



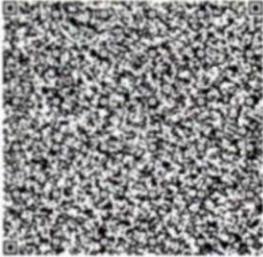
सत्यमेव जयते

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Purchased by : SANJAY KUMAR SINGH
Description of Document : Article 12 Award
Property Description : Not Applicable
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BEFORE SH. SANJAY KUMAR SINGH, ARBITRATOR,
IN DOMAIN NAME DISPUTE RESOLUTION POLICY
(INDRP)

M/S Emani Limited - - - Complainant

vs.
Mr. C. R. Kundelige - - - Respondent

Sanjay Kumar Singh

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

M/s. Emami Limited, a company
Incorporated under Companies Act,
1956 and having its registered office
at 687, Anandapur EM Bypass
Kolkata WB- 700 107.

-----Complainant

Versus

Mr. C. R. Kundaliya, office at Trade
Easterly, the good tidings breeze,
Marketing Yard, c/o. Krishna
Communication Rajkot,
Gujarat- 360002 INDIA

-----Respondent

THE PARTIES:

A COMPLAINANT:-

EMAMI LIMITED

Address: 687, Anandapur EM Bypass Kolkata WB- 700 107

Telephone: 033-6613-6264, Fax: 033-66136600

E-mail: neerajg@emamigroup.com

B. RESPONDENT: -

MR. C. R. KUNDALIYA

Organization: Trade-Easterly, the good tidings breeze Marketing Yard, C/o. Krishna

Communication city: Rajkot, Gujarat- 360002. India. Telephone: +281.2703926,

Fax: +281.2563593, E-mail: tradeast@hotmail.com

**C. THE COMPLAINANT'S AUTHORIZED REPRESENTATIVE IN THIS
ADMINISTRATIVE PROCEEDING IS:**

IPR House, Advocates

8/2, Kiran Shankar Roy Road,

Sanjay Kumar Singh

3rd Floor, Room No. 14, Kolkata - 700001.

D. THE COMPLAINANT'S PREFERRED METHOD OF COMMUNICATIONS DIRECTED TO THE COMPLAINANT IN THIS ADMINISTRATIVE PROCEEDING IS:

Electronic-only material

Method: e-mail

Address: pawan@iprhouse.com

Contact: Pawan Kumar Maheshwari

DISPUTED DOMAIN NAME:-www.zandu.in

F. FACTUAL BACK GROUND OF THE COMPLAINT:-

1. The Complainant has submitted that it is a company limited by shares incorporated as per the provisions of the Companies Act. 1956 and having its registered office at 687, Anandapur EM Bypass Kolkata. West Bengal- 700 107.
2. The Complainant has submitted that it is the flagship company of the famous Emami Group. It is a coveted Rs. 1700 crore business entity, a leading player in the personal and healthcare consumer products industry in India and a household name amongst the public in general.
3. The Complainant has submitted that it has over 100 brands under its portfolio. The focus is on providing the consumers with innovative products which are capable of meeting their multiple needs and add value by enhancing the quality of day-to-day life.
4. The Complainant has submitted that it has an expert research team which fulfils the tedious task of understanding the needs of the modern man and fulfilling them by dint of technical research.
5. The Complainant has submitted that it has successfully established its brands through strong celebrity endorsements. It is the only corporate entity in the country to have both Amitabh Bachchan and Shah Rukh Khan as brand ambassadors. The concept of brand endorsement by celebrities has been successfully experimented in case of most of the brand launches. Besides Amitabh Bachchan and Shah Rukh Khan, other celebrity endorsers of the Plaintiff's brand include HrithikRoshan.

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Kareena Kapoor. Parineeti Chopra, Kangna Ranawat, Yami Gautam Nandamuri Taraka Rama Rao , Sonakshi Sinha . Milkha Singh amongst others.

6. The Complainant has submitted that it covers all the states with 32 depots across India. Its supply-chain management assumes immense significance which was aptly reflected through remarkable expansion in dealer distribution network, outlets and manpower. The domestic sales and distribution division of the Plaintiff directly covers 4.20 lakh outlets all across the country along with an additional 2100 modern retail outlets. The Plaintiff's products reach out to nearly 30 lakh retail outlets across India through 2500 distributors⁷ The products of the Plaintiff not only have a pan India presence, but also have a deep imprint in over 60 countries across the world including GCC, UK, Sri Lanka, Bangladesh, Nepal, African and the CIS countries. The Plaintiff has three subsidiary companies-Emami UK Limited in London, Emami International FZE in UAE and Emami Bangladesh Limited in Bangladesh. The Plaintiff has 7 ultra-modern manufacturing facilities at Kolkata (West Bengal), Abhoypur and Amingaon (Assam), Uttaranchal, Dongri (Maharashtra), Vapi (Gujarat) and Masat (Dadar & Nagar Haveli) and has adopted the Total Quality Management.

7. The Complainant has submitted that by reason of the quality of the Plaintiff's products, the Brands of the Plaintiff have gained tremendous popularity and acquired distinctiveness. Consequently the same are identified with the Plaintiff only and no one else.

8. The Complainant has submitted that it started manufacturing ayurvedic medicine and medicinal preparations in India from the year 1982 and is one of the pioneers amongst the manufacturers of ayurvedic medicines and ayurvedic medicinal preparations in India. The Plaintiff is well known for providing high quality and efficacious Ayurvedic medicines and ayurvedic medicinal preparations for a long time. Today ayurvedic medicines and ayurvedic medicinal preparations manufactured by the Plaintiff are available throughout the length and breadth of the country.

