



தமிழ்நாடு தமில்நாடு TAMILNADU

AX 251489

32498
25 JUN 2015

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor,
No. 90 / 73, Armenian Street,
Chennai - 600 001.

P.S. SHANMUGASUNDARAM
STAMP VENDOR
L. No: B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.ezeerooms.in

EZEEGO ONE TRAVEL & TOURS LTD.

Having its Registered Office at 1st Floor
Cecil Court, Lansdowne Road, Colaba,
Mumbai - 400039

And

Corporate Office at Vaman Center, Marol,
Makwana Road, Off Andheri Kurla Road,
Andheri (E), Mumbai-400059.

.. Complainant

Versus

ABHISHEK BHUWANIA

EZEEROOMS.IN,

Having their Registered Office at
P-3 New C.I.T Road, 4th Floor,
Kolkatta-700073, West Bengal, India

And

Having its Corporate Office at 3B, Lalbazar Street
5th Floor, Kolkatta-700001, West Bengal, India.

.. Respondent



भारतीय गैर न्यायिक

पचास
रुपये
रु.50



FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

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-2-

1. The Parties:

The Complainant is EZEEO ONE TRAVEL & TOURS LTD., having its Registered Office at 1st Floor Cecil Court, Lansdowne Road, Colaba, Mumbai - 400039 and having its Corporate Office at Vaman Center, Marol, Makwana Road, Off Andheri Kurla Road, Andheri (E), Mumbai-400059.

The respondent is ABHISHEK BHUWANIA, EZEEROOMS.IN, having their Registered Office at P-3 New C.I.T Road, 4th Floor, Kolkatta-700073, West Bengal, India and having its Corporate Office at 3B, Lalbazar Street, 5th Floor, Kolkatta-700001, West Bengal, India.



2. The Domain Name and Registrar:

The disputed domain name is: www.ezeerooms.in

The disputed domain name is registered with GoDaddy.com, Inc., 14455, N.Hayden Road, Suite 219, Scottsdale, AZ 85260.

3. Procedural History:

30.07.2015	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
31.07.2015	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
31.07.2015	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator
04.08.2015	The Complaint and annexures were received from the .IN Registry
05.08.2015	Notice was sent to parties wherein the Respondent was directed to file their written response.
21.08.2015	Respondent had filed their written response/reply and made a request for a personal hearing.
08.09.2015	Claimant had e-filed their re-joinder and objected for any personal hearing and requested the Tribunal to render decision on the basis of the pleadings and documents filed by the parties. Thereafter the parties exchanged their respective emails on 10.09.2015, 11.09.2015 and 12.09.2015 reiterating the request of personal hearing and objection over the same.
11.11.2015	The Tribunal had rendered its determination holding that the personal hearing is unnecessary.

4. Factual Background

4.1 The Complainants:



The Complainant is EZEEO ONE TRAVEL & TOURS LTD., having its Registered Office at 1st Floor Cecil Court, Lansdowne Road, Colaba, Mumbai - 400039 and having its Corporate Office at Vaman Center, Marol, Makwana Road, Off Andheri Kurla Road, Andheri (E), Mumbai-400059.

4.2 Complainants' Activities:

The Complainant states that it is an established and reputed online travel portal that offers a one stop travel shop for cheap flight bookings, online hotel reservations, holidays & package tours, car rentals, train ticket booking, bus tickets, cruises and allied services. In the course of its business, the Complainant is also distributing brochures, pamphlets, travelling bags, hats, caps, other promotional material etc. Due to the superior quality and efficient ways in which the Complainant has conducted its aforesaid business, the Complainant has acquired tremendous goodwill and reputation in its said business. Members of the trade and the general public have therefore come to trust the Complainant for excellent quality travel services.

4.3 Complainant's Trading Name:

i) The Complainant states that they have been using various trade marks containing the expressions "EZEEO" / "EZEEO1" upon and in relation to its aforesaid services and goods since the year 2006. The Complainant submits that in and around 2006 it coined, conceived and adopted the trademark/ trade name "EZEEO" / "EZEEO1" and has been openly, continuously and extensively using the mark "EZEEO" / "EZEEO1" as its trade name, corporate name, business name, trading style, trade mark worldwide since then. The Complainant's said domain names/ websites have been an instant success since their inception and till date the Complainant has done substantial business through its domain names/ websites. Consequently the customers and members of the public and trade identify and associate the said domain names/ websites with the Complainant and its services/ business. One such domain name/ website of the Complainant is www.ezeego1.co.in The said domain name/ website was created by the



Complainant on 25th November, 2005. Relevant webpage from whois.net database evidencing the date of creation of the Complainant's said domain name/ website is marked as Annexure "G". The Complainant states that it is the owner of the trademark www.ezeego1.co.in in various jurisdictions and has mostly used the trademark EZEEOGO/EZEEOGO1 in respect to goods and services covered under classes 16, 25, 28 and 39.

ii) The details of the Complainant's registrations of trademark in India are as under:

Sr.No.	Trade Mark Name	Class	Trade Mark Application No.	Certificate No.	Trade Mark Journal No.
1.	ezeeg india's biggest online travel bazaaar	39	1457959	687622	J.No.1372
2.	ezeego1.com	39	1457963	687818	J.No.1372
3.	Ezeego1	28	1457972	687873	J.No.1372
		25	1457973	690620	J.No.1372
		16	1457984	689327	J.No.1372
		39	1457985	687621	J.No.1372
4.	ezeegoone	39	1478122	696899	J.No.1373
		28	1478123	694597	J.No.1373
		25	1478124	693935	J.No.1373
		18	1478125	696222	J.No.1373
5.	Easygo1	39	1478142	692645	J.No.1373
		28	1478143	694658	J.No.1373
		25	1478144	693875	J.No.1373
		18	1478145	696235	J.No.1373
		16	1478146	692863	J.No.1373
6.	ezeeflights	39	1517155	712333	J.No.1377
7.	ezeeholidays	39	1517184	744108	J.No.1377
8.	ezeehotels	39	1517187	717208	J.No.1377

iii) The Photocopy of the Certified copy of the entry of the Complainant's trademarks in the Register of Trade Marks along with the online status of the Complainant's trademarks available on http://www.ipindia.nic.in/tmr_new/default.htm mentioning the validity of the trademark is marked as Annexure "C".

