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28 MAY 2019

DR. SUDHIR RAJA RAVINDRAN

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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: August 06<sup>th</sup>, 2019

ZipRecruiter Inc.

604 Arizona Avenue

Santa Monica, California -90401

United States of America

COMPLAINANT

*(Handwritten signature)*

**VERSUS**

**Amy Cox**

The United States of America

**RESPONDENT/REGISTRANT**

**DISPUTED DOMAIN NAME: "WWW.ZIPRECRUITER.IN"**

**1. Parties**

1.1. The Complainant in this arbitration proceeding is represented by Safename Limited, Safename House, Sunraise Parkway, Lindford Wood, Milton Keynes, MK14 6LS, UK.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Amy Cox.

**2. The Dispute:** The domain name in dispute is ZIPRECRUITER.IN. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Endurance Domains Technology LLP.

**3. Calendar of Major Events:**

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	20.06.2019
2.	Date on which consent was given to act as an Arbitrator	21.06.2019
3.	Date of appointment of Arbitrator	05.07.2019
4.	Date on which the Hard copy of the complaint was received	08.07.2019
5.	Date on which notice was issued to the Respondent	08.07.2019
6.	Due date for filing of Counter Statement by the Respondent	15.07.2019

#### **4. Procedural History**

- 4.1. 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 ("Rules") were approved by NIXI on June 28, 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.
- 4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 4.4. On July 8, 2019, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before July 15, 2019.

#### **5. Factual Background:**

- 5.1. The Complainant is the owner and controller of the 'ZIPRECRUITER' brand. The Complainant was initially founded in 2010, by Ian Siegel, Ward Poulos, Will Redd and Joe Edmonds. The Complainant is a well-known American online recruitment company. The Complainant segments their business into two main categories, providing their services to individuals and secondly, services for commercial entities. The Complainant currently has subsidiaries in Canada, Israel the United Kingdom and its services and products are used by jobs seekers and employers in multiple countries around the world.

5.2. The Respondent registered the disputed name <ZIPRECRUITER.IN> on 2<sup>nd</sup> August, 2014.

## 6. Parties Contentions

### 6.1. Complainant's Submission:

6.1.1. The Complainant claims that the Complainant is a well-known American online recruitment company, attracting over 7 million active job seekers, over 40 million job alert email subscribers and over 10,000 new companies every month. The Complainant segments their business into two main categories, providing their services to individuals and secondly, services for commercial entities. The Complainant currently has subsidiaries in Canada, Israel the United Kingdom and its services and products are used by jobs seekers and employers in multiple countries around the world.

6.1.2. The complainant claims that, the Complainant has registered for its trademark "ZIPRECRUITER" in United States, New Zealand, European Union, Canada, Australia and Japan under Class 9, 35, 36, 41, 42 and trademark Application numbers 3934310, 5212840, 1036562, 015070873, TMA979480, 1749916 and 5876432.

6.1.3. The Complainant claims that it has utilised its trademark as part of its brand logo as shown in the Complaint. The Complainant further claims that the uses of the ZIPRECRUITER term in domain names. Specifically, the Complainant registered the domain name, [www.ziprecruiter.com](http://www.ziprecruiter.com) during February 2010 set out in Annexure 4 of the Complaint which has shown active content as early as 2011 as set out in Annexure 5 of the Complaint. The Complainant's states that the web-based platform is the foundation of their business; allowing employers to post jobs, search for candidates and manage the applicant process, as well as permitting job seekers to search for jobs, apply to jobs, and/ or receive alerts regarding the latest job posts.

6.1.4. The Complainant claims that it has further registered their trademark in country code Top Level Domains ('ccTLDs'), enabling users to access the Complainant's services, using their local TLD as set out in Annexure 6 of the Complaint and the

non-exhaustive list of the Complainant's ccTLD's can be identified below: <ziprecruiter.co.nz> registered May, 2015; <ziprecruiter.com.au> registered June, 2015; <ziprecruiter.fr> registered January, 2016; <ziprecruiter.co> registered May, 2013; and <ziprecruiter.co.uk> registered September, 2010.

6.1.5. The Complainant claims that it is recognised as one of the fastest growing technology companies in North America, ranking at 231 in the Deloitte (2017), Technology Fast 500 as set out in Annexure 7 of the Complaint. The Complainant further claims that it was also featured in Forbes (2017), claiming its place amongst the top 100 world's best cloud companies as set out in Annexure 8 of the Complaint.

