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Property Description	:	Not Applicable
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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD
Disputed Domain Name: <SPECTRUMPHONENUMBER.NET.IN>

IN THE MATTER OF

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC
12405 POWERSCOURT DRIVE
SAINT LOUIS, MO 63131
USA

...Complainant

-----versus-----

PASHUPATI GUPTA
BADI CHAUPAL, NEAR NEEL GAGAN SCHOOL, MAHIPALPUR
DELHI, DELHI
110037, IN

...Respondent

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1. The Parties

The **Complainant** in this arbitration proceeding is **CHARTER COMMUNICATIONS HOLDING COMPANY, LLC**, of the address 12405 Powerscourt Drive, Saint Louis, MO 63131, United States of America, which was founded in 1993 and is an American telecommunications company based in Stamford, Connecticut, United States of America.

The **Respondent** in this arbitration proceeding is "**PASHUPATI GUPTA**" of the address Badi Chaupal, Near Neel Gagan School, Mahipalpur, Delhi, Delhi, 110037, IN.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**SPECTRUMPHONENUMBER.NET.IN**> with the .IN Registry. The Registrant in the present matter is "**PASHUPATI GUPTA**", and the Registrar is **GoDaddy, LLC**.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated July 15, 2020, had sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. July 15, 2020. Thereafter the Arbitrator received soft copies of the Domain Complaint and the annexures thereto on July 21, 2020. The Arbitrator confirmed receipt of the same via email dated July 24, 2020, and also noted that Annexures C, L, M, O and P appeared to be missing from the set received from NIXI/ the Complainant and requested to clarify the same, along with asking confirmation about whether the soft copy of the Complaint (along with annexures) has been served upon the Respondent. NIXI then sent an email on July 22, inter alia confirming that the Complaint (along with annexures) were successfully served upon the Respondent via email and that they are writing to the Complainant to seek clarification regarding the missing Annexures C, L, M, O and P. Accordingly, NIXI wrote to the Complainant about the same on July 22 and kept the Arbitrator in CC. Thereafter an exchange of emails followed between NIXI and the Complainant, and the Complainant stated that Annexures C, L, M, O and P have been deleted and accordingly submitted a revised Schedule of Exhibits, which NIXI forwarded to the Arbitrator by email dated July 29, 2020.

The Arbitrator confirmed receipt of the same vide email dated July 29, 2020, and also asked the Complainant's Representative to provide authorisation documents/ proof of authorisation (showing that they are authorised to represent the Complainant and sign the complaint on their behalf) on or before August 3, 2020. NIXI then sent an email to the Complainant on July 30 and called upon them to provide the aforesaid authorisation documents/ proof of authorisation,

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which the Complainant subsequently did vide email dated August 01, 2020, addressed to NIXI, which NIXI then forwarded to the Arbitrator vide email dated August 03.

Thereafter, the Arbitrator, vide email dated August 03, 2020, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email. The Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email dated August 03, 2020, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from August 03, 2020. Shortly thereafter, the Complainant's Representative had also sent an email on the same date to the Arbitrator, forwarding a copy of the Letter of Authorization from the Complainant, and the Arbitrator acknowledged the same on August 04, 2020.

On August 19, 2020, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on August 18, 2020, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated August 27, 2020, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background and Complainant's Contentions

Complainant has submitted that it was founded in 1993 and is an American telecommunications company based in Connecticut, United States of America, which has been a Fortune 500 company since 2001. Complainant has submitted that it provides services to more than 28 million residential and business customers and considers itself as America's fastest growing TV, internet and voice company. The Complainant delivers a wide range of TV, internet and voice services under the Spectrum brand such as: Spectrum TV, Spectrum Internet, Spectrum Voice and Spectrum Mobile. The Complainant has further submitted that it became a publicly-traded company on NASDAQ in 1999 under the symbol CHTR and at that time it had 3.9 million customers, today it has more than 28 million. Complainant has further submitted that it reported a revenue of USD 45.23 billion in September 2019. Complainant has also provided a list of the awards it has received in the recent years. Complainant has also submitted that it generates significant sales revenue from its official website located at **SPECTRUM.COM** and averages over 16 million unique monthly visitors based on data from 3rd party sources. Complainant has submitted that their website **SPECTRUM.COM** website was launched in 2015. Complainant has submitted excerpts from its websites as well as excerpts from other websites in support of the above submissions, as **Exhibit G**.