iv) The Complainant further states that it is using various domain names/ websites containing the expressions EZEEOGO/ EZEEOGO1/ EZEE with a view to



conduct/ expand its business through the internet. The Complainant states that it is also the owner of several websites which are accessible world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products marketed and sold under the trademark and corporate name "EZEEGO/ EZEEGO1." The list of few domain names registered by the Complainant are stated herein below:

No.	DOMAIN NAME	REGISTRATION DATE
1	EZEEGO.COM	25-Mar-2000
2	EZEEGO.CO.IN	16-Feb-2005
3	EZEEGO1.CO.IN	25-Nov-2005
4	EZEE1.CO.IN	26-May-2006
5	EZEEONE.CO.IN	26-May 2006
6	EZEEGAMES1.IN	13-Apr-2007
7	EASYBLOGS.CO.IN	19-Apr-2007
8	EZEEGO01.CO.IN	27-Oct-2007
9	EZEEGOAIRLINES.COM	20-Nov-2007
10	EZGEECO.COM	20-Nov-2007
11	EZEEGO1-BUSES.CO.IN	27-Oct-2008
12	EZEEGO1-CARS.CO.IN	27-Oct-2008
13	EZEEGO1-CORPORATE.CO.IN	27-Oct-2008
14	EZEEGO1-CRUISES.CO.IN	27-Oct-2008
15	EZEEGO1-EURAIL.CO.IN	27-Oct-2008
16	EZEEGO1-FLIGHTS.CO.IN	27-Oct-2008
17	EZEEGO1-FOREX.CO.IN	27-Oct-2008
18	EZEEGO1-HOLIDAYS.CO.IN	27-Oct-2008
19	EZEEGO1-HOTELS.CO.IN	27-Oct-2008
20	EZEEGO1-INSURANCE.CO.IN	27-Oct-2008
21	EZEEGO1-LUXURYHOLIDAYS.CO.IN	27-Oct-2008
22	EZEEGO1-RAIL.CO.IN	27-Oct-2008
23	EZEEGO1-SIGHTS.CO.IN	27-Oct-2008
24	EZEEGO1-VISA.CO.IN	27-Oct-2008
25	EZEEGOTOURS.CO.IN	27-Mar-2009
26	EZEEGO1.NET.IN	23-Aug-2010
28	EZEEGO01.COM	30-Sep-2010
29	EZGO1.CO.IN	13-Sep-2012
30	EZEEGO1.ORG.IN	18-Feb-2014

The colour print outs of the Whois Record of the Complainant's domain name is marked as Annexure "D".



5. Respondent's Identity and activities:

The respondent is ABHISHEK BHUWANIA, EZEEROOMS.IN, having their Registered Office at P-3 New C.I.T Road, 4th Floor, Kolkatta-700073, West Bengal, India and having its Corporate Office at 3B, Lalbazar Street, 5th Floor, Kolkatta-700001, West Bengal, India.

6. Dispute:

i. The Complainant states that in and around January, 2015 the Complainant became aware of the Respondent's impugned website www.ezeerooms.in. On perusal of the impugned website the Complainant noticed that the Respondent had created domain name/ website deceptively similar to that of the Complainant. Further it appears from the impugned domain name/ website that the impugned domain name/ website offers tour and travel related products and services like the Hotel Bookings and Sightseeing similar to that of the Complainant.

ii. The Complainant has served a Cease & Desist Notice dated 27th January, 2015 on the Respondent via Registered AD and Courier calling upon the Respondent to cease and desist from using the Complainant's registered trademark/trade name/ logo/ domain name in any manner whatsoever and for unauthorized registration and holding a domain name www.ezeerooms.in identical to that of the Complainant's domain name within Ten (10) days of the receipt of the notice. Annexure "E" is the photocopy of the Cease & Desist Notice. The Respondent vide Letter dated 11th February, 2015 sent a reply to the said Notice of Complainants wherein the Respondent stated that they shall not cease to use the disputed domain name www.ezeerooms.in. Annexure "F" is the photocopy of the Letter issued by Respondent's Advocate acknowledging the receipt of the Cease & Desist Notice along with Reply issued by the Respondent's Advocate. The Complainant submits that as of date the Respondent continues to use the impugned domain name containing the Complainant's registered trade mark/trade name.



7. Parties contentions:

A. Complainant:

I. The domain name <ezeerooms.in> is identical/ confusingly similar to the trademark/service mark "EZEEDO/EZEEDO1" in which the complainant has rights:

i. The Complainant submits that the disputed domain name www.ezeerooms.in contains portion of the Complainant's trademark/trade name registered in India. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name of the Complainant.

ii. The Complainant submits that it has painstakingly built up an admirable reputation worldwide for itself and for this purpose has invested substantial amounts of resources in advertising its products under the trademark "EZEEDO/ EZEEDO1" in various news papers. Annexure "H" are the copies of some of the advertisements. In order to develop, promote and popularize the said trade marks and the services rendered thereunder the Complainant has spent huge sum of 94.99 (Rs. Cr.) money towards advertisements and promotional expenses under the said trade marks EZEEDO/EZEEDO1 since the year 2006. The copy of the Certificate issued by Chartered Accountant is marked as "Annexure I".

iii. The Complainant's said domain name / website is one of its kind virtual travel market place. It is one stop online travel market that offers all kinds of travel related services. The Complainant's said domain name/website is a Travel Meta Search Site with booking capabilities. It is a platform where the consumer gets real time information and transaction capability online. All travel providers both online and offline will be represented on the Complainant's said domain name/ website. The Complainant's said domain name/ website uses the best technology platform in the Indian travel industry. The portal offers a real time web based booking engine which is seamlessly integrated to the mid and back office. It is the only reservation that offers a dynamic packaging of all services with real time inventory. Simply put, one gets instant pricing and confirmation, which means that the information and booking status is all real time. The said domain name/ website also employ a unique Single Window Platform for multiple services, so the customer does not have to enter



& exit different systems. It is quick, easy, time saving and helps in doing comparisons at the backend to give the customer the best rates available. It also showcases other products such as holidays, insurance, cruises and hotels. Annexure "J" is a copy of the home page of the Complainant's said domain name/ website www.ezeego1.co.in. The said domain name/ website of the Complainant is still operative.

iv. The Complainant's corporate name and trading style also contains the expression "EZEEDO/ EZEEDO ONE" as its leading, essential, prominent and memorable part. The Complainant is in short known as "EZEEDO/ EZEEDO ONE (often actually displayed as EZEEDO1)". The Complainant's corporate name has also acquired tremendous reputation and goodwill.