9. The Complainant has submitted that it had acquired 68.9% stake in Zandu Pharmaceutical Works Limited and took over the management and control on November 5, 2008. Thereafter on an application filed before the Hon'ble High Court at Calcutta for approval of the Scheme of Arrangement filed under Sections 391-

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394 of the Companies Act, 1956, the Hon'ble High Court at Calcutta approved the scheme of arrangement of de-merger/merger of businesses between the Plaintiff, Zandu Pharmaceutical Works Limited and Emami Infrastructure Limited. Pursuant to the approval granted by the Hon'ble High Court at Calcutta the FMCG (Fast Moving Consumer Goods) business of Zandu Pharmaceutical Works Limited comprising all brands and corresponding assets and liabilities were de-merged into the Plaintiff with effect from November 5, 2008. As a result of the demerger the Plaintiff acquired from the Zandu Pharmaceutical Works Limited portfolio, various products like "Zandu Balm", "Zandu Kesari Jivan", "Zandu Chyawanprash" amongst others.

10. The Complainant has submitted that Zandu Pharmaceutical Works Ltd. was named after venerable Mahatma Zandu Bhatt ji to whom it owes its origin. Zandu Bhatt Ji started manufacturing ayurvedic drugs in August, 1864. Sri Jugatram Vaidya, grandson of ZanduBhattji formed Zandu Pharmaceutical Works in 1910 to manufacture ayurvedic drugs. Since then the medicines manufactured under the Zandu Brand are serving the mankind continuously and without interruption.

11. The Complainant has submitted that it on 01.08.1975 the complainant company has filed trademark application for the mark Zandu (Label Mark) in class 05 under trademark application no. 307300 for availing statutory protection as per the Trade Marks Act, 1999. The said trademark was duly registered as per the Act and the same is valid and subsisting in the records of the Trade Mark Registry. 09.09.2010, the complainant company has filed trademark application for the word mark Zandu in class 03 and 05 under trademark application nos. 2021081 and 2021085 respectively for availing statutory protection as per the Trade Marks Act, 1999. The said trademarks were duly registered as per the Trade Marks Act, 1999 dated 20.03.2012 and 21.03.2012 respectively and the same is valid and subsisting in the records of the Trade Mark Registry. The complainant has also got copyright registration for the artistic work applied on the trademark ZANDU dated 07.05.2011. The registration number of the said copyright is A-98022/2013 dated 4.3.2013. Photocopies of certificate of the registered trademark and photocopy of the copyright certificate annexed herewith and marked with Annexure "B" collectively.

12. The Complainant has submitted that the said brand name ZANDU is ranked in the list of 100 most trusted brands in the various product categories since last three

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years. The said brand is also listed in the Economic Times (ET) Brand Equity Survey, 2014.

13. The Complainant has submitted that the products under the brand name/trademark ZANDU and its variants are sold not only in India but throughout the globe. The said trademark has acquired factual distinctiveness due to its high product quality and its wide range of advertisement campaign through different mediums.

14. The Complainant has submitted that due to its high product quality and wide advertisement campaigning, the said trademark has acquired and enjoys valuable goodwill and reputation amongst the members in trade and public.

15. The complainant has submitted that it also booked various domain names including www.zandu.co.in in order to provide the original and general information of the said trustworthy brand ZANDU to the members in trade and public. The complainant has annexed the details of the other domain registration in the name of the complainant and has annexed and marked it as Annexure "C"

G. THE GROUNDS OF COMPLAINT ARE AS FOLLOWS:-

- I. The domain name registered by the respondent www.zandu.in with registrar is identical to the registered trademark ZANDU of the complainant as mentioned above. By mere glance at the respondent's domain creates enormous confusion as to its origin as the domain name used by the respondent is identical to the registered trademark ZANDU. The said act of the respondent is malafide one and the same is evident from the fact that not a single letter differs between the disputed domain name of the respondent and registered trademark of the complainant. Thus, the use of the disputed domain name by the respondent is a prima facie case of cybersquatting and Trade Mark Passing off.
- II. The Respondent is an individual / business / or other organization and has not been commonly known by the trade name ZANDU and is not using the same in the actual course of business. The Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the

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Complainant whereas the complainant is legitimate owner of the trademark ZANDU and domain name www.zandu.co.in.

The main object of registering the domain name www.zandu.in by the Respondent is primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner and registrant of the trademark ZANDU and domain name www.zandu.co.in. Or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name

Further by using the said domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

REPLY OF THE RESPONDENT TO THE COMPLAINT OF THE COMPLAINANT

The Respondent filed the reply to the complaint of the complainant. The respondent has submitted that Chandulal Ranchhoddas Kundaliya, Proprietor, Trade-Easterly, herein is a tiny service oriented unit, a proprietary concern, engaged in providing various kind of tailor made services and is an entity serving to the community with high integrity and ethics. He has further submitted that Respondent is having shops in Agriculture Produce Marketing Yards in Rajkot having small business and is also looking after family assets. He has further submitted that respondent's one of the areas of work is in the field of Information Technology and are developing various sites e.g. lohana.in. jamnagar city.com (the first city portal), trade-easterly.com and are also engaged in creating the intellectual property assets by registering the domains and developing the brands on the basis of successful brands in the areas in which it is not registered. The first city portal of Jamnagar, jamnagarcity.com have been the creation of your respondent herein which has run from the year 2000 and has been recently could not be maintained due to ill health and age of respondent herein. The halar.com, representing

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the geographical area in and around Jamnagar was built by respondent way back in 1998. The area of service also includes research and analysis of the various brands potential and registration of domain names and in the appropriate cases handing over the domain names registered to the legitimate claimants on chargeable basis. The respondent has contended that the domain placed under dispute by complainant herein is zandu.in. Zandu Rishi belongs to Jamnagar and Jamnagar is hub for services related to ayurved and the respondent has the business related to geographical area and specialities related to Jamnagar as is evident from the various websites that have been developed by your respondent.