The Complainant has submitted that it is the owner of many American trade mark registrations for **SPECTRUM** formative marks, including but not limited to the below registration table as provided in the Complaint:

Trademark	Reg No.	Jurisdic-tion	Class	First Use	Registration Date	Owner
CHARTER SPECTRUM	4618726	US	38,39,42	March 24, 2014	October 07, 2014	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
CHARTER SPECTRUM TV	4618727	US	38,39,42	March 24, 2014	October 07, 2014	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
CHARTER SPECTRUM	4618730	US	38,39,42	March 24, 2014	October 07, 2014	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
CHARTER SPECTRUM TV INTERNET VOICE	4591882	US	38,39,42	March 24, 2014	August 26, 2014	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM VOICE	5098473	US	37,38	July 06, 2015	December 13, 2016	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM INTERNET	5098550	US	37,38	June 15, 2015	December 13, 2016	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM REACH	5101071	US	35,41	May 01, 2015	December 13, 2016	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM TV	5627956	US	9	April 30, 2015	December 11, 2018	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM TV	5420855	US	38	July 06, 2015	March 13, 2018	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM AUTHORIZED RETAILER	5626256	US	38	March 01, 2018	December 11, 2018	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM BUSINESS	5720822	US	38	August 31, 2017	April 09, 2019	CHARTER COMMUNICATIONS HOLDING COMPANY LLC
SPECTRUM MOBILE	18091541	EUIPO	38	July 04, 2019	December 18, 2019	CHARTER COMMUNICATIONS HOLDING COMPANY LLC

The Complainant has further submitted that it also has a registration in the EUIPO as well as a registration for the mark **SPECTRUM ENTERPRISE NAVISITE and Design** in India vide registration (International Registration) no. 1365253/ IRDI- 3641290 in classes 38 and 42. In this regard, Complainant has submitted relevant webpages from the USPTO, WIPO, EUIPO and the Indian Trade Marks Registry's websites, to illustrate these registrations.

The Complainant has also submitted that in addition to the domain names SPECTRUM.COM and SPECTRUM.NET, it also owns the domain names SPECTRUMPHONE.NET, MYSPECTRUMPHONE.COM, MYSPECTRUMPHONE.NET, and SPECTRUMCHARTERPHONE.NET, and in this regard has annexed WHIOS records for the said domain names as **Exhibit J**.

5. Legal Grounds Submitted by the Complainant

The Complainant has submitted the following legal grounds in support of its complaint:

A. The Disputed Domain Name's Similarity to the Complainant's Rights [.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(1)]

The Complainant has submitted that by virtue of its Indian, EUIPO and US trade mark registrations, Complainant is the owner of the **SPECTRUM** formative marks and has further relied on the judgment in *United Way of America v. Alex Zingaus, NAF Claim No. FA0707001036202* and *Huolala Global Investment Ltd. v. Li Chenggong, INDRP/1027 (<lalamove.co.in>)* to inter alia submit that they have rights in the mark to satisfy the requirements under Domain Dispute Policy. The Complainant has further relied on the case of *Corp. Pty Ltd. Mr. Dean Chandler, INDRP Case No. 844* to submit that "The jurisdiction where the trademark is registered is not relevant". The Complainant has also relied on earlier UDRP cases wherein it prevailed (*Charter Communications Holding Company, LLC v. Julio Montezuma / Global Signal LLC Claim Number: FA1912001877220 (Forum Feb. 5, 2020)*

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<spectrumtvs.com>; Charter Communications Holding Company, LLC v. Ammar Saleem Claim Number: FA1904001841051 (Forum May 23, 2019) <spectrumcableservice.com>; Charter Communications Holding Company, LLC v Khurram Khan Claim Number: FA1803001775735 (Forum April 11, 2018) <spectrumbundleoffer.com>) to substantiate its contentions. The Complainant has annexed copies of a few such cases as **Exhibit N**.

