOOL Mark, (ii) Complainant's WHIRLPOOL Mark having been recognized as well-known trademark in India in 1996; (iii) use of the WHIRLPOOL Mark by Complainant for over a century prior to Respondent's registration of the domain name, (iv) Complainant's prior use of the WHIRLPOOL Mark on the Internet and in other domain name(s), and (iv) tremendous fame, goodwill, and reputation associated with the WHIRLPOOL Mark, it is impossible to conceive of any circumstance in which Respondent could have registered and used the domain name in good faith or without knowledge of Complainant's rights in the WHIRLPOOL Mark.

In light of the above, it is apparent that the registration as well as use of the disputed domain name <whirlpool.net.in> by the Respondent is in bad faith and without any *bona fide*.

**(13) Other Legal Proceedings:**

No other legal proceedings, apart from the aforementioned enforcement actions, have been commenced or terminated in connection with or relating to the disputed domain name <whirlpool.net.in> that is the subject of this complaint.

**(14) Remedy Sought:**

In accordance with Paragraph 10 of the Policy, for the reasons described in Section V. above, the Complainant requests the Hon'ble Arbitration Panel appointed in this domain name dispute, to issue a decision that the disputed domain name <whirlpool.net.in> be transferred to the Complainant.



## **RESPONSE BY THE RESPONDENT**

(15) Respondent failed to submit the required documents (Statement of Defense) within the time limit mentioned in mail dated 11.11.2022 i.e. 05.12.2022 & up to 11.12.2022, therefore the Respondent lost their right to entertain it and it was also informed to all concerning vide AT mail dated 11.12.2022 that the proceeding of this case is kept closed for award and the matter would be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.

(16) Received from PublicDomainRegistry.com mail dated 11.11.2022 with the comments-

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*'Thank you for reaching out to us. Our Team is working on your request and will get back to you within 48 hours. Subject: INDRP Case No: 1628: Submission of documents , Case Number : 44808337'*

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(17) Received from PublicDomainRegistry.com mail dated 12.11.2022 with the comments-

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*'Hi Rajesh, Thank you for your email. We acknowledge the receipt of your email. Have a nice day. Regards, PDR Arbitration Team'.*

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(18) Received from nilesh.desai@aastha.in on behalf of client@druvaan.com mail dated 26.11.2022, with the comments-

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*'Dear Sirs,*

*This domain is registered by us in 2006 and we are sole owner of this domain. There are no rules or law for domain for copyright and you cannot claim unless we use your name. We don't have any website on this domain and we are not using it for commercial or personal use. We have invested lot of money in to this domain since 2006. We not allowed anyone to transfer our domain without our writer consent doing so will attract further action.*

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*For further communication in this regards kindly use Nilesh.Desai@aastha.in email id.*

*Regards*

*Nilesh Desai*

*9824508651'*

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### **REJOINDER BY THE COMPLAINANT**

- (19) Since Respondent failed to file the Statement of Defense, so there is no question of submitting the Rejoinder by the Complainant.

### **DISCUSSION AND FINDINGS**

- (20) After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the Complainant.
- (21) Respondent was given enough opportunity to submit Reply of Complaint (Statement of Defense) by 05.12.2022 & up to 11.12.2022 . But Respondent failed to submit the same within said time limit; therefore the Respondent had lost their right to entertain it. The proceeding of this case was kept closed for award on 11.12.2022 and the matter is to be decided ex-parte on the basis of the material on record with this tribunal as per INDRP policy.
- (22) Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant has filed a complaint to .IN Registry on the following premises:
- (a) the Registrant's domain name is identical or confusingly similar to a Name , Trademark or Service Mark in which the Complainant has rights; and
  - (b) the Registrant's has no rights or legitimate interest in respect of the domain name; and





(c) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose

**(23) The Registrant's domain name is identical or confusingly similar to a Name, Trademark or Service Mark in which the Complainant has rights:**

**Facts & Findings**

On the basis of the referred Awards of INDRP & WIPO cases, other above mentioned facts by Complainant and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes that the Complainant has established 4(a) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**(24) The Registrant's has no rights or legitimate interest in respect of the domain name:**

**Facts & Findings**

On the basis of the referred Awards of INDRP & WIPO cases, other above mentioned facts by Complainant and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**(25) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose:**

**Facts & Findings**

On the basis of the referred Awards of INDRP & WIPO cases, other above mentioned facts by Complainant and due to non submission of Statement of Defense by Respondent, the Arbitral Tribunal concludes



that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**(26) ARBITRAL AWARD**

I, **Rajesh Bisaria** , Arbitrator, after examining and considering the pleadings and documentary evidence produced before and having applied mind and considering the facts, documents and other evidence with care, do hereby publish award in accordance with Clause 5,17 and 18 of the INDRP Rules of Procedure and Clause 11 of .IN Domain Name Dispute Resolution Policy (INDRP), as follows:

***Arbitral Tribunal orders that the disputed domain name***

***WWW.WHIRLPOOL.NET.IN***

***be forthwith TRANSFERRED from Respondent to Complainant.***

***Further AT takes an adverse view on the bad faith registration of impugned domain by the Respondent and to restrict the act for future misuse, fine of Rs 10000/- (Rs Ten thousand only) is being imposed on the Respondent, as per the provision in clause 11 of .IN Domain Name Dispute Resolution Policy (INDRP) to be paid to .IN Registry for putting the administration unnecessary work.***

AT has made and signed this Award at Bhopal (India) on 28.12.2022 (Twenty Eighth Day of December, Two Thousand Twenty Two).

**Place: Bhopal (India)**

**Date: 28.12.2022**



**(RAJESH BISARIA)**

**Arbitrator**