The respondent has contended that the present domain name zandu.in is registered through the official web domain registrant authorized by nixi (Details of the registrant was sought by Registry from complaint which were not mentioned by them initially). This reply is being filed and point may be considered individually and jointly to set aside the complaint ab-initio

A. TRADE MARK INFORMATION BY RESPONDENT

The respondent has contended that he is not engaged in any business which is covered in class or classes in which the complainant has the trade mark rights in zandu. The respondent is a tiny proprietary concern and engaged in various service business. The respondent has put in a lot of gestation time, creativity and ideas in developing the work on zandu. The respondent has submitted that Developer has strong belief that the word has good sign, good fortune and has potential for development. The respondent has submitted that he is eligible for trade mark registration for the zandu.in which complainant has not registered as per Trade Marks Act.

B. FACTUAL AND LEGAL BACK GROUNDS OF RESPONDENT

1. The respondent has submitted that he is the proprietor of many well-known ideas and creation in the context of website developments. The products of the respondent are self-made and capable to cater to varied users of internet.
2. The respondent has submitted that he did not receive the copy of the complaint till date it was appraised to the arbitrator and in absence of providing such complaint to the respondent M/s. Trade-Easterly, Proprietor Shri C. R. Kundaliva. it would be unfair and incorrect to decide the matter by the process

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of arbitration also as principles of natural justice is required to be followed in all the process of justice. The respondent has submitted that on intervention of the arbitrator the soft copy has been received by him.

3. The respondent has submitted that the products by us are not sold under trademark zandu, any products which are said to have been the complainant's trade mark are not sold in part through a specialised channel or in any other manner in whole area in this part of the world by us and this part of the world is hardly aware of any brand zandu for the services that respondent proposes to deliver and complainant herein do not have any stores and any business for the services of the nature of respondent doing. The respondent has submitted that Neither complainant sales any 'service products' in this part of the world nor the respondent sales any service product accessories of classes of the schedule to the Trade Marks act as mentioned by the of the complainant. The respondent has submitted that the nature of the products being developed by the respondent herein are centric on designing (web pages) technology etc. and mainly service oriented. It includes tailor made services sought by the clients and respondent does the business whatever he gets. Thus the products of the respondent under the enterprise zandu have never shown directly or implicitly and never encroached reputation, goodwill and distinctiveness of the products of the zandu. Only after several years of caring by your respondent herein, the word "zandu", one fine day, complainant has claimed it for the reasons best known to them. Time limit of the continuous registration put in by the respondent for years, total money poured in by the respondent for the years, employment of creativity, gestation period that has been passed are the important factors of the respondents life time that has been the input to the zandu.
4. The respondent in relation to para 11 has submitted that there is no mention by Hon'ble High Court of Kolkata or no notice has been received from Hon'ble High Court of Kolkata, it is believed that complainant has not any time mentioned before Hon'ble High Court of Kolkata that M/s. Emami or any of his subsidiaries has any interest in zandu.in being developed by M/s. Trade-Easterly, who are service oriented people. The respondent has further submitted that such mention appears to have not been declared or raised before High Court of Kolkata any time by the complainant. Since the matter has been before Hon'ble High Court of Kolkata about demerger, it is believed all brands and corresponding assets and liabilities and the properties of earlier M/s. Zandu Pharmaceuticals Works

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Ltd., at the time of at the time of merger has been taken care and would have been declared by the complainant before Hon'ble High Court. The respondent has submitted that such claim at this time is not proper and legal, and appears post thought. For any purposes whatsoever, neither parties to the merger has declared before any authorities that they have interests in zandu.in.

5. The respondent has submitted that by this complaint, respondent is being attempted to be deprived of its rights and legitimate interests, as complainant have not been able to show any stores in the city/state/country being operated by them or their subsidiary for the services that are being planned and organized by the respondent. The respondent has submitted that right to do business in any name arises out of fundamental rights of citizens of India and respondent has not breached any provisions of trade mark act or any other law in force in India and zandu name is not infringing any laws in India. At the time of registration, there was no bad faith that this would be bought by M/s. Emami Ltd., and they would be requiring this name. Complainant has failed in toto in bringing any of the foul play at any point of time in any manner by the respondent. Complainant do not have ethical, moral or any financial rights in the name of zandu.in when the same is not being used for any class or related products being made by complainant.
6. The respondent has submitted that complainant do not have any presence in service sector and your respondent herein has been in service sector for several years Present domain is a country specific domain (.in) and there is no mention that they have any sales in India for services at any point of time. It is self-revealing that they are not in the service business at any point of time in any manner,
7. The respondent has submitted that Complainant is in manufacturing, marketing, products Bio-pharmaceutical formulations and active pharmaceutical ingredients and Vaccines. Even if it is presumed that there is a sale of service products then the sale would not be of the all class of goods of Trademark schedule. Respondent, at present or in near future do not have capacity, willingness or any potential for engaging in such products in which complainant is dealing and it is far imagination that such thing may happen remotely which is just to take away the name zandu by the complainant by showing might and army of legal resources and charging unnecessarily bad faith.

S. Anil Kumar

8. The respondent has submitted that he appreciates learning that complainant employs several people globally with several intellectual properties in their name, their capability and commitment in pursuing intellectual property for years and award to them for maximum number of trademarks, copyrights patent filing and grants. However, respondent does not appreciate the claim of the complainant on the domain on the ground that they are big and rich persons, big corporate. Complainant wants zandu.in name on the grounds of intellectual property that they possess very late after registration of the zandu.in by your respondent. Copyrights and domain are independent and exclusive of each other. All the people small or big have equal rights to work when there is no infringement of the others rights. It is admitted position in the complaint that (quote)"In 2008, Emami acquired Zandu Pharmaceutical Works Ltd for Rs.730 crores. The company demerged Zandu FMCG into Emami and raised Rs.310 cr through QIP. The company became debt free within 2 years of the Zandu deal.(unquote). There was no dispute at the relevant time and no consideration at the relevant time for zandu.in.
9. The respondent has submitted that Right does not arise on domain for the country level domains especially when the products are not of similar nature or not in the same class or classes as enumerated in the Trade marks law. Right on domain does not arise when the service products as have seen the potential by respondent are not dealt with by the complainant. Right on domain does not arise when various websites of the same area from where Zandu Rishi belonged has been demonstrated with fair use. Arguments of infringement has remote possibility especially when products are totally different.
10. The respondent has submitted that Revenue earning does not show the rights over the domain and cannot prejudice play of small revenue earners from business or profession as it cannot be cause of complaint as per INDRP.
11. The respondent has submitted that he appreciate and respects the work across the globe by complainant but it does not give them right in the domain in the all classes in India.
12. The respondent has submitted that respondent denies that mere mention of the word zandu in the service and internet business would make any person to lead to believe that it has connection with the complainant. However, remedy is suggested for links in the reply hereunder for lifetime without obligation, if it is

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warranted in the interest of justice, till zandu.in is owned and maintained by the respondent herein.