Complainant has contended that the disputed domain name **SPECTRUMPHONENUMBER.NET.IN** is confusingly similar to Complainant's **SPECTRUM Marks**, such as **SPECTRUM TV** because it incorporates the most prominent part of the mark SPECTRUM, omits "tv" portion of the mark and adds the generic terms "phone" and "number," as well as the "net.in" gTLD. The Complainant has contended that omitting a portion of a mark while adding terms and a gTLD may be insufficient to defeat a finding of confusing similarity and that the addition of generic terms, which pertain to a complainant's industry, can evince confusing similarity and that the addition of a gTLD is insufficient to overcome confusing similarity. In this regard, the Complainant has cited the INDRP cases of *Dell, Inc. v Deepak Rana (INDRP/1192 February 6, 2020)* where the domain <delllaptopservicecentersurat.in> was found confusingly similar to Complainant's mark DELL; *Laboratory Corporation of America Holdings v. Suraj Chetan Lalit (INDP/1182 January 28, 2020 <labcorpdiagnostics.co.in>* finding the disputed domain name is confusingly similar to Complainant's LAB CORP marks and Complainant's trading name. Complainant has also relied on similar UDRP decisions in *G-Star Raw Denim KFT v. xia xinzheng [WIPO Decision D2009-03*], *Huron Consulting Group Inc. v. David White, FA 1701395 (Forum Dec. 6, 2016)*, *Charter Communications Holding Company, LLC v. Ammar Saleem FA1842970 (FORUM June 6, 2019)* and *Charter Communications Holding Company, LLC v. sameer anwer FA 1800628 (FORUM September 7, 2018)*.

The Complainant has also contended that when comparing the Disputed Domain Name(s) to the Complainant's Mark(s), the relevant comparison to be made is between only the second-level portion of the Disputed Domain Name(s) and the Complainant's Mark(s), and has relied on the judgments in *Rollerblade, Inc. v. Chris McCready, WIPO Case No. D2000-0429* and *Gardline Surveys Ltd. v. Domain Fin. Ltd., NAF Claim No. FA0304000153545* to substantiate their contention.

B. <u>The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name</u>
[.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(2)]

The Complainant has contended that the Respondent has not been commonly known by the Disputed Domain Name and that upon information and belief, at the time Respondent registered the Domain Name, it had no trademark or intellectual property rights in the Domain Name. In this regard, Complainant has submitted a copy of the WHOIS records for the disputed domain name as **Exhibit I**, wherein the name of the Respondent is reflected as "Pashupati

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Gupta". Complainant has contended that the WHOIS information suggests that Respondent is known as "*an entity other than the trademark associated with Complainant, and Complainant has not "licensed, authorized, or permitted Respondent to register domain names incorporating Complainant's... mark,*" and has relied on the judgments in *United Way of America v. Alex Zingaus, NAF Claim No. FA0707001036202* and *RMO, Inc. v. Burbridge, FA 96949 (Nat. Arb. Forum May 16, 2001)* to substantiate its contention. The Complainant has also cited the cases of *Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001)* and *Wacom Co. Ltd. v Lihen, INDRP/634 (November 24, 2014) (<wacom.in>)* to contend that the Respondent is not been commonly known by the domain name and that it has no rights or legitimate interest in the domain name.

Complainant has further submitted that the Respondent is not sponsored by or legitimately affiliated with Complainant in any way and nether has it given the Respondent permission to use Complainant's Mark in a domain name and has relied on the judgment in *Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020*, wherein it was inter alia held that a respondent had no rights or legitimate interest in the disputed domain name where it was not commonly known by the mark and never applied for a license or permission to use the mark.