v. Further, the Complainant submits that upon perusal of the Respondent's website www.ezeerooms.in it seems that the Respondent is engaged in the business of offering tours and travel related products and services like the Hotel Bookings and Sightseeing which directly conflicts with the Complainant's business activities. The Complainant submits that the Respondent has intentionally and fraudulently chosen the impugned domain name/ website www.ezeerooms.in, to trade upon and take undue advantage of the Complainant's said trade marks and aforesaid domain name/ website www.ezeego1.co.in. Annexure "K" is a copy of the homepage of the Respondent's impugned domain name/ website www.ezeerooms.in.

vi. The Complainant submits that Respondent's impugned domain name/ website was created on 20th August, 2012 much later than the Complainant's domain name/ website www.ezeerooms.in. The Respondent's impugned domain name/ website is active and its registration is valid until 20th August, 2022. The Complainant submits that the Respondent's impugned domain name/ website www.ezeerooms.in is easily accessible to the public. The Complainant submits that the impugned domain name/ website www.ezeerooms.in is closely, deceptively and confusingly similar to the Complainant's domain name/ website www.ezeego1.co.in as well as to the Complainant's said trade marks containing the expressions EZEEDO/ EZEEDO1. The dishonesty and bad faith of the Respondent is apparent from the fact that the



Respondent has also used deceptively similar font and style of writing the name as that of the Complainant's mark. It is also pertinent to note that a domain name/ website is easy to remember and use and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the Internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its goods or services and to specify its corresponding online Internet location. Hence, such use by the Respondent amounts to infringement of the Complainant's rights in the registered and famous trade mark EZEEGO/ EZEEGO1 as per Section 29 of the Trade Marks Act, 1999. Further, such unauthorized use also amounts to violation of the Complainant's Common Law rights in the trademark EZEEGO / EZEEGO1, copyright in the websites, the privacy policy as displayed on the Complainant's website and cyber squatting by registration of domain name www.ezeego1.co.in

vii. Moreover the Complainant's said trade marks and domain name / website contains a unique, novel and catchy expression such as "ezeego". All that the Respondent has done is to replace the letters "go" from the Complainant's domain name / website www.ezeego1.co.in. with the letters "rooms". The Complainant says and asserts that such a minor alteration does not make the impugned domain name / website dissimilar to the Complainant's domain name / website. The impugned domain name/ website www.ezeerooms.in conveys the same idea and impression as that of the Complainant's domain name/ website www.ezeego1.co.in.

II. Respondent has no rights or legitimate interests in respect of the disputed domain name <ezeerooms.in>:

i. The Complainant submits that it has legitimate interest in the trademark in India as it had registered the said mark in the year 2006 and has been openly, continuously and extensively using it for close to 10 years. By virtue of long and extensive use and advertising, the Complainant's trademark EZEEGO/EZEEGO1 has become well known in the relevant section.

ii. Further, the Complainant submits that it has registered the domain name www.ezeego1.co.in on 20th November, 2005 whereas the disputed domain name



www.ezeerooms.in was registered by the Respondent on 20th August, 2012. Hence, such subsequent adoption and registration of the impugned domain name shows that the Respondent has no right or legitimate interest in the domain name www.ezeerooms.in.

iii. The Complainant submits that the Respondent's impugned domain name was intentionally created for commercial gain wherein the consumers or traders of the Complainant have been misleadingly diverted to the Respondent's domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.

iv. The Respondent does not have any right or legitimate interest in the impugned domain name/ website www.ezeerooms.in. In view of the tremendous reputation and goodwill acquired by the Complainant's said trade marks containing the expression EZEEGO/EZEEGO1 as also by the Complainant's said domain name/ website www.ezeego1.co.in, the deception of confusion in the minds of people is inevitable.

III. The disputed domain name <ezeerooms.in> was registered and is being used in bad faith:

i. The Complainant states that the Respondent was aware of the Complainant's registrations as the same was informed vide cease and desist notice to the Respondent on 27th January, 2015 and hence the use of the Complainant's trademark EZEEGO/ EZEEGO1 by the Respondent is in bad faith.

ii. The Complainant submits that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/ available on the Respondent's website.

iii. The Respondent has intentionally and dishonestly used the impugned domain name/ website to attract, for commercial gain, Internet users to its impugned domain name/ website www.ezeerooms.in by creating a likelihood of confusion



with the Complainant's said trade marks and domain name / website as to the source, sponsorship, affiliation, or endorsement of the EZEEDO1 website. The Respondent is not making any legitimate non-commercial or fair use of the impugned domain name/ website and is only using the same so as to gain commercially and mislead and divert customers from the Complainant's domain name/ website www.ezeedo1.co.in. It is pertinent to note that the impugned domain name/ website contains links to other travel related websites. As a result whenever a customer and/or user visits the impugned domain name/ website he is bound to be connected to other such travel related websites thereby resulting in a direct economic loss to the Complainant. The Complainant has reason to believe that every time a user/ customer is diverted through the impugned domain name/ website to the other travel related domain names/ websites, the Respondent stands to gain commercially in terms of revenue sharing from such domain names/ websites. The Complainant says and submits that the Respondent should not be allowed to use the impugned domain name/ website as a platform to divert the user traffic from the Complainant's domain name/ website to the other travel related domain names/ websites and enjoy commercial gain out of the same.

iv. The Complainant refers to and rely on the case of Ezeedo One Travels and Tours Ltd. v. Demand Domains, Inc. Case No. D2010-1347 and Ezeedo One Travels and Tours Ltd. v. Domain Admit Case No. D2010-1346 [INDRP/512], it was held that when a disputed domain name contains the trade mark in its entirety, the domain name is identical and confusingly similar. Annexure "L" are copies of orders referred by the Complainant.

B. Respondent's Reply:

I. The Preliminary Submissions of the Respondent is as follows:

1. That Respondent/ Registrant Mr. Abhishek Bhuwania has duly authorized Mrs. Laxmi Bisht to be his constituted Attorney to sign verify and affirm the present reply on behalf of Respondent/registrant by virtue of Constituted Power of Attorney dated 11th August, 2015. Original Power of Attorney is filed as Annexure-A.