13. The respondent has submitted that Right shown by the complainant does not show a single sale in India of the service products and class in which respondent is working. They never cared to register the domain in the sunrise policy and respondent did not made any attempt to register the said brand name in the sunrise policy administered by NIXI. Only after the registration of the domain by the respondent after a decade complainant wanted that. Such raising of the objection and claims are after several years is incorrect and unfair. By this actions it transpire that though the complainant was aware of the domain names and their brand names but was never interested in having those brand in their names and thereafter till years they have not made any efforts for the same and only after the registration of the domain by the present respondent they shown their interest in it. In this manner they also caused losses to the nixi and thereby people here that they enjoyed their intellectual property rights in the brand but have not registered the domain. This is nothing but harassment and creating tense and charging of bad faith is height to it.
14. The respondent has submitted that Registration, ideas of development of the same, and making payment to the nixi for the said registration charges in time by the respondent also show legitimate interests in the domain. Demonstrable preparation to use in creativeness and giving the theme of development is more than what is required. There has been expenses for such developments.
15. The respondent has submitted that Ownership of halar.com during 1998, development of jamnagarcity.com (Closed recently), possession of Jamnagar.in are also explicit evidences that registrant has rights and legitimate interest in zandu.in.
16. The respondent has submitted that there is no bad faith in registration of domain after sunrise policy. There is no bad faith in registration of domain for rendering services when the complainant is manufacturer/trader of certain class of goods only. There is no bad faith when there is no channels of distribution having interests of complainant in those products in which respondent finds potential in India by rendering services. Sunrise policy has given ample opportunity to the complainant. Complainant was having all certificates at the time of sunrise policy about its trade mark. The right at this stage is post thought and to harass and stretch away showing the might by the complainant.

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17. The respondent has submitted that it is not the legal obligation nor it is required under any moral ethical or legal responsibilities of the respondent, yet respondent came forward with a statement that if it is desired by the complainant, respondent would place a line in all pages whenever it make it public the site that the present site is not in any way related to or part of M/s. Emami Limited, if such act of respondent satisfies the complainant. This would be done out of fair play acts that respondent has been doing and would ask for no compensation life time from the M/s. Emami Limited. It would also be mentioned that Zandu.in has not authorized to register the domain name and would also mention that there is no connection or a direct nexus or affiliation of the respondent with the complainant.
18. The respondent has submitted that Even the Arbitration Act of this country reveals that the law should be adhered to. The Trade Marks Act in India allows registration and there is no reason for denial of registering it for services and other goods which are not manufactured or registered by the person herein complainant. Law is abundantly clear on it. Once the brand is developed, it shall be registered soon with the registrar of trade marks. M/s. Trade-Easterly is eligible to make applications for such registration of the brands in India. While primary search of the website it reveals that several Trademark application have been made starting with Zandu by M/s. Emami Ltd., but you would appreciate that all this applications are for Class 5 in which your complainant do not deal with at all.
19. The respondent has submitted that he is Citizen of India and has right to do any lawful business in any name and manner.
20. The respondent has submitted that that the Domain name has been registered through the registrar appointed by the .in registry.
21. The respondent has submitted that that the name zandu.in is not a prohibited word in any of the law at present and as such your respondent has right to do the business in the name and style of zandu.in.
22. The respondent has submitted that Complainant has grossly erred in presuming that domain name is registered in bad faith and erred that zandu.in cannot be sold for any other class of trademarks or other intellectual property rights. Any person producing other class of goods in this region who come forward for such enterprise can be sold intellectual property.

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23. The respondent has submitted that Registration was not done in bad faith as is revealed by various acts narrated above and in particular following circumstances
- a. Domain with second level .in viz. zandu.in is not registered in sunrise period.
 - b. Other domains related to the party with its products have not been registered by us and we have registered several domain where in party's might have succeeded in other unknown areas of the world and have no interest of doing business in India or have not registered. In such case registration should not have been allowed to any person by Nixi itself. Nixi has allowed the registration to the respondent without trademarks.
 - c. Domain with coin or other brand names of this party is not registered by respondent.
 - d. zandu.in has never been used the domain for creation of traffic.
 - e. Respondent has never allowed third party to market anything on the domain zandu.in.
 - f. Respondent has not given any space to anybody at any time for any act detrimental to the interest of M/s. Emami Limited. All the charges of the bad faith by the party has created unrest for the respondent and has demur the image of the respondent.
 - g. Respondent has not registered the domains in which party and its products are prejudiced.
 - h. No links or any other form of usage is allowed to competitor of the party or any other person for such purpose for the years.
24. The respondent has submitted that Complainant do not have Trade Mark rights in all class of goods in India and has rights only limited to few class only.(Annexure B to complaint)
25. The respondent has submitted that he has never taken the services of any of the brand ambassadors or dignatories like Shri Amitabh Bachchan, Shri Shah Rukh Khan, Shri Hritik Roshan, Sau. Kareena Kapoor, Sau. Parineeti Chopra, Sau. Kangna Ranawat, Sau. Yami Gautam, Shri Nandamuri Tarak Rama Rao, Sau. Sonakshi Singh, Shri Milkha Singh mentioned by the complainant for any of the services that are proposed to be rendered. This

Jayraj Singh

also shows that there is not a single activity of the respondent detrimental to the interests of complainant.