The Complainant has also contended that the Respondent is not using the disputed domain name for a bona fide offering of goods or services or a legitimate non-commercial or fair use because Respondent is implying a connection with Complainant by passing itself off as the Complainant on the resolving webpage. The Complainant has contended that the disputed domain name and website displays the SPECTRUM mark and offers services such as Internet and television. The Complainant has further stated that the phone number and physical address on the website are not correct Spectrum contact information and the Respondent is clearly implying a connection with the Complainant, and that attempting to create a false affiliation to divert Internet users seeking complainant's website is not a bona fide offering or legitimate use under Policy. In this regard, the Complainant has relied on the cases of *Ripple Labs Inc. v. NGYEN NGOC PHUONG THAO, FA 1741737 (FORUM Aug. 21, 2017)* and *Pathway IP S.A.R.L vs Regus India INDRP/1168 (December 2, 2019) (<regusindia.in>)*. In support of these contentions, the Complainant has annexed excerpts from the Respondent's website on the disputed domain name as **Exhibit H**.

Complainant has further pointed out that the date of registration of the disputed domain name (November 3, 2019) is significantly subsequent to Complainant's first use in commerce of its trade marks and also its trade mark registrations and domain name registrations. In this regard, the Complainant has annexed copies of WHOIS records for its domain names as Exh**ibits J and K**.

C. **<u>The Registrant's Domain Name has been registered or is being used in bad faith</u>**

[.IN Domain Dispute Resolution Policy, Paragraph 7; INDRP Rules, Paragraph 3(b)(vi)(3)]

The Complainant has inter alia contended that the Respondent has registered and uses the disputed domain name in bad faith because the Respondent attempting to attract, for commercial gain, Internet users to Respondent's own website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the content thereon. Complainant has further contended that the resolving webpage from the domain name displays Complainant's SPECTRUM marks, provides a contact phone number, email address and claims to be an authorized retailer of Complainant. In relation to such facts and circumstances, the Complainant has relied on the cases of *AOL LLC v. iTech Ent, LLC, FA 726227 (FORUM July 21, 2006), Microsoft Corporation v. Story Remix / Inofficial, FA 1734934* and *Amazon Technologies Inc. v. Alex Parker INDRP/1166.*

Complainant has further contended that the Respondent is also attempting to gather Internet users' personal information through a "Contact" page on the website of the disputed domain name, and the website allows visitors to input their name, email address and phone number, and that such phishing for private information indicates bad faith registration and use. In this regard, the Complainant has relied on the case of *Morgan Stanley v. Bruce Pu, FA 1764120.*

The Complainant has further contended that the Respondent's bad faith is also evident by their apparent knowledge of the Complainant's rights in the at-issue trademarks at the time it registered the Disputed Domain Name, as the same is evidenced by Respondent's explicit use of the SPECTRUM mark in the domain name and on the website. Complainant has further contended that such actions show that the Respondent was well aware of the Complainant and its trademarks before it registered the domain name. Complainant has also contended that registration of a domain name that is identical to a trademark, with actual knowledge of the trademark holder's rights is strong evidence that the domain name was registered in bad faith, and in this regard has relied on the cases of *Accenture Global Services Limited v. Vishal Singh INDRP/999 (< accenturesoftware.co.in>)* and *Radio & Records, Inc. v. Nat'l Voiceover, FA 665235.*

In light of the above submissions, the Complainant has contended that the Respondent has registered the domain name in bad faith.

<u>Other Legal Proceedings</u>

The Complainant has submitted that there are no other legal proceedings that have been commenced against the Respondent in relation to the domain name <**<u>SPECTRUMPHONENUMBER.NET.IN</u>**>.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <**SPECTRUMPHONENUMBER.NET.IN**> to be transferred to them.

