

The Parties:

In the present proceeding, the complainant is Ezeego One Travels And Tours Ltd, an Indian company having its registered office at 1st Floor, Cecil Court, Lansdowne Road, Colaba, Mumbai 400039, India and its corporate office at Classique Centre 4th Floor. Unit no. 401 to 409, "B" Wing 26, Mahal Industrial Estate, off Mahakali Caves Road, Andheri (east), Mumbai-400093, India.

The authorized representative for the complainant is Mr Himanshu W.Kane, Advocate and Solicitor, 6th Floor, Merchant Chamber, 41 Sir Vithaldas Thackersey Road, Opp. Patkar Hall, Churchgate, Mumbai 400020, India.

The respondent in this proceeding is Sanjay Jha, whose email contact is support.vibor@gmail.com, sara.vnn@rediffmail.com.

The Domain Name and Registrant:

This dispute contains the domain name: www.ezeego.org.in. The Registrant is Sanjay Jha.

Procedural History:

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the complainant, regarding the dispute over the domain name www.ezeego.org.in.

IN Registry has supplied the copy of the Complaint and Annexures to me.

I had sent an email to the parties informing them about my appointment as an Arbitrator on January 18, 2011.

In the same email itself, I requested the Complainant to supply the copy of the complaint with the annexure to the Respondent and in case if they have already served it, then to provide the details of the service record. Notice of Arbitration, in accordance with INDRP read with INDRP Rules of Procedure, was sent to the Respondent on January 18, 2011 with the instructions to file his say/reply within 15 days from the receipt of the email.

On January 19, 2011, I received an email from the Counsels of the Complainant, informing about the details of the service of the copy of complaint to the respondent. According to this mail the copy of the complaint was served upon the respondent via an email on January 19, 2011.

The Respondent failed to file his reply to the Complaint by February 3rd 2011.

In the interest of justice and fairness on February 8th 2011, a reminder was sent to the Respondent to submit his say/reply, if any, to the complaint by allowing extension till February 15th 2011.



The Respondent failed/neglected to file his reply to the complaint of the Complainant within the given time period. Similarly he has not communicated anything regarding the complaint till the date of this award and as such the proceedings were conducted Ex-parte.

That I have perused the record and Annexures/documents.

Factual Background:

The following issues have been raised by the Complainant regarding the disputed domain name and contented the respective:

The Complainant is an established and highly reputed service provider in respect of adventure tourism, arranging of cruises, reservation of transport and travel and various other services associated with the tourism industry. Since over the years, the Complainant has conducted its business in extremely efficient fashion and of superior quality. The members of the trade and the general public have come to trust the Complainant for excellent quality travel services.

The Complainant is a registered proprietor of various trademarks with the term "EZEEO"/"EZEEO1" and has also advertised its said trademarks in various leading newspapers such as Times Of India, Hindu, Deccan Chronicle, Telegraph, DNA, HT which have comprehensive nation wide coverages list of which is provided by the Complainant. The Complainant has spent over 66.21 crores to develop and promote the said trademark.

The Complainant has acquired worldwide public recognition and goodwill in connection with its business.

The Complainant with a view of expanding its business created domain names/websites containing the expressions "EZEEO"/"EZEEO". One such domain name /website, www.ezeego1.co.in was created by the Complainant on 25th Nov 2005.

The Respondent's domain name www.ezeego.org.in was created on 18th October 2009 which is identical to the said mark of the complainant over which he has rights on accounts of prior registrations.

The complainant submits that the Respondent has intentionally and fraudulently chosen the impugned domain name www.ezeego.org.in to trade upon and take undue advantage of the complainant's said trade marks and aforesaid domain name/website www.ezeego1.co.in.

Parties Contentions:

The Complainant contends as follows:

The Respondent domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights. The Respondent has no rights and legitimate interest in respect of the domain name.

The Respondent has registered and is using his domain name in bad faith.



Respondent:

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities.

Discussions and Findings:

As earlier pointed out, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

Rule 8(b) of the INDRP Rules of Procedure provides that "*In all cases, the arbitrator shall ensure that the parties are treated with equality and that each Party is given a fair opportunity to present its case*".

As mentioned above the fair opportunity has been given to the respondent to file the reply but no response has been received from his side. Therefore the Arbitration, proceedings have been conducted ex parte.

Rule 12(a) of the INDRP Rules of Procedure provided that "*An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable*".

