

Bond



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**Deponent**

Name: Rachna Bakhru

H.No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



Purpose : ALL PURPOSE to be submitted at All place



RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Reliance Industries Limited  
3rd Floor, Maker Chamber-IV, 222,  
Nariman Point,  
Mumbai - 400 021

Reliance Retail Limited  
3rd Floor, Court House, Lokmanya Tilak Marg,  
Dhobi Talao,  
Mumbai - 400 002

....Complainants

jiomartfranchise.in  
3rd Floor, Andheri Kurla Road, Near Mittal Industrial Estate,  
Andheri East, Mumbai – 400059

AND

*Rachna*

Dr. Noushad's ENT Hospital, Near Muthoot Finance,  
Banerjee Road,  
Ernakulam-682 018,  
Kerala

Domain Manager of GoDaddy.com LLC  
14455 N Hayden Rd Ste 100, Scottsdale,  
AZ 85260, United States

.....Respondents

Disputed Domain Name: <WWW. JIOMARTFRANCHISE.IN>

## **AWARD**

### **1) The Parties:**

The Complainants in this arbitration proceeding are Reliance Industries Limited, of the address 3rd Floor, Maker Chambers-IV, 222, Nariman Point, Mumbai – 400 021 and Reliance Retail Limited of the address 3rd Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai - 400 002. The Complainant is represented by its authorized representative, Mr. Vinod Bhagat of Arjun T. Bhagat & Co.

The Respondent in this arbitration proceeding is jiomartfranchise.in, having its address at 3rd Floor, Andheri Kurla Road, Near Mittal Industrial Estate, Andheri East ,Mumbai – 400 059 and also at Dr. Noushad's ENT Hospital, Near Muthoot Finance, Banerjee Road, Ernakulam-682 018 as per the details available in the Whois database maintained by National Internet Exchange of India (NIXI). From the website of the Respondent Company, the following details were ascertained jiomartfranchise.in 3rd Floor, Andheri Kurla Road, Near Mittal Industrial Estate, Andheri East, Mumbai – 400 059. Ph:+91 9875472893 E-Mail Contact : info@jiomartfranchise.in.

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is <www.jiomartfranchise.in>.

The Registrar is GoDaddy.com LLC.

The Registrant is jiomartfranchise.in, having its address at 3rd Floor, Andheri Kurla Road, Near Mittal Industrial Estate, Andheri East ,Mumbai – 400 059.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.



As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on September 09, 2020.
- The notice was issued to the Respondent on September 09, 2020 at his email addresses [info@jiomartfranchise.in](mailto:info@jiomartfranchise.in) and [postmaster@jiomartfranchise.in](mailto:postmaster@jiomartfranchise.in) outlining that the Complainant had prayed for transfer of the disputed domain name "www.jiomartfranchise.in" in its favour. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until September 19, 2020.
- Since no response was received by the Respondent, on September 21, 2020 the Arbitrator sent another reminder to the Respondent at the email addresses [info@jiomartfranchise.in](mailto:info@jiomartfranchise.in) and [postmaster@jiomartfranchise.in](mailto:postmaster@jiomartfranchise.in) providing the last and final opportunity until September 28, 2020 to provide their response. The Respondent was also informed that if no response is received by the said date, the Complaint will be decided based on the Complainant's submissions.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties. Further, the Arbitrator did not receive any delivery failure notification from the Respondent's email id, therefore the complaint is deemed to be served. In view of no response/ acknowledgment/ communication from the Respondent, the Complaint is being decided ex-parte and solely based on materials and evidence submitted by the Complainant and contentions put forth by them.
- I note that the present mode of communication i.e. emails were copied to all the concerned parties i.e. Complainant and Respondent as well as NIXI. I further confirm that I did not receive any pleadings/documents from the parties (Complainant and/or Respondent) in relation to present Arbitration case.

#### **4) Summary of Complainant's contentions:**

##### **The Complainant in support of its case has made the following submissions:**

- i) The Complainant No. 1 is an old and well-established company founded in the year 1973, which is India's largest and most profitable private sector company with a turnover of Rs. 6,59205 crores in FY 2019-2020. The Complainant No. 1 is India's largest private sector conglomerate with business spanning across various industries, including oil and gas exploration and production, petroleum refining and marketing, petrochemicals, yarn, fabrics and garments, rendering telecommunication services, retail services through chain of retail stores selling



readymade garments, food and food products, all kinds of groceries, lifestyle and personal care products. The Complainant No. 1 along-with its subsidiaries and affiliate companies, constitute the RIL Group.