7. **Respondent's Contentions**

As already mentioned in the Factual Background of the matter, despite being duly served with a copy of the Domain Complaint as filed and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

8. **Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
ii. The Registrant has no rights and legitimate interest in respect of the domain name;
iii. The Registrant's domain name has been registered or is being used in bad faith.

i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights (Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the mark **SPECTRUM** and formatives thereof, and based on the evidence placed on record, the Complainant's trade mark rights in India for a **SPECTRUM** formative trade mark at least dates back to the date of application of the trade mark application no. **IRDI-3641290** for the mark Spectrum ENTERPRISE | Navisite / **SPECTRUM ENTERPRISE NAVISITE** i.e. **April 13, 2017**, which is incidentally the only Indian **SPECTRUM** formative trade mark application/registration explicitly mentioned in the complaint or the annexures thereto. Complainant has also placed on records information and evidence relating to various SPECTRUM formative trade mark registrations owned by it in the USA, including the marks SPECTRUM TV (U.S. Reg. Nos. 5420855, 5627956), SPECTRUM VOICE (U.S. Reg. No. 5098473), SPECTRUM INTERNET (U.S. Reg. No. 5098550), SPECTRUM REACH (U.S. Reg. No. 5101071), SPECTRUM BUSINESS (U.S. Reg. No. 5720822) as well as the EUIPO registration no. 018091541 for the mark SPECTRUM MOBILE. Although it may be noted that based on the Complaint and the documents placed on record, it appears that the Complainant has not submitted any record of any registration for the solo word/mark SPECTRUM.

Complainant has further placed on records documents evidencing that it owns various **SPECTRUM** formative domain names, which also significantly predate the date of registration of the disputed domain name by the Respondent. These rights significantly pre-date the registration of the domain name <**SPECTRUMPHONENUMBER.NET.IN**> by the Respondent. Complainant has established that besides its onsite/physical operations, it has a ubiquitous presence on the internet, and to that end has also submitted excerpts from their social media accounts.

The Complainant has also placed on record prior UDRP decisions wherein, including for the domain names <**SPECTRUMTVS.COM**>, <**SPECTRUMCABLESERVICE.COM**>, and <**SPECTRUMBUNDLEOFFER.COM**>, wherein prior UDRP panels have recognized the Complainant's rights over the SPECTRUM marks and Complainant has prevailed. Incidentally, the above domain names also comprise of the name/mark **SPECTRUM** in toto and is followed by a descriptive/generic word/term, i.e. **TVs**, **Cable Service** and **Bundle Offer**, akin to the disputed domain name.

The disputed domain name <**SPECTRUMPHONENUMBER.NET.IN**> incorporates the dominant portion of the Complainant's trade marks, i.e. **SPECTRUM**, in toto, and the same is followed by the descriptive term "**Phone Number**" and it has been noted that the Respondent is prima facie using the website hosted on the domain name to portray an offering of services which are similar/identical to those of the Complainant and appears to be passing off as the Complainant's own website.

It has been upheld by prior INDRP panels, including the ones cited by the Complainant - ***Inter-Continental Hotels Corporation vs. Jaswinder Singh (INDRP/278)*** and ***Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148)***, that in cases where the disputed domain name incorporates a mark in its entirety, it is adequate to prove that the domain name is either identical or confusingly similar to the mark. The same has also been held by other INDRP panels, such as ***Kenneth Cole Productions v. Viswas Infomedia INDRP/093 <kennethcole.in>, Carrier Corporation, USA v. Prakash K.R. INDRP/238 <Carrier.net.in>, M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>, Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887 <Colgate.in>*** and ***The Singer Company Limited v. Novation In Limited INDRP/905 <singer.co.in>***. Accordingly, it may be noted that the same can be extended to apply to the present case, wherein the disputed domain name comprises of the dominant portion of the Complainant's trade marks, i.e. **SPECTRUM**, in toto, and the same is followed by the descriptive term "**Phone Number**".
Even though the Complainant may not possess any registration for the solo word mark **SPECTRUM**, it has established that it owns various **SPECTRUM** formative trade marks, including but not limited to **SPECTRUM TV**, **SPECTRUM VOICE**, **SPECTRUM INTERNET**, **SPECTRUM REACH**, **SPECTRUM BUSINESS**, **SPECTRUM MOBILE** and Spectrum ENTERPRISE | Navisite / **SPECTRUM ENTERPRISE NAVISITE**. It is evident that the dominant and prominent part of all these trade marks is the word mark **SPECTRUM**, akin