26. The respondent has submitted that duty of the respondent was soon over, once the respondent was satisfied that parties are not interested in zandu.in in domains and has not registered the same for years when they are in the field with adequate infrastructure.
27. The respondent has submitted that even taken over of M/s. Zandu Pharmaceuticals has passed approx. seven years
28. The respondent has submitted that none of the citations/authorities of INDRP can come to the help of the complainant as they could not produce any citation and respondent herein further submits that
 - a. There is absence of bad usage
 - b. In several cases in INDRP there is no response from respondents and arguments above are not discussed on fact
 - c. .in and .com has different status altogether and in is country level domain and may not be treated as the generic top level domain.
 - d. There has not been availment of opportunity given in sunrise policy in those domain cases.
 - e. India has not ratified UNDRP policy and separate INDRP policy exists and is relevant with the laws in India.

The respondent has submitted that in addition to what has been submitted hereinabove, following few grounds are further submitted for your kind consideration in the facts and circumstances of the case;

1. The respondent has submitted that Non submission of the details by the Complainant that they are not registered in all class of trademark law in itself is a ground to set-aside the complaint and no relief can be granted or any cognizance may kindly be given on the grounds of creating ambiguity and suppression.
2. The respondent has submitted that Whole complaint is on presumption and assumptions only and to harass the respondent. Without ascertaining anything they charged bad faith and presumed to the extent what is not even known to the respondent.

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3. The respondent has submitted that that India is not the party to the UNDRP. There is a separate dispute resolution policy i.e. INDRP and is in altogether different state of affairs, though policy may be on the lines of UNDRP for the purpose of easy creation and codification. The respondent has further submitted that the status of various international treaty which are IP related wherein there would be different opinion of this country along with various countries. The respondent has submitted that the .com registrars were probably not able to give the sunrise policy in the manner in which NIXI has given it to the people of India protecting the brands due to evolvement of the dots and coms in the world. NIXI has given adequate time and opportunity for all those brand owners who are interested in in domain extensions. The respondent has submitted that if this domain would be transferred there would loss to the intellectual assets of this country in hundreds of thousands of crores being not able to explore various potential in different domain names or words or unique nature of marks from being developed in fear psychosis that somebody would come and snatch away the said domain after development of the same on the grounds which are alien to the person who have obtained it. The respondent has further submitted that this would also debar to the right enshrined in constitution of India to do business in any name or style and will hit the fundamental right of the persons, enjoying freedom to do business in any name or style. The respondent has submitted that even with the knowledge that, if the brand name is owned in some products, if a person, for the purpose of development of the said work, mark and construction or arrangement of alphabets wishes to develop it for other products, there is nothing wrong in it, especially when a long time has elapsed and when failure to register the same in sunrise policy, which was remedy available to the respondent and has not been availed by the claimant or complainant.
4. The respondent has submitted that in this case circumstances do not indicate that the respondent and the registrant herein has registered the domain name primarily for the purpose of selling, renting or transferring the domain name as at the time of registrations, M/s. Emami Limited complainant herein never owned M/s. Zandu Pharmaceuticals Ltd.,

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5. The respondent has submitted that Registrant has never prevented the owner of trademark from reflecting the mark in a domain name, as the same has not been booked during the sunrise policy of NIXI. Registrant and respondent herein has never attempted to attract internet users to the registrant's website or other on line locating and has never created a likelihood of confusion.
6. The respondent has submitted that there are unequivocally several decision in WIPO cases in favour of your applicant herein but are not submitted as there cannot be comparison of .in and .com extensions for the reasons of prolixity.
7. The respondent has submitted that further purpose and situation of the state of affairs of UNDRP and INDRP is different to the extent that there is no scope for cost in UNDRP whereas when the sunrise policy and law of trade mark is clear in the INDRP situations, there is scope for adequate costs added recently. India is not the member of dispute for resolution in UNDRP as some other countries are and INDRP has to settle in its own perception and within constitutional frame work of Constitution of India. The respondent has submitted that Cost may be awarded for expenditure and inconveniences created to the respondent in the interest of justice.
8. The respondent has submitted that such transfer of domain would be detrimental to the creativity, and there would be loss to the people who are interested in development of the extensions with .in which is the representation of more than 100 crore public where in growth of internet technology is among the fastest noted. The detriment to creativity in itself is against the sound principles of intellectual property related matters whose main purpose is to safe guard creativity.
9. The respondent has submitted that the case would also be the case fit for reverse hijacking as through the complaint there is no interest that has been shown for use of zandu.in in India by the complainant for rendering the services in which inputs have been made by respondent.

The respondent has prayed to consider the above for the purpose that :

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1. To transfer of domain may not be allowed in favour of complainant as the same are not within the policy and it is correct legal and proper with respondent as per law of the land.
2. To remove the bad faith charges made by the complainant
3. To grant relief for such presumptions and assumptions made by complainant
4. To set aside complaint with costs, consequential financial and other relief as may be suitable in the facts and circumstances of the case.
5. To make orders as deemed fit in the interest of justice.

REJOINDER OF THE COMPLAINANT TO THE REPLY OF THE RESPONDENT

1. That the Complainant received the soft copy of the reply in complaint in accordance with the .IN Domain Dispute Resolution Policy read with other laws in force and perused the same as filed by Shri C. R. Kundaliya, on behalf of Respondent and filed the rejoinder to the reply of the respondent.
2. The complainant has at the outset, denied all the averments made therein save and except which are matter of record and nothing shall be deemed to be admitted by the Complainant unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied specifically.
3. The Complainant in his rejoinder has repeated and reiterated the contents / Statements / information as made by them in their Complaint.

HISTORICAL BACKGROUND

The Complainant has again stated that the Plaintiff had acquired 68.9% stake in Zandu Pharmaceutical Works Limited and took over the management and control on November 5, 2008.