In the present circumstances, the decision of the Arbitrator is based upon the Complainant's contentions and evidence and conclusion drawn from the Respondent's failure to reply.

The submissions and documentary evidence placed on record has proved that the complainant has statutory and common law rights in the mark "EZEEO"/"EZEEO1".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of IN domain Name dispute Resolution Policy, viz:

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

BASIS OF FINDINGS:

Domain name is identical or confusingly similar to a name , trademark or service mark in which the Complainant has rights.

It is stated that the Complainant is the registered proprietor of the trade marks "EZEEO"/"EZEEO1" under the Trade Marks Act, 1999. Thus, the customers and the



members of the public and the trade, identify and associate the said domain names/websites with the Complainant and its services/business. The complainant have gained significant reputation and its mark can be termed as a well known brand.

The Complainant contends in the complaint that the domain name of the respondent i.e. www.ezeego.org.in is identical and confusingly similar to complainant's domain name/website www.ezeego1.co.in as well as to the Complainant's said trade marks containing the expressions EZEEOG/EZEEOG01.

Thus the Complainant has the right over the name "EZEEOG"/"EZEEOG01" and the Respondent's domain name is also confusingly similar to it. In order to support its contention the Complainant has referred to the judgment of *Parle Products vs J.P & Co., Mysore AIR 1972 SC 1359*.

The Complainant has further relied on the *Kerly's Law of Trade Marks and Trade Names* (9th edition Paragraph 838) in support of his submission that the replacement of the letters "co" from the Complainant's domain name /website www.ezeego1.co.in, with the letters "org" and removal the number 1 from the expression, does not make the impugned domain name dissimilar to the Complainant's domain name/website.

The above submissions of the Complainant have not been rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

The Registrant has no rights or legitimate interests in the respect of the domain :

According to the paragraph 7 of the .IN Dispute Resolution policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(h)

(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.*

The Complainant has contented that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

(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;*

The Complainant has stated that Respondent is neither known by the disputed name, nor it is a personal name. The Complainant has further put forth that Respondent, by adopting the impugned domain name www.ezeego.org.in is taking the undue advantage of the reputation and goodwill that has accrued t the Complainant's said trade marks/domain name /website. The Respondent by using the impugned domain name www.ezeego.org.in is trying to mislead and divert unwary customers to its website, thereby making illicit gains.

Hence such an adoption cannot be a bona fide adoption and consequently the use of the impugned domain name for this type of services cannot be termed as a bona fide use for offering services.

The Complainant has relied upon the judgment of *Madonna Ciccone v. Dan Parisi*, ICANN Case No.D2000-0847, in which it was held that a use which intentionally trades on the fame of another cannot constitute a 'bona fide' offering of goods or services.

According, to the Complainant, disputed domain name has been adopted by the Respondent only for commercial gain. The sole purpose of the Respondent is to divert the internet users to its website. Thus the Respondent has no legitimate right or interest to the use of the domain name/website www.ezeego.org.in.

The above submission of the Complainant has not been rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith.:

The Complainant also alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contented that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Complainant has relied upon the judgment of *Expedia Inc v. European Travel Network* Case No. D2000-0137 WIPO Arbitration and Mediation Centre to prove the above contention.

The Complainant has also stated that the impugned domain name contains links to other travel related websites as a result of which whenever a customer visits the impugned domain name he is bound to be connected to other such travel websites, this will directly result in economic loss to the Complainant. The dishonesty and bad faith of the Respondent is visible from the fact that the home page of the impugned domain name has certain symbolic features which are almost identical with and/or deceptively similar to those which are demonstrated on the Complainant's domain name/website that too in similar color combinations.

In support of this the Complainant has relied on the judgment given by the Bombay High court 1999, in the case of *Rediff Communication Ltd v. Cyber tooth & Anr* .In this case it was held that the use of similar domain name/website may lead to diversion of users which could result from such users mistakenly accessing one domain name/website instead of another.

The above submission of the Complainant has not been rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that

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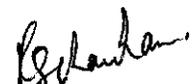
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the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

Decision:

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In the facts and the circumstances of the case it can be presumed that the only purpose for the registration of the disputed domain name was to capitalize on the fame and reputation of the Complainant and to make monetary benefits.

The Respondent has got registered and used the disputed domain name in bad faith. .IN Registry of the INXI is hereby directed to transfer the domain name of the Respondent i.e. www.ezeego.org.in to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 10th day of March, 2011.


Rajeev Chauhan

Sole Arbitrator

Date: 10.03.2011