6.1.6. The Complainant claims that in addition to the above, the Complainant promotes their brand on national television set out in Annexure 9 of the Complaint, which has facilitated the brand's recognition as one of the leading recruitment services, especially in the United States. The Complainant further states that they also uses their brand to establish social media presence and in turn promote their services under this name

6.1.7. The Complainant claims that they hold registered trademarks for the "ZIPRECRUITER" terms in multiple jurisdiction and these trademarks are not generic or commonly understood by any other meaning, other than their association with the Complainant's goods and services. As further evidence to support their recognition in the Indian market, the Complainant states that that for the period of 2018-2019, over 2.2 million users coming from the different regions of India have used the Complainant's website [www.ziprecruiter.com](http://www.ziprecruiter.com) and over 4.5 million sessions were made by Indian users only as detailed in Annexure 13 of the Complaint and claims that Complainant has the "rights" for the purpose of these proceedings. The Complainant states that the disputed domain name incorporates the term "ZIPRECRUITER" verbatim and is sufficient to make a finding that the domain name is identical, or at the very least, confusingly similar.

*Next*

- 6.1.8. The Complainant firstly claims that it maintains the legal right to ZIPRECRUITER.IN, based on the statutory protection of the "ZIPRECRUITER" term by way of trademarks in several jurisdictions and the Complainant also relies on the recognition acquired by the Complainant since 2010, which pre-dates the date when the Respondent registered the domain name on the 26th August 2014. Further the Respondent claims that to the best of the Complainant's knowledge, the Respondent does not own any recognised rights to the term "ZIPRECRUITER", by way of trademarks, or any other protected right.
- 6.1.9. The Complainant claims that ZIPRECRUITER.IN is currently active as a Pay-Per-Click ("PPC") landing page, with various links referring to the Complainant but also direct users to various websites, some of which offer competing goods as per Annexure 14 of the Complaint. Further the Complainant states that it is a well-established principle that the use of a domain name to offer PPC links, can be legitimate, so long as the links do not take advantage of any third party rights and this principle is commonly applied in UDRP disputes.
- 6.1.10. The Complainant claims that ZIPRECRUITER.IN currently resolves to a PPC landing page, where links refer to the Complainant brand as well as the Complainant's competitors and further claims that the Respondent has also offered to sell the domain name at a significant value, based on the domain name's brand value. Therefore, the use of the domain name is for commercial gain and thus, means that the Respondent cannot come within this defence.
- 6.1.11. The Complainant claims that they hold prior rights which protect "ZIPRECRUITER". The Complainant further claims that anyone who has access to the Internet can find the "ZIPRECRUITER" trademarks on public databases, including, but not limited to WIPO Brand Database as set out in Annexure 18 of the complaint. The complainant states that till date on popular search engines like Google for "ZIPRECRUITER", lists the Complainant's brand and services as the first hit as set out in Annexure 12 of the complaint. Further the Complainant states that based on the goodwill and reputation built-up for this brand, the Respondent would have been aware of the

Complainant's rights and should have paid more heed to the representations made to their Registrar, to ensure that they did not infringe any trademark rights.

6.1.12. The Complainant further claims that it offers Internet users the opportunity to search for jobs in specific regions, such as India, where over 8,000 open positions are currently available through their online platform as detailed in Annexure 19 of the Complaint.

6.1.13. The Complainant states that it relies on an argument that the Respondent has acquired this domain name to obtain profit from the Complainant, which is in excess of out-of-pocket costs (Paragraph 6(i) of the INDRP), as seen in Annexure 15 of the Complaint, the Respondent has stated that they will sell ZIPRECRUITER.IN for 11,000 USD, which is undoubtedly in excess of out-of-pocket costs and illustrates that the Respondent's primary purpose of registering ZIPRECRUITER.IN was to extort a benefit from the Complainant, wherein such activities amounts to bad faith registration and use, which satisfies the complaint in its entirety. The Complainant further states that the Respondent's domain portfolio that they have many domain names which correspond to other 3rd party brands as set out in Annexure 20 of the Complaint.

6.1.14. The Complainant states that based on the evidence submitted relating to the Respondent's bad faith conduct, the Complainant claims that the Respondent has engaged in prior bad faith activities and it is more likely than not, that ZIPRECRUITER.IN is also subject to this bad faith pattern of conduct. Further the Complainant claims that the Respondent also registered the domain name ZIPRECRUITER.CO.IN, which also infringes on the Complainant's "ZIPRECRUITER" trademark.