to the disputed domain name <**SPECTRUMPHONENUMBER.NET.IN**> which essentially comprises of the terms **SPECTRUM** and **PHONE NUMBER**. In numerous prior UDRP panels, a domain name has been found to be confusingly similar to a mark where a common descriptive term has been appended to the mark as part of the domain name as well as cases wherein *a domain name has also been found to be confusingly similar where a common term has been added to only a part of a trademark*, such as the present case (**SPECTRUM + PHONE NUMBER**, wherein SPECTRUM forms the dominant and prominent part of Complainant's trade marks). In this regard, reliance is placed on the cases of ***Veuve Clicquot Ponsardin v. Net-Promotion, Inc. [WIPO Case No. D2000-0347]***, which was regarding the domain names **<champagnecliquot.com>** and < **champagne-cliquot.com>** and the same were held to be confusingly similar to the **VEUVE CLICQUOT** trademark; ***Abercrombie & Fitch Trading Co., A & F Trademark, Inc. v. Johnathan Smith [WIPO Case No. D2008-1800]*** which was regarding the domain name <**cheapabercrombie.com**>, and the same was held to be similar to the complainant's **ABERCROMBIE & FITCH** trademarks; and ***8848 Altitude AB v. Constance Siddiqui [WIPO Case No. D2017-2001]***, which was regarding the domain name <**8848rea.com**> and the same was held to be confusingly similar to the dominant part of the Complainant's trademark **8848 ALTITUDE**;

Further, the presence of the ccTLD ".NET.IN" in the domain name is insufficient to distinguish the domain name from the Complainant's trade marks, as has been observed in numerous prior INDRP cases also.

Further, it is pertinent to note that the generic term "PHONE NUMBER" in fact pertains to the Complainant's own goods/services and its industry, and hence the addition of the said term to the word SPECTRUM in fact exacerbates the similarity between the disputed domain name and the Complainant's trade marks.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain <**SPECTRUMPHONENUMBER.NET.IN**> is confusingly similar to the Complainant's trade mark(s).

ii. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)

The Complainant has contended that the Respondent has not been commonly known by the disputed domain name and neither has it licensed or authorised the Respondent to register the disputed domain name, and neither is the Respondent sponsored or affiliated with the Complainant in any way. As submitted by the Complainant in **Exhibit I**, the Respondent's name is "Pashupati Gupta".

In the present dispute, Complainant has established that it has rights over the SPECTRUM Marks and that the domain <**SPECTRUMPHONENUMBER.NET.IN**> is confusingly similar to the Complainant's trade mark(s). Based on the Complainant's contentions and the documents placed on record, coupled with the Respondent's lack of response, it prima facie appears that the Respondent indeed has not been commonly known by the disputed domain name and thus does not appear to have rights or legitimate interests in the disputed domain name.

The Complainant has further contended that the Respondent does not appear to be using the disputed domain name with respect to a bona fide offering of goods or services or a legitimate noncommercial or fair use, as the Respondent is implying a connection with Complainant by passing off as Complainant on the resolving webpage. In this regard, Complainant has annexed excerpts from the website hosted on the disputed domain name as **Exhibit H**. Upon a perusal of the same, it indeed prima facie appears that the Respondent is attempting to imply an association/affiliation or some sort of relationship with the Complainant.