2. That the Respondent/ Registrant is one of the director of a company namely Ezeerrooms Accomodation Private Limited. The company was founded in the year 2012, offers accommodation choices in more than 3,00,000 hotels across 11,000 destination around the globe. Ezeerrooms provides services both B2B and B2C customers. Ezeerrooms have tie up several travel agents and corporate houses while also make customers to make direct booking on its website www.ezeerrooms.in Respondent/ Registrant's Company Ezeerrooms also offers services of Transports & sightseeing tours under their website www.ezeerrooms.in. Copy of memorandum and article of association of Ezeerrooms Accommodation Private Limited along with certificate of Incorporation have been filed as Annexure-B (colly).
3. That Ezeerrooms plans to tie up with additional bed banks to enhance capacity and facilities growth. The company will also expense geographic focus on Europe, US, Middle East and India.
4. The Respondent/Registrant submits that in the course of their business the Respondent's company adopted a Trademark EZEEROOMS.COM in the year 2012 and also registered a Domain Name/website on 20.08.2012. Respondent/Registrant's company also filed various Applications for the Trademark EZEEROOMS.COM. Copies of TM-1 are filed as Annexure - C (colly).
5. That the Respondent/Registrant also submits that the Registrant is also owner of www.ezeerrooms.com which was created on 20.08.2012. Printout of whois records along with screenshots & printout of website are filed herewith as Annexure - D (colly).
6. That the Respondent's company Ezeerrooms also owns copyright Registration for the artistic work Ezeerrooms.com vide registration no. A-107921/2013. True copy of registration certificate is filed as Annexure-E.
7. That the Ezeerrooms have also got tie up with renowned company Global Destination which was founded on 2008 by Mr.Pranab Kapadia. Global Destination; is highly experienced and very energetic tourism solution provider. It is further submitted that an agreement was executed between Ezeerrooms and Global



Destination dated 18th August, 2014 for the purpose of sale and marketing supports to Ezeerooms by the Global Destination. Copy of Agreement dated 18.08.2014 & Trade Release of Global Destination are filed as Annexure - F (colly).

8. That with a view to promote Trademark EZEEROOMS.COM the Registrant's company have incurred approximately 26 lacs in advertising and promotion through electronic and print media including the Internet. Printout of online advertisements material along with few invoices for the amount incurred on advertisement of Trademark EZEEROOMS.COM are filed as Annexures - G (colly) & Annexure - H (colly) respectively.

9. That the Registrant's company Ezeerooms has also participated in SATTE exhibition at Pragati Maidan New Delhi in January 2015. Identity card showing the participation in SATTE along with invoice of professional fees for participation in SATTE & pictures taken of the stall of the registrant's company are filed as Annexure - I (colly).

10. That the registrant company has also organized a personal event during IPL 2013 for awareness of their Trademark EZEEROOMS.COM. The CD capturing the personal event of the Respondent's company is herewith as Annexure - J.

11. That owing to its high quality of services, extensive advertising and promotion, and unsolicited media attention, the registrant's company mark EZEEROOMS.COM has today achieved enviable fame and notoriety all over world. Consequently, the revenue attributable to the registrant's company Ezeerooms for the mark EZEEROOMS.COM runs into 9 crores of rupees since 2013-2014. Copy of certain invoices of the Registrant's company are filed as Annexures - K (colly).

II. The Preliminary Objections of the Respondent is as follows:

1. *Reply to the Ground of INDRP Rule 3(b)(vi)(1):*

a. The Respondent/Registrant submits that the complainant has furnished several hundred pages of documents; is an attempt to substantiate their alleged claim



that the respondent/registrant herein is the unauthorized user of the Domain Name www.ezeerooms.in on the ground that the domain name www.ezeego1.co.in is confusingly and deceptively similar to alleged Trademarks EZEEOGO/ EZEEOGO1 and/or website www.ezeego1.co.in. It is submitted that the combination of common word / dictionary word & misspelled version of a dictionary word does not make the resultant word a "coined or invented" word such as in the instant complaint; the complainant is claiming coined word

EZEE+GO = EZEEOGO/ EZEEOGO1

EZEE+GO+1

b. Hence complainant seeks to divide its alleged Trademarks/domain into portions for comparison which is not permissible in law.

2. *Reply to the Ground of INDRP Rule 3(b)(vi)(2)*

a) The respondent/ registrant submit that the complainant has brought an action under the provision of INDRP only to harass the respondent/ registrant. The provision of INDRP is only to all disputes regarding domain name registration such as domain squatting, trademark violation etc. However the complainant has miserably failed to lead any evidence in support of the claim that the respondent has no right or legitimate interest in respect of subject domain name. The word EZEE has not been shown to be distinctive as a Trademark. For example if EZEEROOMS is compared to a Trademark like DOMINOS PIZZA; it would be clear that whereas DOMINOS uses the word PIZZA in a descriptive sense meaning thereby that the word DOMINOS is protectable as a Trademark irrespective of the word PIZZA, it is not so when it is compared to Domain name/Trademark/like Ezeerooms. In the trademark Ezeerooms the word "rooms" is not being used in a descriptive manner but as a part of Trademark itself. From the above e.g. and comparison it is abundantly clear that Ezee and rooms cannot be separated for a comparison. Further, the complainant has miserably failed to show that the word Ezee has acquired factual distinctiveness which is only relatable to the complainant.



3. *Reply to the Ground of INDRP Rule 3(b)(vi)(3)*

a) The complainant has miserably failed to even plea the basic elements of a bad faith adoption which is sine qua non for the adjudication of the present complaint. It is submitted that unlike a passing off action where intention to deceive is not a relevant criterion, in an INDRP proceedings the requirement of a bad faith adoption is a sine qua non. The Respondent/ Registrant further submits that insight into a bad faith adoption lies predominantly in the disputed domain name. Factually, in the present case, the complainant has not even pleaded that EZEE is a famous; distinctive and only relates to the complainant. The complainant has not pleaded basic facts to aver its fame and reputation as a Corporate entity. This couples with the fact that 1000 domains with the prefix or suffix exists over the world wide web, given no intention for the respondent to adopt a domain name which constitutes a word (ezee) which is not even famous or well known. Hence, the element of bad faith adoption is manifestly lacking in the present case.

b) It has also been miserably failed to prove that the word ezee is not generic as there are several entities using the domain name with prefix or suffix EASY and/or misspelled version of EASY i.e. ezee/ez etc. over the world wide web. Some of them are as follows:

- a) www.easytobook.com
- b) www.easemytrip.com
- c) www.easytoursofindia.com
- d) www.ezeeflight.com
- e) www.flightez.com
- f) www.ezeeholiday.com
- g) www.ezeereservation.com
- h) www.ezeecentrix.com
- i) www.ezeeabsolute.com

Printout(s) of whois record of domain name(s) along with screenshots of the abovementioned websites have been filed as Annexure-L (colly).

c) It is pertinent to mention here that Domain Name/ website www.easytobook.com is in existence even prior to complainant's alleged Domain



Name/ website for the services of booking of different category of Hotels etc; which are identical to the complainant's alleged services.

d) It is further submitted that a Google searches for the word EZEE, EZEEO and EZEEROOMS display different results for each word

- Word EZEE does not display complainant's Domain name/website www.ezeego1.co.in
- Word EZEEO does not display Domain Name/website of Respondents/Registrant's Domain Name/website www.ezeerooms.in
- Word EZEEROOMS does not display Domain Name/website of complainant's Domain Name/website www.ezeego1.co.in

Printout(s) of Google search showing the results for the word EZEE, EZEEO & EZEEROOMS are filed as Annexure - M (colly).

e) Hence complainant has also miserably failed to show even a single instance of confusion or deception between complainant's alleged Domain Name/website and respondent/registrant's Domain Name/website. Mere allegations are insufficient.

III. The respondent/registrant submits that the present complaint is liable to be dismissed on the ground that the complainant has concealed the facts that the Respondent/ Registrant's company has filed various application for the Trademark EZEEROOMS.COM along with prior user since 28.09.2012 hence registrant's company has also got proprietary rights in the Trademark EZEEROOMS.COM since 28.09.2012. It is pertinent to mention that complainant has also filed frivolous Oppositions against above mentioned Trademark Applications of Respondent/Regitrant's company just to harass and business rivalry. Respondent has filed appropriate reply/ counter statement(s) to the said frivolous oppositions. The ulterior motive of the complainant is not let to come into the knowledge of this Forum that respondent/ registrant company has got proprietary rights in the Trademark Ezeerooms.com since 28.09.2012 as the complainant has portrayed in



present company that the respondent/ registrant is using the Domain name www.ezeerooms.in illegitimately.

IV. The Respondent/Registrant submits that the complaint has been signed by one Ms.Amrutha Raut claiming that she is authorized representative of Complainant's Company without supporting by Board Resolution & Power of Attorney. Pertinently complainant allegedly is a Private Limited Company as mentioned in Memo of Parties however no documents of any authorization has been filed. The complaint does not even disclose designation of Ms.Amrutha Raut in the complainant Company. Hence the present complaint is liable to be dismissed on this ground; that it has been filed by authorized representative/ authorized person on behalf of Complainant Company.

V. The respondent/ registrant submits that the complaint is hit by acquiescence, delay and laches and the documents relied upon lack evidentiary value and the complaint ought to be dismissed in limine on this ground itself without going into the merits of this case. The Respondent/ registrant's company registered their website on 20.08.2012 and has been visible in the said domain space for the services mentioned herein above. It is now only 2015, after 3 years the complainant has filed this complaint. The instant visibility of the domains on the internet and the use of general public on day to day basis create so much goodwill and other intangible assets and it therefore does not lie with the complainant to lodge a complaint when the respondent/ registrant has been in business for more than 3 years and has gained a lot of visibility and has grown from strength to strength specially since the domain of respondent / registrant does not even remotely suggest or confuse to the alleged Trademark and/or Domain Name that it is link to the complainant in any manner. Further more in the age of instant communication and visibility, the law of acquiescence apply equally and rapidly it is very clear and does not permit a person who has actively remain silent for such a long duration to wake up one fine day and object to the use of the Trademark / domain name by the Respondent/Registrant, who have spent money, time and efforts to promote his services. Furthermore, it has not been stated as to how the complainant has come to know of the existence of the



Respondent all of a sudden, when the Respondent's company EZEEROOMS has been carrying on business openly and honestly since 2012.

VI. The essence of the reply on merits of the Respondent is as follows:

The Respondent vehemently denies that complainant became aware about the respondent's website in and around January, 2015. It is submitted that alleged month and year are apparently concocted for the reason that complainant even did not put the date in the paragraph and kept it blank. It is further submitted that alleged month and year are further concocted from complainant's own version that respondent is engaged to the business/services similar to the complainant if it is so then website of respondent must be into the knowledge of the complainant since the inception of the said website. If it is not so; the version of the complainant of deceptively similar website would become automatically false. The Respondent vehemently denies that Domain Name www.ezeerooms.in is identical and/or confusingly similar to the Trademark EZEEOGO/EZEEOGO1 and www.ezeego1.co.in. The complainant cannot divide its alleged Trademark/ Domain Name into portion for comparison. That the contents related to use of Trademark EZEEOGO/EZEEOGO1 in respect of goods and services covered under class 16, 18, 25 and 28 are wrong and denied as the complainant's alleged website does not disclose any goods and services covered under the said classes. The Respondent/Registrant submits that the complainant has hoarded register by obtaining/ securing various Trademarks in order to create monopoly on the component EZEEO which is misspelled version of dictionary word EASY. The Respondent/Registrant further submits that the Respondent Company has also filed necessary petition(s) for cancellation against the complainant's registrations. Copies of Cancellation Petition(s) along with money receipt are filed as Annexure-N (colly). It is further submitted that Respondent/Registrant company has a legitimate right and interest the Domain Name/website www.ezeerooms.in. Respondent/Registrant further submits that Annexure L filed by the complainant is not applicable to the Respondents/Registrants Domain Name as Annexure L is related to decisions of Domain Complaint for the Domain Name EZEEOGO/EZEEOGO1 which are alleged Trademark of the complaint in entirety. The Respondent/Registrant's Trademark &



Domain Name/Website is Ezeerooms.com; which is entirely different and complainant cannot dissect it into portion for comparison. Respondent/ Registrant submits that the present complaint has been filed with malafide intention and ulterior motive to harass the respondent/registrant.