6.1.15. In support of its contentions, the Complainant/s relied on the decisions in the cases of ZipRecruiter, Inc. v. Harold Wright, WIPO Case No. D2018-0944, ZipRecruiter, Inc. v. Grace Phillips, WIPO Case No. D2018-0945, ZipRecruiter, Inc. v. Cyber Domain Services et al., WIPO Case No. D2018-1992, ZipRecruiter, Inc, v. Domain Administrator, Shi Lei, WIPO Case No. D2018-2289, Zippo Manufacturing Company

Inc. v. Zhaxia. Case No. INDRP/840, Urban Outfitters.Inc. v. Hua An Holdings (H.K.) Limited. Case No. INDRP /601, Urban Outfitters.Inc. v. GoaGou/ Yerect International Limited. Case No. INDRP /624, Wal-Mart Stores. Inc. v. Machang. Case No. INDRP539, Vestel Elektronik Sanayi ve Ticaret AS v Kahveci. WIPO Case No. D2000-1244, Mozilla Foundation v. lina/Doublefist Limited. Case No. INDRP /934, Limited v. Lin Yanxiao. Case No. INDRP/818.

6.1.16. The Complainant/s requests for the following relief: “that the disputed domain name <ZIPRECRUITER.IN> be transferred to the Complainant”.

**6.2. Respondent:**

6.2.1. The Respondent did not file any reply to the Complaint.

**7. Discussion and Findings**

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

**7.3. Identical or Confusingly Similar**

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks and has established that it has rights in the trademark “ZIPRECRUITER” in various Jurisdiction.



7.3.3. It is further evident that the Complainant has its rights on the trademark "ZIPRECRUITER" and this has been established in the following case laws listed in the Complaint *ZipRecruiter, Inc. v. Harold Wright, WIPO Case No. D2018-0944*, *ZipRecruiter, Inc. v. Grace Phillips, WIPO Case No. D2018-0945*, *ZipRecruiter, Inc. v. Cyber Domain Services et al., WIPO Case No. D2018-1992* and *ZipRecruiter, Inc. v. Domain Administrator, Shi Lei, WIPO Case No. D2018-2289*.

7.3.4. The disputed domain name incorporates the trademark "ZIPRECRUITER" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. This position was upheld in *Zippo Manufacturing Company Inc. v. Zhaxia. (INDRP/840)*.

7.3.5. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

#### **7.4. Rights and Legitimate Interests**

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if

7.4.2.1. before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or

7.4.2.2. the registrant (as an individual, business organization) has been commonly known by the domain name, or

7.4.2.3. the registrant is making 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.

7.4.3. It is evident to the Arbitrator that the Respondent does not satisfy any of criteria mentioned in Paragraph 7 of the Policy, as the Respondent has used the disputed



domain name to displays “pay-per-click” links and various links referring to the Complainant, also directs users to various websites, some of which offer competing goods and the Respondent is using the disputed domain name to commercially gain by misleadingly/diverting consumers. Further there is no evidence proving that the Respondent is commonly known by the domain name.

7.4.4. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name since the Respondent is using the domain name to divert/ redirect internet users who may be seeking the Complainant’s service for commercial gains and that the Respondent has registered the domain name “ZIPRECRUITER.IN” mala fide with the sole motive to encash upon the goodwill and reputation of the Complainant. This view has been upheld *Indeed.inc. v. Deepak singh (INDRP/987)*.

7.4.5. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.6. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

## 7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant’s burden of proof.

- 7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "ZIPRECRUITER".
- 7.5.3. The Respondent's intention to sell the domain name is evident from the email conversation produced by the Complainant in Annexure 15 of the Complaint is abundantly clear that the Respondent has purposely demanded an amount far more than its out-of-pocket costs for registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith registration and use as held in *Aktiebolaget Electrolux v. Li Bing Yu* [WIPO Case No. D2012-1106] and *Vodafone Group PIC v. Rohit Bansal*, Case No. INDRP/052.
- 7.5.4. The Complainant further states that the Respondent having no legitimate interest is corroborated by the fact that the domain in question displays "pay-per-click" links and various links referring to the Complainant, also directs users to various websites, some of which offer competing goods. The fact that the Respondent's website displays just "pay-per-click" links and various third party links proves that the Respondent is a Cyber Squatter. This view has been upheld in *Urban Outfitters, Inc. v. GoaGou/ Yerec International Limited* (INDRP /624).
- 7.5.5. Under Paragraph 6 (i) of the Policy, if the registrant of the domain name in dispute, has registered or circumstances indicate that he has 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. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.
- 7.5.6. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant/s have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.

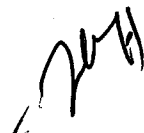
**8. Decision**

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <ZIPRECRUITER.IN> to the Complainant.

8.3. The Award is accordingly passed on this the 06<sup>th</sup> day of August, 2019.

Place: Chennai

  
Dr. Sudhir Raja Ravindran  
Sole Arbitrator