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BEFORE THE SOLE ARBITRATOR UNDER THE
.IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Zynga Inc.
365 Vermont Street,
San Francisco,
California 94103,
U.S.A.

The Complainant

Vs.

Shawn Li
103, Arvind Society,
Anand Nagar, Pune
Maharashtra- 411051

The Respondent

THE PARTIES

The complainant in the present proceeding is Zynga Inc., 365 Vermont Street, San Francisco, California 94103, U.S.A.

The complainant in this proceedings is represented through its authorised representative, Ranjan Narula, Ranjan Narula Associates, Vatika Towers, 10th Floor, Block – B, Sector – 54, Gurgaon, Haryana.

The respondent in this proceeding is Shawn Li, 103, Arvind Society, Anand Nagar, Pune, Maharashtra- 411051. .

THE DOMAIN NAME AND REGISTRANT

The Domain Name in dispute is “ZYNGA.CO.IN”. The Registrant is Shawn Li, 103, Arvind Society, Anand Nagar, Pune, Maharashtra- 411051

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 ZYNGA.CO.IN.

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

On 25.11.2011, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 25.11.2011, itself I sent an email to Complainant requesting them to supply the copy of the complaint with annexures to the Respondent and in case if they have already served it, then to provide me with the details of service record.

On 28.11.2011, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail copy of the complaint was duly sent to the postal address as well as on the email Id of the Respondent.



In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 25.11.2011 with the instructions to file his say latest by 10.12.2011.

The Respondent filed his reply on 28.11.2011.

The Complainant filed the Rejoinder to the Response of the Respondent on 28.11.2011.

Thereafter, the Respondent filed his reply to the Rejoinder of the Complainant on 28.11.2011. as per the INDRP Rules & Policy, there is no explicit provision of filing the reply to the Rejoinder of the Complainant, though such can be done with the Tribunal's consent under the powers conferred upon the Tribunal by the Arbitration & Conciliation Act, 1996. But no permission was taken for filing such reply from the Tribunal, however in the interest of justice the facts in such reply filed by the Respondent have been taken into consideration while passing the present award.

The Complainant has filed various documents as Annexures in support of his contentions. Whereas the Respondent, has not filed any documents in support of his contentions.

I have perused the record and Annexures / documents.

FACTUAL BACKGROUND:

COMPLAINANT

The Complainant is a leading social network games developer offering browser-based games that work on a number of global platforms including Facebook, MySpace, Yahoo, the iPad, the iPhone and Android devices, since 2007.

As of July 2011, Complainant's games on Facebook had over 232 million monthly active users. Four of Complainant's games, CityVille, FarmVille, Zynga Poker, and FrontierVille, are the most widely-used game applications on Facebook, with *CityVille* having over 20 million daily active users.

In India, Zynga Game Network India Private Limited is the Complainant's subsidiary having its registered office at 5th Floor, Esquire Centre, No. 9 M.G. Road Bangalore. It was incorporated on 26th November 2009.

The Complainant's official web site www.zynga.com has become famous worldwide, including in India, on account of Complainant's constant presence on the Internet. The domain name www.zynga.com was created on **2nd November 2007** and is valid until 2nd November 2016.

Additionally, the Complainant is also the owner of the domain www.zynga.org. The domain name www.zynga.org was created on 2nd February 2008 and is valid until 2nd February 2014.

The Complainant has various trademark registrations already existing in the USA, India etc and few which are pending including the ones in India etc, a list of which is provided by the Complainant.

The Complainant has invested an enormous sum of money in its promotional activities involving advertising its products and services. It claims that the "ZYNGA" trademark is distinctive, has acquired substantial goodwill and is an extremely valuable asset of the Complainant company.

The Complainant alleges that respondent's domain name www.zynga.co.in incorporates the trade name of the Complainant and is also identical to the trademark ZYNGA. That the respondent has no legitimate rights or interests in respect of the domain name "zynga.co.in". That the disputed domain name is registered and is being used in bad faith by the respondent.