C. IN REPLY TO PRELIMINARY OBJECTIONS THE COMPLAINANT SUBMITS AS FOLLOWS:

i. The Complainant says that the word "EZEEGO" is not a word which can be found in any dictionary and is otherwise unknown in the languages which are commonly spoken. The Complainant further says that the said word is also not a word which has become customary in the current language or in the bonafide or established practices of the trade. The Complainant says that the said trade mark "EZEEGO" is a unique and distinctive contraction of two words resulting in a new word conveying no meaning. The Complainant says that for assessing distinctiveness of a trade mark, one cannot be permitted to dissect the mark and then conclude that some components are distinctive and some are not distinctive. The Complainant says that the said trade mark being a registered trade mark is further prima facie evidence of its distinctiveness. The Complainant denies that it is seeking to divide the said trade mark/domain name into portions for comparison much less as alleged or at all. On the contrary, the Complainant submits that it is the Respondent which has dissected the Complainant's said trade mark to arrive at its wrong conclusion that the same is not a coined or invented word. The Complainant submits that mere comparison of the Complainant's said trade mark/ domain name and the impugned trade mark/ domain name (including as a whole) is sufficient to come to an unmistakable conclusion that the impugned trade mark/ domain name is confusingly, phonetically and deceptively similar to the Complainant's said prior adopted, used and registered trade mark/domain name.

ii. The Complainant says that it merely being vigilant and is trying to protect its common law and statutory rights in its well-known trade marks/domain names. The Complainant says that it has adduced sufficient cogent, clear and unimpeachable documentary evidence in support of its claim which the Respondent has failed to



appreciate. The Complainant says that the analogy drawn by the Respondent in the paragraph under reply by comparing DOMINOS PIZZA with the impugned trade mark is misplaced and irrelevant to the present proceedings and hence ought to be rejected. The Complainant does not admit that the word "ROOMS" in the impugned trade mark/ domain name is not being used in a descriptive manner but as a part of the trade mark. The Complainant says that even the Ld. Registrar of Trade Marks was of the opinion that the impugned trade mark was descriptive in nature and hence correctly raised an objection to the registration of the impugned trade mark under Section 9 of the Trade Marks Act. As regards the Respondent's contention that the words EZEE and ROOMS cannot be separated for comparison, the Complainant says that on one hand the Respondent is dissecting the Complainant's said trade mark to arrive at its wrong conclusion that the same is not coined or invented and consists of misspelled dictionary word while on the other hand contends that its impugned trade mark/ domain name cannot be dissected.

iii. The Complainant says that the burden to prove that the word EZEE is generic lies on the Respondent and not on the Complainant. In any event, the Complainant says that the Respondent has itself applied for registration of the impugned trade mark/ domain name which inter alia contains the word EZEE as its leading and essential feature. The Respondent is therefore stopped from contending that the same is generic. The Complainant says that the similarity between its said trade mark domain name and the impugned domain name may lead an unwary user of the internet of average intelligence and imperfect recollection to assume a business connection between the two. The Complainant says that it is a known fact that while conducting search on the internet, often, an internet user is not required to type the entire word/domain name in the search column and upon typing only part of the word/domain name is given various options to select from. Such user, who vaguely remembers only part of the Complainant's said trade mark/domain name while trying to access the information or services provided by the Complainant, may, in the process of typing the Complainant's said trade mark/domain name be given the option of accessing the Respondent's impugned domain name and be disappointed with the result. The Complainant therefore says that the Respondent's contention



that search results for the words EZEE, EZEEOGO or EZEEROOMS display different search results is irrelevant to the present proceedings. The Complainant says and submits that it is settled principle of law that actual instance of actual confusion or deception is not required but mere likelihood thereof is sufficient for a trade mark to be refused registration

iv. The Complainant says that the Respondent's applications for registration of the impugned trade mark are pending registration and have in fact been opposed by the Complainant. The Complainant says that the pending applications for registration of the impugned trade mark cannot inure to any benefit whatsoever to the Applicant in so far as the present proceedings are concerned. The Complainant says that even otherwise, the aforesaid clearly demonstrates the Complainant's objection to the Respondent's use of the impugned trade mark/ domain name and shows that the Complainant has taken timely action against the Respondent's adoption/use of the impugned.

v. With reference to paragraph 5 of the preliminary objections raised in the said reply, a copy of the Power of Authorization/ Board Resolution authorizing Ms. Amrutha Raut to sign and verify the present Complaint is annexed herewith and marked as Annexure "I".

vi. The Complainant says that it is settled principle of law that if a person uses a trade mark, even if concurrently, without making himself aware of the fact as to whether the same or similar mark is the subject matter of trade mark registration and belongs to another person, the first person cannot be heard to complain for he has been using it negligently in as much as he has not taken the elementary precaution of making himself aware by looking at the public record of Registrar as to whether the mark in question is the property of another. It is further settled law that domain name serves the same function as a trade mark and is not a mere address or like finding number on the internet and, therefore, it is entitled to equal protection as a trade mark. The Complainant says that the Respondent ought to have conducted a search of the Register of Trade Marks and/or conducted a market survey before adopting the impugned domain name in respect of the impugned services and upon



doing so it would have come across the Complainant and its well-known and flourishing business under its said trade marks/domain names. The Complainant says that the Respondent was careless enough to adopt the impugned domain name without conducting sufficient due diligence prior to adoption of the impugned domain name and hence is stopped from complaining or from alleging honest or bonafide adoption of the impugned domain name. On the issue of delay and acquiescence on the part of the Complainant, the Complainant says and submits that it is settled law that delay must be such as to have induced the Respondent or at least to have lulled him into a false sense of security to continue to use the impugned trade mark/ domain name in the belief that he was the monarch of all he surveyed. The Complainant reiterates that it came to learn of the Respondent's activities for the first time in January 2015. The Complainant says that immediately thereafter the Complainant sent Cease and Desist Notice dated 27th January, 2015 vide which it informed the Respondent of its aforesaid statutory and common law rights in the said trade mark/domain name and called upon the Respondent to immediately cease and desist from using the impugned domain name in respect of the impugned services. The Complainant says that thereafter, in or about April, 2015 the Complainant opposed registration of the impugned trade mark/domain name in the name of the Respondent before the Trade Marks Registry. The Complainant says that thereafter, in July, 2015 the Complainant filed the present Complaint. The Complainant says and submits that at no point of time, after becoming aware of the Respondent's existence, did the Complainant approve of the Respondent's activities or use of the impugned domain name and the same has always been brought to the notice of the Respondent. The Complainant says that in view thereof, there is no question of acquiescence, delay or laches on the part of the Complainant.