- ii) The Complainant submits that in relation to its aforementioned services and goods, the Complainant No. 1 is the owner and proprietor of various trademarks. Amongst them is the trade mark JIO. The trademark JIO was originally conceived, adopted and registered by the Complainant No. 1 in December 2011 in classes 9 and 38 under numbers 2247460 and 2247360 respectively. The Complainant No. 1 is also the registered proprietor of the trademark JIOMART, registered in classes 35 and 38 under numbers 2430735 and 2430819 respectively. The Complainant No. 1 is the registered proprietor of over 1100 trademarks consisting of JIO in all 45 classes under the Trade Marks Act 1999. The trademark JIO and its variations are used by various subsidiaries and group companies of the Complainant No. 1 under a license from the Complainant No. 1. A list of the trade mark registrations for JIO and of marks consisting of JIO as its essential feature, granted in favour of the Complainant No. 1 alongwith copies of registration certificates of some JIO and JIO MART trademarks relevant to the present proceedings have been enclosed as **Annexure-1**
  
- iii) The Complainant submits that the trademark JIO is licensed to a group company, Reliance Jio Infocomm Limited (RJIL) of the Complainant No. 1 for use in respect of telecommunication services. RJIL has openly, bonafidely and continuously used the said trademark JIO in relation to its telecommunication business since 2016. In this regard, the Complainant submits press articles indicating the association of the trade mark JIO and its reputation are enclosed as **Annexure-2.**
  
- iv) The Complainant submits that in December 2019, Complainant No. 2 made a soft launch of JIOMART for testing purposes. The JIOMART services were launched on a pilot scale in Navi Mumbai, Thane and Kalyan in April 2020 and were officially and commercially launched in May 2020 in 200 cities and towns across the Republic of India. The Complainant further submits that by virtue of such widespread use and reach of the said trademark JIOMART, an enviable goodwill and reputation has thus accrued in its favour, which is unique and remains unparalleled. The trademark JIOMART is synonymous with the Complainant No. 2 and its business. As reiterated hereinabove, the Complainant No. 2 has been using the trade mark JIOMART under a license from the Complaint No. 1. Such use undertaken by the Complainant No. 2 in the course of the trade inures to the benefit of the Complainant No. 1 and is to be considered as use undertaken by the Complainant No. 1. Press articles covering the launch of JIOMART are enclosed as **Annexure-3.**
  
- v) The Complainant No. 1 is the owner and proprietor of the domain name and website www.jiomart.com which it has got registered since 13th June 2012 on the World Wide Web. The said website is fully functional and active. A print out of the WHOIS page relating to the said website disclosing the name of the



Complainant No. 1 and the date of its registration is enclosed by the Complainant as **Annexure-4**.

- vi) The Complainant submits that in and around the first week of August 2020 while browsing through the internet, it had come to the notice of the Complainant No. 1 that the Respondent No. 1 has obtained registration of the impugned website and domain name [www.jiomartfranchise.in](http://www.jiomartfranchise.in). The disputed domain name was registered by the Respondent No. 1 above-named on April 24, 2020 which is clearly subsequent to the use and registration of the Complainant No. 1's trademarks JIO and JIOMART and is also subsequent to the registration of the domain name and website [www.jiomart.com](http://www.jiomart.com) by the Complainant No. 1 (June 13, 2012). The Complainant has marked as **Annexure - 5** print out of the WHOIS page relating to the first Respondent's impugned website.
- vii) Thereafter, the Complainant made a telephonic enquiry, followed by an email enquiry was made with the said Registrar for obtaining the email address of the Registrant on August 12, 2020, a copy of the email sent to the Registrar is enclosed as **Annexure-6**. The Complainant has submitted as **Annexure - 7**, a response dated August 13, 2020 was received from the Registrar which does not answer the query raised by the Complainant No. 1. The Complainant further submits that it appeared to them that the said Domain Registrar is looking after/managing/has access to the disputed domain name, the Registrant and its name and address. Accordingly, the said Domain Registrar, viz. GoDaddy.com LLC, having its address as mentioned in the cause title above, is impleaded herein as Respondent No. 2.
- viii) The Complainant further submits that the disputed domain name is sought to be used by the Respondent No. 1 to lure the unwary people into believing that they can obtain a franchise of the Complainants' online grocery store. The impugned website is designed in such a way that the visiting members of the public have an option of getting in touch with the Respondent No. 1 by calling them or filling up a form expressing their willingness to obtain a franchise of JIOMART on payment of a stipulated fee to be collected by the Respondent No. 1, for which it has no authority, permission or license. In this regard, the Complainant has marked as **Annexure - 8** a print out of the Respondent's home page offering franchises of such impugned services using the impugned domain name [www.jiomartfranchise.in](http://www.jiomartfranchise.in).
- ix) The Complainant submits that the Respondent No. 1 has designed the impugned website under the domain name to defraud innocent netizens in believing that this is the site to become a franchisee of the Complainant No. 2. This is evident from a press report appearing in the Mumbai Edition of Mumbai Mirror dated August 13, 2020, which reports that a man was duped by the Registrant impersonating the Complainant No. 1. The said press report is hereto annexed and marked as **Annexure-9**.