RESPONDENT

The Respondent is an individual named Shawn Li who has registered the disputed domain name <zynga.co.in> on 19th January, 2008 as per the Whois Database.

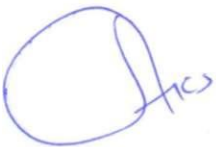
It is pertinent to note that not much information about the Respondent is known to the Tribunal, as even in the reply filed by the Respondent, nothing in particular to describe the background of the Respondent is mentioned.

PARTIES CONTENTIONS:

Complainant

- a. The Complainant contends as follows in the Complaint:
 - i. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
 - ii. The Respondent has no rights and legitimate interest in respect of the domain name.
 - iii. The Respondent has registered and is using his domain name in bad faith.
 - iv. The complainant claims to be a leading social network games developer offering browser-based games that work on a number of global platforms including Facebook, MySpace, Yahoo, the iPad, the iPhone and Android devices, since 2007.
 - v. The Complainant submits that the intention of the Respondent is primarily to encash the goodwill and reputation enjoyed by the Complainant in its prior used mark ZYNGA. The mark/name ZYNGA has no dictionary meaning. Thus, the mark/name ZYNGA exclusively refers to the Complainant and none else.
 - vi. Further, it is claimed by the Complainant that the worldwide publicity of the ZYNGA mark and domain and considering the highly distinctive nature of the ZYNGA mark and name in respect of the Complainant's aforesaid business activities, the adoption and registration of an identical domain name and mark cannot be a coincidence. The Respondent was clearly aware of the existence of prior trademark rights in favour of the Complainant when it adopted the mark. In the circumstances, the present case is clearly that of cyber-squatting.
 - vii. The Complainant submits that use of an identical domain name by the Respondent is likely to mislead/divert consumers and also tarnish the reputation of the trademark or service mark of the Complainant.
 - viii. The Complainant claims that it has various trademarks registered in its name in various countries and few applications are pending for registration in several countries.

- ix. The Complainant claims that the disputed domain name is an instrument of fraud and deception and its registration is causing irreparable loss and injury to the Complainant's reputation and goodwill.
 - x. The Complainant as such has filed the present complaint praying therein to transfer the disputed domain name in its favour and award cost.
- b. The Respondent has contended the following in the Reply to the Complaint filed by him on 28.11.2011:
- i. The Respondent submits that the domain name www.zynga.co.in was registered for his personal use and the name Zynga has been his pen name for more than 10 years. It is further stated that the name "Zynga" was adopted from an African place "Zinga".
 - ii. The Respondent submits that the name "Zynga" was not registered by him as it was not for any commercial use.
 - iii. The Respondent alleges that "the domain names are registered on first come first serve basis, as it is 100% online and our purpose is totally different from that of Zynga.com games, we do not have to surrender our domain just because you have similar name".
 - iv. The Respondent claims that the Respondent has registered the disputed domain name on 19.01.2008, and before that anyone in India, had ever heard of existence of domain name/trademark "Zynga", "Zynga.com" or "Zynga games". The Complainant had no existence or presence in India when the Respondent adopted his said domain name "zynga.co.in" as the Complainant registered its trademark in India on 09-04-2009.
 - v. The Respondent submits that he has all the right and legitimate interest in the domain name and he has used the same in good faith and not for the purpose of fraud.
- c. The Respondent has not filed any documents along with his response.
- d. The Complainant filed its rejoinder on 28.11.2011 and contended the following:



- i. The Complainant contends that the domain name <zynga.com> has been registered by them on 02.11.2007 and enjoyed good reputation in the ZYNGA mark in India as well as abroad.
 - ii. The Complainant claims that it has been the prior user and adopter of the name “Zynga” as he has been using the same in USA since 2007.
 - iii. The Complainant submits that the Respondent has failed to show a justified proof of its legitimate working and adoption of the domain name in good faith as the Respondent did not have any active business in the name of Zynga and the same was activated only in August 2011 after a notice was served by the Complainant. Prior to this the domain name was being redirected to a website of Chinese Content.
 - iv. The Complainant claims that the Respondent has not produced any evidence to show his actual working as nothing has been published under his pen name.
 - v. The Complainant further claims that it would be more logical and suitable to adopt the name “www.zinga.co.in” rather than www.zynga.co.in if it was adopted from an African place “Zinga”.
 - vi. The Complainant submits that the Respondent has intentionally attempted to attract internet users to the disputed website and from there to its other online location, by creating confusion with the Complainant’s trademark and hence, it does not prove that the Respondent has been commonly known by the domain name.
- e. The Respondent filed the Response to the Rejoinder of the Complainant on 28.11.2011 and submitted the following points:
- i. The Respondent submits that the documents submitted by the Complainant are not sufficient enough to show any kind of proof that the Complainant has been known by the name “Zynga” prior to 2008.
 - ii. The Respondent again reiterates that he did not register any trademark in the name of “Zynga” as it was not for any commercial purpose and the mere purpose of acquiring the domain name was for his personal blog.
 - iii. The Respondent claims that it is the honest adopter and registrar of the domain name “Zynga” and has been using the said name since 10 years.



- iv. The Respondent further claims that the Complainant had acquired the domain names "zynga.com or zynga.org" in 2007 for business game try. As only in the future the name of Zynga games got recognition for which the Complainant acquired the trademark in 2009 only.
- v. The Respondent finally submits that his domain name has been acquired only for the purpose of personal use and he need not show any justification of choosing the said name due to his privacy.

DISCUSSIONS AND FINDINGS:

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 fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.

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 contentions and evidence filed by both the parties respectively and conclusion drawn from the same.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "ZYNGA".

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:

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

The Complainant contends in the complaint that the domain name of the respondent i.e. <zynga.co.in> is identical and confusingly similar to ZYNGA, its trademark and its domain names associated like <zynga.com>.

It is further stated that the Complainant is the registered proprietor of the "ZYNGA" trademark in numerous countries in the world and various other registration applications are pending in countries including India and therefore, has gained significant reputation and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registration at International and domestic level.

After scrutinizing the trademark of the Complainant "ZYNGA" and the disputed domain name <zynga.co.in>, the Tribunal is of the opinion that the disputed domain name <zynga.co.in> is identical or at least confusingly similar to the Complainant's "Zynga" mark since it incorporates Complainant's mark in its entirety. There is no alteration existing which distinguishes Respondent's domain name from the mark as it is exactly the same as Complainant's mark. Whereas, both of them are phonetically similar and are pronounced exactly in the same manner.

The Tribunal is of the opinion that when a trademark is incorporated in its entirety in the domain name, it is sufficient to establish that the said domain name is identical or confusingly similar to Complainant's mark.

This proposition was also upheld in the following cases:

1. Lego Juris A/S vs. RobertMartine, INDRP/125 (NIXI February 14, 2010), it was held in this case that " *it is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark.* "
2. Volkswagen AG vs. Satya Bagla Exclusive Motors Pvt. Ltd., INDRP/112 (NIXI November 18, 2009), it was held by the Panel that "*if a trademark is incorporated in its entirety in a*

domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark".

3. Rediff Communication Limited Vs. Cyberbooth & another, [AIR 2000 Bom 27], it was held in the case that, When both the domain names are considered it is clearly seen that two names being almost similar in nature there is every possibility of Internet user being confused and deceived in believing that domain names belong to one common source and connection although belong to two different persons.

The Tribunal further notes that the Respondent's domain name is created by mere addition of cCTLD ".co.in" in the end of the Complainant's Trademark. Such is not sufficient to make the domain name distinct and hence the disputed domain name is confusingly similar to the Complainant's Trademark.