In light of the Complainant's unrebutted assertions, it is pertinent to state that while the burden of establishing that the Respondent has no rights or legitimate interest in respect of the disputed domain name lies on the Complainant, the same shifts to the Respondent if the Complainant makes a prima facie case showing that the Respondent has no legitimate interest in the domain name. This has been upheld by INDRP panels in the cases of ***Luxottica Holdings Corp v. Lokesh Morade [INDRP/139] for <sunglasshut.in>***; ***Alticor Inc v. Aryanent [INDRP/192] for <nutriliteindia.co.in>***; and ***Hitachi Limited v. Kuldeep Kumar [INDRP/1092] for <hitachicorporation.in>***.

The element under Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in ***Huolala Global Investment Limited v Li Chenggong*** **(INDRP /1027)** that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

Under paragraph 7 of the INDRP policy, it is stated that Respondent can demonstrate rights or legitimate interests in a disputed domain by showing - (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (ii) 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 (iii) 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.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

It has further been held by numerous UDRP as well as INDRP panels, that the Respondent may be presumed to have constructive notice of the Complainant's trade mark if the Complainant can show that the mark has ubiquitous use, including online use and that such knowledge can be construed as an indicator of bad faith. Moreover, in the present case, based on the contents of the complaint and the unrebutted evidence placed on record, including but not limited to the similarity of the services being offered on the website hosted on the disputed domain name, it is evident that the Respondent was aware of the Complainant and its trade marks prior to registering the disputed domain name. Moreover, as contended by the Complainant, it appears that the Respondent is attempting to create a false affiliation to divert Internet users seeking complainant's website, which is not a bona fide offering or legitimate use under Policy. In this regard, the Complainant has placed reliance on the INDRP case of ***Pathway IP S.A.R.L vs Regus India INDRP/1168***.

The Complainant has established a prima facie case of its rights in the SPECTRUM Marks, and in view of the facts and circumstances and evidence on record, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bonafide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(ii) of the .IN Domain Name Dispute Resolution Policy.

iii. <u>The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)</u>

Paragraph 6 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (i) 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 (ii) 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 (iii) by using

the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online 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.

Complainant has contended that the Respondent has registered and uses the disputed domain name bad faith because the Respondent is attempting to attract, for commercial gain, Internet users to Respondent's own website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the content thereon.

Based on the evidence on record and the Complainant's assertions, it appears that by registering and using the domain <**SPECTRUMPHONENUMBER.NET.IN**>, the Respondent has engaged in conduct as enumerated in paragraph 6 (iii) of the INDRP, that *it has 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.*

Complainant has further contended that the resolving webpage displays Complainant's SPECTRUM marks, provides a contact phone number, email address and claims to be an authorized retailer of Complainant. A perusal of the excerpts of the website as placed on record as **Exhibit H** shows that the Respondent is indeed claiming to be an "*authorized reseller for Spectrum Cable, internet service provider and email services*". This, coupled with the fact that the Respondent has provided an American address on its website (15400 Don Julian, Rd, City of Industry, CA 91745, USA), further evidences that the Respondent is attempting to attract, for commercial gain, Internet users to Respondent's own website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the content thereon.

Complainant has also contended that the Respondent is also attempting to gather Internet users' personal information through a "Contact" page on the website of the disputed domain name. A perusal of the documents placed on record as **Exhibit H** reveals that the Respondent indeed prima facie appears to be phishing for private information of persons visiting the website.

Complainant has also contended that the factum of the prominent use of the SPECTRUM Marks on the website hosted on the disputed domain name is indicative of the Respondent's prior knowledge of the Complainant's trade marks and is also indicative of the Respondent's bad faith.

In addition to the above, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

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In light of the above and evidence placed on record in support thereto, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

8. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has rights over certain **SPECTRUM** formative marks. The Complainant has herein been able to prove conclusively that:

i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
ii. The Registrant has no rights and legitimate interest in respect of the domain name;
iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**SPECTRUMPHONENUMBER.NET.IN**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.

Lucy Rana, Sole Arbitrator

Date: September 03, 2020.

Place: New Delhi, India.