Zandu Pharmaceutical Works Ltd. was named after venerable Mahatma Zandu Bhattji to whom it owes its origin. Zandu Bhattji's real name was Karunashankar; he was the son of legendary Vaidya Vithal Bhattji. a personal physician to Ranmal, the then King of Jamnagar. He was very accurate in diagnosis of diseases and also intelligent and learned. Therefore, those who learnt Ayurveda from him have become famous among Ayurvedic Physicians

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e.g. Shri. Raghunathji Indrajji. the author of Nighantoo Sangrah and Shri.Bawabhai Achalji, a very well-known personality among the Vaidyas, who were co-students of Zandu Bhattji; all of them learnt the art of Ayurveda from Vithal Bhattji.

After Jam Saheb, the King of Jamnagar was satisfied with the ayurvedic medicines prepared by Shri Zandu Bhattji, he gave the latter a piece of land on the bank of Rangamati River in Gujarat for preparing medicines there.

This was the oldest factory manufacturing Ayurvedic drugs, established about 147 years ago from this date (Ras-Shala was established by Zandu Bhattji in August 1864 in Jamnagar).

Zandu Bhattji used to employ learned Vaidyas for the preparation of drugs and treatment of patients. Chyavanprash-avaleh, Arogyavardhini, Vidangtanduprayog and Samsamani are standard preparations whose specific effects in some diseases were proven by him for the first time. Grandson of Shri Zandu Bhattji took this tradition of Ayurveda forward. Shri Jugatram Vaidya had great knowledge of chemistry and pharmacy. While working under Professor Lee in the Chemical Laboratory at Rajkot. he dreamt of starting an Ayurvedic Pharmaceutical Industry to manufacture Ayurvedic medicines strictly following standard books like Charak, Sushrut, Bhaishajya Ratnavali, Sarangadhar etc. With modern technology this dream came true with the birth of the Zandu Pharmaceutical Works, founded by him in October 1910 as a private Concern.

The company started gaining popularity with its various products from the very beginning. Within a decade, it started finding it difficult to meet the growing demands of the market, and the need for more capital investment was urgently felt. Hence, on 10th December 1919, Zandu was converted into a Public Limited Company to promote research and healthcare through traditional systems of medicines like Ayurveda, Zandu Foundation for Health Care was established in 1990.

In 2008, Emami acquired major stake in Zandu Pharmaceuticals Works Ltd., from the Parikh family, on the basis of huge business synergy between Zandu and Emami. Post the acquisition of Zandu Pharmaceuticals, a century old household name in India; some of its prominent brands like Zandu Balm.

Sangay Ku Singh

Zandu Chyawanprash, Zandu Kesari Jeevan, Zandu Pancharishta, Nityam Churna are also under Emami's basket of brands. Today, Zandu is a part of Emami Limited.

PARAWISE REPLY OF THE COMPLAINANT TO THE REPLY OF THE RESPONDENT

With reference to statements made in paragraph I and II of the Reply, the Complainant has denied the alleged statement and averments made therein save and except which are matter of record. The complainant has submitted that the Respondent has admitted one of the areas of work is in the field of Information technology and are developing various sites and are also engaged in creating the intellectual property assets by registering the domains and developing the brands on the basis of successful brands in the areas in which it is not registered. The Complainant here submits that core practice areas of the Respondent is domain squatting i.e. cybersquatting. This shows that the Respondent is acting as cyber squatters by registering the domain names of the successful brands in which it is not registered with the intent of profiting from the goodwill of someone else trademarks. Zandu the trademark with the passage of time and by virtue of its quality has acquired tremendous goodwill and reputation and has now become a Well Known Mark and is known to public at large that the mark ZANDU belongs exclusively to Emami Group and none else. The Respondent's alleged contention that the first city portal of Jamnagar, jamnagarcity.com had been the creation of them which had rum from the year 2000. The Complainant herein submits that registering the domains in the name of the cities is nothing but trafficking the domains and trademarks and is an offence of cybersquatting, which is same with the halar.com The Respondent states in there reply that the area of service also includes research and analysis of the various brands potential and registration of domain names and in the appropriate cases HANDING OVER THE DOMAIN

NAMES REGISTERED TO THE LEGITIMATE CLAIMANTS ON "CHARGEABLE BASIS".

The complainant in its rejoinder to the reply of the respondent has submitted that the Respondent themselves agreed that they are indulge in the act of

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cybersquatting. Cybersquatting is nothing but in a layman language it is getting registered the domain names of successful brands and later on selling the same to the real owner / proprietor at a huge price and thereby profiting at the goodwill of someone else trademark.

The complainant has submitted that the averments made by the Respondent that Zandu Rishi belongs to Jamnagar and Jamnagar is hub for services related to ayurved itself shows that Respondent is somehow rendering services related to ayurveda only, whereas ZANDU the trademark of Emami Limited is also exclusively used and owned for Ayurveda purpose only for decades. The complainant has submitted that this clearly shows the mala fide intention of the Respondent to trade upon the goodwill of the Complainant. The complainant has further submitted that ZANDU belongs its genesis in the year 1864 at Jamnagar and the admission made by the Respondent is evident that their intention is to trade upon the goodwill of the Complainant.

The complainant has submitted that With reference to statements made in paragraph III and IV of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. The complainant has vehemently denied that the Respondent has put in a lot of gestation of time, creativity and ideas in the developing the work on ZANDU. The complainant has submitted that the very word and mark ZANDU marked its presence in the year 1864 and was very much in existence when the Respondent registered its domain zandu.in. The Complainant denies that Respondent is eligible for trade mark Registration for the ZANDU in which the complainant has not registered as per the Trade Marks Act, 1999.