The Tribunal also gets support to the finding from the following cases:

1. Lego juris A/S v. Robin Martin, INDRP/125 (February 14, 2010), it was held that has the addition of country code ("CTLD") in the domain name is not sufficient to distinguish from the mark and does not change the overall impression of the designation as being connected to a trademark of the Complainant.

Thus the conclusion is that the domain name of the Respondent is identical and confusingly similar to the Trademark of the Complainant.

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

It is clear that once a Complainant makes a prima facie case, then the burden shifts to the Respondent to provide evidences to establish rights or legitimate interests in the disputed domain name.

This proposition was also upheld in the following cases:

1. Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO case No. D2003-0455, where it was held that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of proving rights or legitimate interests in the

domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of UDRP.


2. Hanna- Barbera Productions, Inc. Vs. Entertainment Commentaries, FA 741828 (National Arbitration Forum, September 25, 2006), where it was held that the Complainant must first make a prima facie case showing that the Respondent does not have rights or legitimate interests in the subject domain name. If the Complainant satisfies its burden, then the burden shifts to the Respondent to show that it does have rights or legitimate interests in the subject domain name.

The Tribunal determines that the Complainant has made positive assertions and concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the subject domain name. Hence, the burden shifts on the Respondent to prove that it has rights or legitimate interests in the subject domain name. Whereas the Respondent has not discharged the onus positively, which had shifted upon him as the Respondent neither put forth and has nor provided any evidence, except that he has only made bald assertions which will be clear from the following:

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(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

- a. While considering paragraph 7 (i) of the .IN Dispute Resolution Policy, *“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 contended 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. The Complainant claims that the Respondent has not produced any evidence to show the actual usage of the domain name for any bonafide offering or services. The Complainant has further contended that the on 19.07.2011, the Complainant via an email served a notice to the Respondent to immediately cease and desist from using the mark "Zynga". After exchange of few emails between them, the Respondent finally refused to surrender the said domain name to the Complainant. Immediately after the said conversation, the Respondent activated his domain name/website prior to which the said domain name was redirected to a website with Chinese content. This clearly signifies that the Respondent is not carrying on any legitimate or bonafide business under the contested domain name.

The Respondent has argued that the before any notice of the dispute, he was using the said domain name for his personal blog and has been using the mark "Zynga" for more than 10 years.

The Respondent to show his bona fide offering of goods or services has not produced any evidences or documents to the Tribunal, except the plea that the said domain name was merely acquired for his personal use and the said name was adopted for privacy reasons.

The Tribunal does not find such pleas and justifications of the Respondent to be sufficient enough to show or demonstrate bona fide offering of goods or services in the name of the disputed domain name. It is pertinent to note that the in spite of the chances given to the Respondent, to furnish hard evidence or proof of his working or use of his domain name, the Respondent has not provided any positive, cogent and specific evidence that he is known or recognized by domain name, by its user and that he in fact uses it for providing goods or services. More so when he knew that his alleged use or preparations to use domain name is challenged by the Complainant.

Hence, the Tribunal is at a conclusion that the Respondent has neither put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonfide goods or services in the name of the disputed domain name.

This proposition was also upheld in the following cases:

1. Pfizer Inc. Vs. Deep Soni and Ashok Soni, (Case No. D2000-0782), it was held that the respondent to prove his right or legitimate interest in domain name, must show that he is using the domain name for offering of goods and services or that he is making a demonstrable preparation to use the domain name for offering goods and services.
2. 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.

b. While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, "*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 commonly known by the disputed name, nor it is a personal name.

The Respondent has argued that it has been using the name "Zynga" for more than 10 years for his personal use. The Respondent has further contended that at the time of registering the domain name, anyone in India, had never heard of existence of domain name/trademark "ZYNGA" of the Complainant. The Complainant had no existence or presence in India when the Respondent adopted their said domain name "zynga.co.in".

It is important to note that even after constant queries raised by the Complainant about the reason behind the adoption of the name "Zynga", the Respondent failed to give any justified reasoning for the same. The mere reason provided by him was that such name "Zynga" was registered by him after a place in Africa named "Zinga".