D. CLAIMANT'S REJOINDER TO THE REPLY FILED BY THE RESPONDENT:

The Complainant denies inter-alia that Mrs. Laxmi Bisht to be the authorized representative of Respondent; Respondent's constitution; respondent's plan to tie up with additional bed banks and their geographic focus on Europe, US, Middle East or India; adoption and registration of trade mark ezeerooms.com by respondent; copy



right registration in respect of artistic work in the impugned trade mark/ domain name; tie-up with Global Destination; incurring huge amount towards advertisement and promotion; participation in SATTE Exhibition; Organisation of personal event during IPL 2013; achievement of familiarity of their trademark and generation of revenue thereby.

8. Discussion and Findings:

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainants must prove each of the following three elements of its case:

- (i) The respondent's domain name <ezeeroms.in> is identical to the Complainant's trademark EZEEDO, EZEEDO1;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name <ezeeroms.in>; and
- (iii) The registration and usage of domain name <ezeeroms.in> by the respondent is in bad faith.

(a) Identical or confusing similarity:

- (i) Under 4(i) of INDRP, onus is on the Complainant to establish that the disputed domain is identical or confusingly similar. It is the case of the Complainant that they are the registered proprietor of trade mark "EZEEDO"/"EZEEDO1" and various domain names containing expressions, such as, "EZEEDO"/"EZEEDO1"/"EZEED1"/"EZEEDONE"/"EZEEDGAMES1"/"EASYBLOGS"/"EZEEDGOAIRLINES", etc., The registration of such trademarks starts since 2006 and registration of such domain names starts since 2000. It is the further case of Complainant that in and around January, 2015 they became aware of the Respondent's disputed domain name www.ezeeroms.in and had issued Cease & Desist Notice dated 27.01.2015 as the disputed domain name contains a portion of their trade mark/trade name which is visually and phonetically indential and/or confusingly or deceptively similar to the trade mark and trade name of the



Complainant involving similar trade as that of the Complainant. The further case of the Complainant is that the Respondent has replaced the letters "go" from the their domain name/website www.ezeego.co.in with the letters "rooms" and such a minor alteration does not make the impugned domain name/website dissimilar to the Complainant's domain name/website; the word "EZEEOGO" is not a word which can be found in any dictionary and is otherwise unknown in the languages which are commonly spoken; the Respondent could have adopted the word EZEE in its usual writing style i.e. EASY, however the very fact that the Respondent chose to include the prefix EZEE goes a long way to prove the Respondent's bad faith. The Complainant has relied upon the case laws in support of their case, namely, (1) *Bal Pharma Ltd., Vs. Centaur Laboratories Pvt, Ltd., and Anr.*, [MANU/MH/0682/2001]; (2) *Corn Products Refining Co., Vs. Shangrila Food Products Ltd.*, [MANU/SC/0115/1959]; (3) *F.Hoffmann-la Roche & Co., Ltd., Vs. Geoffrey Manner & Co., Pvt. Ltd.*, [MANU/SC/0302/1969]; (4) In the matter of an application by *Beck, Koller & Company (England) Limited* for the Registration of a Trade Mark; (5) *Jagdish Gopal Kamath and Ors. Vs. Lime & Chilli Hospitality Services* [MANU/MH/0384/2015]; (6) *Ruston & Hornsby Ltd., Vs. The Zamindara Engineering Co.*, [MANU/SC/0304/1969]; and (7) *Satyam Infoway Ltd., Vs. Sifynet Solutions Pvt. Ltd.*, [MANU/SC/0462/2004].

(ii) *Per contra*, the Respondent states *inter-alia* that they incorporated a company under the name and style of "Ezeerooms Accommodation Private Ltd., in the year 2012; adopted a trademark "EZEEROOMS.COM" in the year 2012 and also registered a domain name /website on 20.08.2012; also owns copyright registration for the artistic work "Ezeerooms.com" vide registration No.A-107921/2013; the word "EZEE" has not been shown to be distinctive trademark by the Complainant; in the trademark of the Respondent i.e., ezeerooms, the word "rooms" is not being used in a descriptive manner but as a part of trademark itself; the words "eze" and "rooms" cannot be separated for a comparison; the claimant has not proved that the word "eze" is not generic as there are several entities using the domain name with prefix or suffix "easy" and/or misspelled version of "easy" i.e., "eze"/"ez" etc.,

1. (iii) Admittedly, trade mark "EZEEOGO"/"EZEEOGO1" and various domain names containing expressions, such as, "EZEEOGO"/ "EZEEOGO1"/ "EZEE1"/



"EZEEOONE" / "EZEEOGAMES1" / "EASYPBLOGS" etc., of Complainant and the trade mark "EZEEROOMS.COM"; domain name www.ezeerooms.in; and copyright registration for the artistic work "Ezeerooms.com" of Respondent contain a common word "EZEE". This Tribunal finds that the Complainant is neither the owner of any trademark/service mark nor the owner of domain name over the word "EZEE" individually. This tribunal is of the considered view that if greater regard is paid to the uncommon element in these two words i.e., "GO" or "GO1" from "EZEEOGO" / "EZEEOGO1" and "ROOMS" from "EZEEROOMS.IN", it is difficult to hold that both are visually and phonetically similar and/or confusingly or deceptively similar to each other and it is also difficult to hold that one will be mistaken for or confused with each other. If the letters 'GO', 'GO1', '1', 'ONE', 'GAMES1', 'BLOGS' and 'AIRLINES' are removed from the following words "EZEEOGO" / "EZEEOGO1" / "EZEEO1" / "EZEEOONE" / "EZEEOGAMES1" / "EASYPBLOGS" / "EZEEOGAIRLINES", the word 'EZEE' alone would not identify the Complainant. On the other hand, the word "EZEEROOMS" seems to have established a separate identity by its usage and convention. The respondent has been using the name EZEEROOMS.com since 2012. The respondent has been in active usage of the said name for substantial period of time by which time the respondent came to be identified with the name. The disputed name EZEEROOMS by efflux of time and without any interruption has come to be recognized with the respondent and not the complainant. The complainant has not produced any piece of evidence that the said domain name has exhibited either any similarity or was confusingly similar or created any identity crisis during the said period of 3 years. The facts and circumstances of the present case warrants the actual instance of actual confusion or actual deception. However, no concrete evidence has been filed to show that the domain name has exhibited confusing similarity on usage by the respondent. Hence, there will be no real tangible danger of confusion. The cases laws relied upon by the Complainant are not applicable to the case on hand. In specific, (1) *Bal Pharma Ltd., Vs. Centaur Laboratories Pvt, Ltd., and Anr.*, [MANU/MH/0682/2001] is arising out of an interim order of injunction against the Appellant in which "MICRODINE" is the subject matter where the respondent registered the same in the year 1982, however the Appellant claims that the Respondent has not used or attempted to use prior to