The complainant has submitted that with reference to statements made in paragraph V (1) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. The complainant has submitted that it is vague and baseless to state that the Respondent is the proprietor of many well Known ideas and creations or that the products of the Respondent are self-made and capable to cater to varied users of internet. The complainant has submitted that the Respondent is

Jangam Rishi

The complainant has submitted that with reference to statements made in paragraph V (2) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. It is denied that the copy of complaint is not received by the Respondent. *The copy of the complaint has been sent to the Respondent by mail and through courier to the registered e -mail and address as recorded with the whois record. The complainant has annexed the copy of the Communication between respondent and the Arbitrator and has marked it with Letter A and has placed reliance on the same.*

The complainant has submitted that With reference to statements made in paragraph V (3) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. Everywhere in the reply, the Respondent has mentioned that the Respondent is a tiny service oriented unit. The complainant has submitted that If this is assumed that the Respondent is a tiny service oriented unit it is hard to find the existence of such tiny unit in a massive trade and population and as soon the Complainant come across the same it raised objection and file the Complaint. The Respondent alleged statement that time limit of the continuous registration put by the Respondent for years is irrelevant and has no importance in the present context.

The complainant has submitted that With reference to statements made in paragraph V (4) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. The complainant has submitted that at the time of demerger and such acquisition of 68.9% stake in Zandu Pharmaceutical Works Ltd. all the right, title and interest over and above the trademark ZANDU transferred to the Complainant by virtue of the order of the Hon'ble High Court at Calcutta By the implication of the statutory rights and common law rights all the interest transferred to the Complainant and it is irrelevant for the mentioning of any interest in zandu.in exclusively. The complainant has submitted that Zandu becomes a well know mark and is known to public at large and to trader that it exclusively belongs to Emami Limited and to it's group company.

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The complainant has submitted that With reference to statements made in paragraph V (5) to (12) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. Right to do business in any name shall be right of any person but at the same time, the person / entity / concern need to abide by the laws, rules and regulation of the land. The complainant has submitted that the alleged act of the Respondent of doing business in the name of zandu.in is infringing and passing off the exclusive right of the Complainant and is void and not allowed also as per the various provisions of the Trade Marks Act, 1999 and the rules made therein. The complainant has submitted that further, there are several settled legal propositions as pronounced by the various Courts / Forums of India holding such alleged act of Respondent as unlawful wherein the respondents therein restrained and refrained from carrying on and conducting such unlawful and illegal acts. The complainant has submitted that Zandu in itself is a prominent and well known mark. The complainant has further submitted that such alleged act of Respondent by registering the zandu.in clearly indicates the mala fide intention of the Respondent to trade upon the goodwill of the Complainant and to pass off his services as that of the Complainant. The complainant has denied that the presence of the Complainant in such service sector at present has no relevance and submitted that this does not give any sort of right to the Respondent to pass off his services under the trade name and trademark of the Complainant. The complainant has submitted that The Complainant never states and claim the domain zandu.in on the ground of big and rich person or big corporate or that the Complainant want zandu.in name on the grounds of intellectual property that they possess very late after registration of the zandu.in by the Respondent. The complainant has submitted that the all the right, title and interest belongs solely to the Complainant from the time of 1864 by virtue of demerger. The Complainant states that all the people small or big have equal rights to work but not where there is infringement of other's right. The complainant has submitted that the ZANDU exclusively owned and acquired by the Complainant and any unauthorized use by the Respondent will tantamount to infringement and / or passing off of the trademark of the Complainant. The Complainant has denied the alleged averments made by the Respondent that the right does not arise on domain for the country level

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domains especially when the products are not of similar nature or not in the same class or classes as enumerated in the Trade marks law or that Zandu Rishi belonged has been demonstrated with fair use. The complainant has submitted that domain is used and can be accessible by any person sitting anywhere in the world and country / states / place is not a factor for accessing to any domain. The complainant has further submitted that having similar nature of products or of same class is irrelevant and has no effect as domain can be accessible by any person searching for any kind of goods / products / services over the international network. The complainant has further stated that any layman searching for the word ZANDU in the international network will get result which solely and exclusively belongs to Complainant. The complainant has further submitted that in the modern world people are so casual and lackadaisical that they even did not bother to type the full name of the thing they are searching and this lead to causing confusion in the minds of the public.

The complainant has further denied the statements made in paragraph V (13) of the Reply. The complainant has further denied the alleged statement and averments made therein save and except which are matter of record. The Complainant has stated that the brand Zandu is ranked in the list of top 100 most trusted brands in the various products category. The products under the brand ZANDU and its variants are sold not in India only but throughout the globe. The said Trade Mark has acquired factual distinctiveness due to its high product quality and its wide range of advertisement campaign through different mediums. The Complainant or the erstwhile owner had filed trade mark application under the Trade Marks Act, 1999 and rules made there under for availing statutory protection. The Complaint has also booked various domain names including www.zandu.co.in, www.zanduayurveda.com in order to provide the original and genuine information of the said trustworthy brand ZANDU to the public at large. The complainant has submitted that mere registration of the domain by the Respondent does not grant right upon the Respondent to render services under the mark zandu.in and it creates enormous confusion as to its origin. The Complainant has denied the alleged statements of the Respondent that the Complainant was aware of the domain names and their brand names but was never interested in having those brand in their names and thereafter till

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years Complainant have not made any efforts for the same or that this is harassment or creating tense or charging of bad faith is height of it. The Complainant repeats that they were unaware about the existence of such domain and brand zandu.in.

The complainant has further denied the statements made in paragraph V (14) of the Reply. The complainant has further denied the alleged statement and averments made therein save and except which are matter of record. The complainant has further denied that registration, ideas of developments of the same and making payment to the NIXI for the said registration charges in time by the Respondent show legitimate interests in the domain. The Complainant has submitted that mere registration of a domain and making payment for same cannot be called legitimate interest in domain and that the ownership of halar.com, development of jamnagarcity.com, possession of Jamnagar.in has nothing to do with zandu.in and it is nothing but trafficking the domain in the name of city.

The complainant has further denied the statements made in paragraph V (16) of the reply. The Complainant has denied the alleged statement and averments made therein save and except which are matter of record. The Complainant has denied that there is no bad faith in registration of domain or that there is no bad faith in registration of domain for rendering services when the complainant is manufacturer / trader of certain class of goods only or that there is no bad faith when there is no channels of distribution having interests of complainant in those products in which respondent finds potential in India by rendering services.