## 5) Respondent:

The Respondent has not filed any official response dealing with the contents of the Complaint. Therefore, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.

## 6) Discussion and Findings:

The submissions and contentions provided by the Complainant shows that the mark 'JIO'/ 'JIOMART' was first adopted in the year 2011 and has been in use as a trade/ service mark since at-least 2016 in its telecommunication business. Further, the Complainant has applied and secured registration for the trademark JIO as early as 2011. The Arbitrator notes that the Complainant has been using the trademark JIO as a brand name and trademark for several years.

Based on the submissions and documents filed in support, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

### **(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**

Based on submission and evidence filed by the Complainant, it is clear that the Complainant has prior and subsisting rights in the mark JIO/JIOMART and several trademark registrations worldwide including India. In India, the Complainant has evidently proved that it has secured trademark registration for the JIO trademark in various classes. Therefore, it is established that the Complainant has statutory trademark rights in the mark JIO in India as early as 2011. Further, the Complainant has pleaded that it has been commercially using the JIO trade/ service mark since 2016 for its telecommunications business. Therefore, the Complainant also has prior user rights in the JIO/ JIOMART trade/ service mark. As the Complaint is filed under INDRP, it has to be now ascertained if the disputed domain name <[www.jiomartfranchise.in](http://www.jiomartfranchise.in)> is identical to or confusingly similar with the Complainant's mark.

*As per WIPO Jurisprudential Overview 3.0, the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.*

*While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.*

It is also noted from the documentary evidences provided by the Complainant that the Complainant is the registered proprietor of the trademark JIO/JIOMART which is entirely



contained in the disputed domain name of the Respondent. It is evident in the present case that the disputed domain name <[www.jiomartfranchise.in](http://www.jiomartfranchise.in)> is identical and confusingly similar to the Complainant's registered trademark JIO/JIOMART and domain name [www.jiomart.com](http://www.jiomart.com) for which the Complainant has secured registration as early as 2012. In my opinion, owing to the worldwide presence of the Complainant's business, the disputed domain name could make Internet users to believe that such domain name and the contents originating there-from belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(i) is satisfied.

**(ii) The Registrant has no rights or legitimate interests in respect of the domain name;**

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such *prima facie* case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.

In the present case, no response was received from the Respondent and none of the contentions put forth by the Complainant against the Respondent were denied or rebutted.

Paragraph 7 of INDRP Policy deals with the Registrant's Rights to and Legitimate Interests in the Domain Name:

*Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :*

*(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.*

Keeping in mind instances covered in Paragraph 7 of INDRP Policy, the Arbitrator notes that the Respondent has no legitimate interest in the disputed domain name as the Respondent is likely to be trading on the fame and recognition of the Complainant's registered trademark JIO and will lead to deceive the users. Therefore, the disputed domain name is registered with intent for commercial gain to misleadingly divert consumers or to tarnish the trade/ service mark JIO.



Further, as there exists no business relationship or authorization or license between the Respondent and the Complainant, I find the requirement of the INDRP Policy paragraph 4(ii) also satisfied.

**(iii) The Registrant's domain name has been registered or is being used in bad faith.**

Paragraph 6 of the INDRP policy states Evidence of Registration and use of Domain Name in Bad Faith:

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(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 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.*

Based on prior adoption, worldwide use, several trademarks and domain names registrations of trademark JIO/JIOMART by the Complainant; it is believed that the Respondent was well aware of the Complainant's business and services while registering the disputed domain name constituting the mark JIO/JIOMART. Further, the Complainant had commenced use of the trademark JIO/JIOMART since 2016 for its business and has also registered the trademark JIO in various classes in India. Therefore, based on constructive knowledge of the Respondent and no legitimate business on the disputed domain name/website, it is presumed that the Respondent registered the disputed domain name in bad faith.

It is clear that the Respondent has registered the disputed domain name with an obvious intention to illegally benefit from the goodwill and reputation of the complainant's mark JIO/JIOMART.

Based on the above and the documents filed by the Complainant, it can be concluded that the domain name/mark JIO/JIOMART is identified with the Complainant's name, mark and services, therefore the adoption, registration and use of the disputed domain name by the Respondent shows 'opportunistic bad faith'. Thus, the present case





squarely falls within the premises of bad faith registration and use, thus fulfilling condition laid down under paragraph 4(iii) of INDRP Policy.

7) **Decision:**

The Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <[WWW.JIOMARTFRANCHISE.IN](http://WWW.JIOMARTFRANCHISE.IN)> be transferred to the Complainant.



RACHNA BAKHRU  
SOLE ARBITRATOR  
NIXI  
INDIA  
October 7, 2020