1998. (2) *Corn Products Refining Co., Vs. Shangrila Food Products Ltd.*, [MANU/SC/0115/1959], it was a case of dispute between "Gluvida" and "Glucovita" wherein registration of Respondent was refused as Respondent attempted to register "Gluvida" by removing "co" from the registered trademark "Glucovita". (3) *F.Hoffmann-la Roche & Co., Ltd., Vs. Geoffrey Manner & Co., Pvt. Ltd.*, [MANU/SC/0302/1969], it was a case of dispute between "DROPOVIT" AND "PROTOVIT" in which it was held that there was no confusing similarity. (4) In the matter of an application by *Beck, Koller & Company (England) Limited* for the Registration of a Trade Mark, it was a case of dispute between the registered trademark "Plio" and registration of trademark "Plyophen". Here, the distinctive word being registered trademark "Plio" has been completely used in the "Plyophen". (5) *Jagdish Gopal Kamath and Ors. Vs. Lime & Chilli Hospitality Services* [MANU/MH/0384/2015], it was a case of dispute exactly over "café Madras" ; (6) *Ruston & Hornsby Ltd., Vs. The Zamindara Engineering Co.*, [MANU/SC/0304/1969], it was case of dispute between the trademarks "RUSTON" and "RUSTAM" having phonetic similarity. Finally, (7) *Satyam Infoway Ltd., Vs. Sifynet Solutions Pvt. Ltd.*, [MANU/SC/0462/2004], it was a case of dispute over the domain names [www.sifynet](http://www.sifynet.com), www.sifymail.com, www.sifyrealestate.com and www.siffynet.net & www.siffynet.com. It was arising out of an interim order of injunction. In this case, <sifynet> of the Plaintiff has been completely hijacked by the Defendant and used it in their domain name <siffynet.net> and there is a similarity phonetically between both the domain names. Further, the Complainant refers to and relies on the case of *Ezeego One Travels and Tours Ltd. v. Demand Domains, Inc.* Case No. D2010-1347 and *Ezeego One Travels and Tours Ltd. v. Domain Admit* Case No. D2010-1346 [INDRP/512]. The said decisions are not applicable to the case on hand as it relates to registration of the complainant's trademark in it's entirety. Further, this tribunal finds, as held above, the Complainant is neither the owner of any trademark/service mark nor the owner of domain name "EZEE" individually. The Complainant has not exhibited any actual instance of confusion or deception between the disputed domain name and Complainant's trademark or domain name. Hence, this tribunal comes to an irresistible conclusion that the Complainant has no personage right over the word "EZEE".



Thus the Arbitral Tribunal concludes that the Complainant has not established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy viz., (a) use of the disputed domain name should be in connection with a bonafide offering of goods or services; (b) registrant must be commonly known by the domain name even if the registrant has not acquired trademark or service mark rights; or (c) registrant is making a legitimate non-commercial or fair use of the domain name, with out intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. From the documents relied on by the respondent it could be seen that the name EZEEROOMS is available in the public domain. The name has been extensively advertised in popular portals by the respondent in Face Book, Google & Linkedin. Substantial time, efforts and amounts have been expended by the respondent to establish the brand name and the complainant seems to have been only a silent spectator until 27.01.2015 by which time the respondent seems to have established the name EZEEROOMS. The respondent seems to be enjoying the corporate name "Ezeerooms Accommodation Private Ltd., which contains the word "EZEEROOMS" without any rival claim before the Registrar of Companies since 2012. The respondent has been using the name EZEEROOM since 2012 and that the Respondent has been commercially exploiting the name since 2012 by spending substantial amount to establish identity to the name EZEEROOM. Furthermore, the respondent has engaged itself in a personal event during IPL 2013 for awareness of their Trademark EZEEROOMS.COM. The claimant disputes and denies the documents filed by the respondent in support of their defence. Except such ceremonial denials, the claimant has not filed any contra evidences to eliminate such evidences. Further, it is not even the case of the complainant that the Domain name <ezeerooms.com> adopted by the



respondent is confusingly similar. It is neither the case of the complainant that they are the prior user to the name EZEEROOMS nor it is the case of the complainant that they have been exploiting the name EZEEROOMS for their business purposes. Hence, it is a bald claim made by the complainant without usage of the name. As held herein above, the Respondent has incorporated a company under the name and style of "Ezeerooms Accommodation Private Ltd., in the year 2012; adopted a trademark "EZEEROOMS.COM" in the year 2012 and also registered a domain name /website on 20.08.2012; also owns copyright registration for the artistic work "Ezeerooms.com" vide registration No.A-107921/2013 and also bonafidely offering of goods and services in connection with the domain name.

ii. Thus, the Arbitral Tribunal concludes that the complainant has not satisfied the paragraph 4(ii) of the Policy in establishing that the disputed domain name conflicts with their legitimate rights or interests.

(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, 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 the Respondent's web site or location, for the purpose of 4(iii) of the IN Domain Name Dispute Resolution Policy.

(ii) It is not the case of the Complainant that the Respondent registered the domain name so as to sell, rent or otherwise transferring the domain name registration to the Complainant or it's competitor or the Respondent has engaged in a pattern of registration of such domain names. In view of Respondent's legitimate



interests in the domain name, as held herein above, the bad faith as stipulated under 6(iii) of the IN Domain Name Dispute Resolution Policy goes without any saying.

(iii) In the light of the above, this Arbitral Tribunal finds that the Complainant has not satisfied paragraph 4(iii) of the Policy in establishing that the disputed domain name was registered and is being used in bad faith.

9. Decision:

For all the foregoing reasons, the Arbitral Tribunal finds that the Complaint is liable to be dismissed and the disputed domain name <ezeerooms.in> need not be transferred to the Complainant. Accordingly, the Complaint is dismissed.

Dated at Chennai on this November, 25th, 2015.


(D.SARAVANAN)
Sole Arbitrator