With reference to statements made in paragraph V (17) of the Reply, the Complainant reserves its right to make any comment of it at later stage of the proceeding and at present the Complainant states that mere lacing such statement would not stop causing confusion in the minds of public and will continue causing confusion.

With reference to statements made in paragraph V (18) of the Reply, the Complainant denies the alleged statement and averments made therein save and except which are matter of record. The Complainant submits that they will adhere with all the laws of land. The Complainant further states that

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such unlawful act of the Respondent is clear act of infringement / passing off the trademark of Complainant and there are well settled legal pronouncements made by the various court / forums in India where such act was pronounced as unlawful and illegal.

The complainant has further denied the statements made in paragraph V (19) to (23) of the Reply. The Complainant has denied the alleged statement and averments made therein save and except which are matter of record. The Complainant has denied that it has grossly erred in presuming that domain name is registered in bad faith or erred that zandu in cannot be sold for any other class of trademarks or other intellectual property rights or any person producing other class of goods in who come forward for such enterprise can be sold intellectual property. The Complainant has stated that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the public and the people in trade.

The complainant has further denied the statements made in paragraph V (24) to (27) of the Reply. The complainant has further denied the alleged statement and averments made therein save and except which are matter of record. The Complainant has stated that such averments of the Respondent has no relevance in the present context.

The complainant has further denied the statements made in paragraph V (28) of the Reply including its sub paragraphs. The Complainant has denied the alleged statement and averments made therein save and except which are matter of record. The Complainant has submitted that the grounds as stated by the Respondent are void, bad in law and is made to mislead the Honour. The grounds of the Respondent has nothing to do with present case. The instant matter is clear example of passing off the trademark and cybersquatting.

The complainant has submitted that henceforth, prayers of the Respondent Should be summarily rejected.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

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The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's disputed Domain name www.zandu.in.

I was appointed as Sole Arbitrator in the matter by NIXI

The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).

On 28-07-2015, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *TEN* days from receipt of the notice.

On 07-08-2015 I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *SEVEN* days from receipt of the notice.

On 14-08-2015 I received the intimation / e-mail from the respondent from his e-mail id wherein he sought 15 days' time to file reply on the ground that he had not received the copy of the complaint. He also sought the soft copy of the complaint and the documents.

On 20-08-2015 I informed the NIXI about the same and directed NIXI to send the soft copy of the complaint and the documents to the respondent.

On 21 -08-2015 NIXI sent the soft copy of the complaint and the documents to the respondent. NIXI duly informed the respondent that as required by the procedure NIXI had sent the hard copy of the complaint with annexures by courier to the respondent's address (address as per WHOIS details) vide courier consignment No. **Z59786968** sent on 24-07-2015. On receipt of the email from Respondent, NIXI the courier agency DTDC about the status of the courier and the courier agency replied "Consignment RTO due to short address which was received in the courier office and the courier consignment was returned to the NIXI office on 20-08-2015.

On 26-08-2015 the respondent sent an email asking for the hard copy of the complaint.

On 26-08-2015 I analyzed the request of the respondent for 15 days' time to file reply. I granted 15 days' time to the respondent to file reply to the

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complaint.

9. On 29-08-2015 the respondent submitted the reply to the complaint.
10. On 09-09-2015 I informed the complainant about the reply submitted by the respondent and directed the complainant to file the rejoinder to the reply of the respondent.
11. On 28-09-2015 the complainant filed the rejoinder to the reply of the Respondent.

OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical. Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has legitimate right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark on the said domain name and has no affiliation with the trademark. He has acquired reputation or goodwill in it or that he is known or recognized or associated with it in or outside market. He must show that he has acquired these by extensive user, length and extent of sales, advertisement, length and extent of sales, consumer surveys, or by media recognition.

Sargay ke Singh

This principle is settled in many Indian cases and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287**. The complainant has only made submission that he has legitimate trademark in India, he is using trademark for many years

Thus the conclusion is that the domain name "www.zandu.in" is identical and confusing similar to the trademark of complainant "**ZANDU**" and the complainant has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

The paragraph 4(ii) of INDRP is to read with paragraph no.7. As already stated that paragraph 4(ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power.

In the instant complaint the complainant has made positive assertions that respondent has no legitimate right in domain name and there is no evidence of its use and the respondent has no trademark on the domain name neither he has affiliation with it in India. The complainant has made positive assertions regarding the fact that respondent has got registered various other domain names, in the IN Registry for which the respondent has no right or trademark. The respondent has got registered various domain names as are already mentioned above. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has failed to provide any positive, cogent and specific evidence that he is known or recognized by domain name, by its user and that he in fact uses it for providing goods or services. The respondent has neither put forth nor provided such evidence. The assertion of complainant is that the respondent at time of registering his domain knew or ought to have known about his trademark and so he has violated complainant's right. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

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Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant. The complainant has alleged that the respondent has got registered the domain name for selling it and that he also hijacks domain name to sell it for a profit. The complainant has also asserted that the main object of registering the domain name www.zandu.in by the Respondent is primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner and registrant of the trademark **ZANDU** and domain name www.zandu.co.in Or to a competitor that of Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name.

Further by using the said domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

Keeping in view above facts and circumstances it is thus clear that the respondent has registered domain name and he has not come forward and has not provided any substantial evidence of using them for business or for offering of goods and services. The obvious purpose for registering domain names is to sell, rent or transfer it or to prevent other owner of mark from reflecting it in corresponding domain name. Thus the conclusion is that the respondent has got registered his domain name "www.zandu.in" in bad faith.

In view of above facts of the complaint, law of the land and the case laws as discussed above it is clear that the complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in

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above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him.

RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The respondent also does not have right or legitimate interest in the domain name. The complainant is entitled for transfer of domain name "www.zandu.in" as it has established its bonafide rights in trademark. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 23-12-2015.

Sanjay Kumar Singh
(Sanjay Kumar Singh)
Arbitrator