When the Complainant raised a query that "zinga.co.in" was not registered by the Respondent instead of "zynga.co.in", no answer was given by the Respondent

In view of above, this Tribunal is of the view that the Respondent has failed to give any plausible and acceptable reason for choosing similar name as that of the Complainant.

As discussed above, the tribunal is of the view that the Complainant has legitimate rights and interest in the Trademark irrespective of the fact as contended by the Respondent that the

Trademark of the Complainant was not known in the India and anyone in India wasn't aware about the said Trademark and the Complainant had no Trademark registered in India at the time of registering the disputed domain name <zynga.co.in>.

The Tribunal also gets support to the finding from the following cases:

1. Uniroyal Engineered Products, Inc. Vs. Nauga Network services (WIPO Case No. D2000 – 0503) & Consorzia del Formaggio Parmigiano Reggiano Vs. La casa del Latte di Bibulic Adriano (WIPO Case No. D2003-0661), it was held in both the cases that the location of the registered Trademark are irrelevant when ascertaining or finding rights in the mark.

The Tribunal concludes that the Respondent has failed miserably in giving any justification and reason to show that it is commonly known by that name or is conducting any business in the said name

The Tribunal also gets support to the finding from the following cases:

1. Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007), has been relied upon, where it was held that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor is it his personal name.
2. Pauleka Vs. Paula Korenek, (WIPO Case No. D2003-0453, July 24, 2003), it was held that “in order to have rights or legitimate interests under the “commonly known” provision of the policy the Respondent must be commonly known by the domain name prior to registration of the domain name in issue”.

Thus the Tribunal concludes that the Respondent has failed to show evidences to prove that it is commonly known by the disputed domain name.

- c. While considering paragraph 7 (iii) of the .IN Dispute Resolution Policy, “*the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue*”, the Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name.



According to Complainant that the sole purpose of the Respondent is to divert Internet users to its web site. The Complainant further alleges that the Respondent has indulged in the practice of “Cyber-squatting” in order to divert the potential customers to its website.

The Respondent has refuted the above contentions of the Complainant by stating that he has acquired the disputed domain name prior to the registration of the trademark of the Complainant in India. He further contends that the domain name, “zynga.co.in” was adopted by him for his personal blog and the name “Zynga” was acquired by him after being inspired by the place in Africa named “Zinga”.

The Tribunal notes and concludes that as stated earlier the Respondent has not produced any evidence to show its bonfide using or offering of goods and services in the said disputed domain name. The Tribunal believes that even if the Respondent has been using the name “Zynga” for more than 10 years, still he has not produced any sort of evidences or work that proves his honest intentions of acquiring the said disputed domain name. Hence the Tribunal is of the view that such an act of the Respondent may give strength to the apprehension of the Complainant that it may lead to diversion of the potential customers and users of the Complainant to the website of the respondent.

The Tribunal also gets support to the finding from the following cases:

1. M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd, [AIR 2004 SC 3540], it was held that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.
2. Alliance & Leicester Plc Vs. Henao Berenice, WIPO Case D-2005-0736, it was held that use of the domain name by the Respondent should be bonafide without the intent to mislead internet users or consumers or to divert them to his website and without our intent to tarnish trademark of Complainant.

The Tribunal finds that the above submission of the Complainant has not been rebutted by Respondent in a proper way and by giving no evidences, 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 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 contended 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 Respondent has argued the above contentions of the Complainant by stating that it has been using the disputed domain name by offering bonafide services and goods and has not registered the domain name in bad faith.

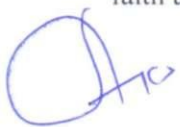
The Tribunal notes that the Respondent as stated above has failed to produce any evidence or document showing that the said domain name was not registered in bad faith and for providing bonafide services and goods. The Respondent's version about selection of name "Zynga" in the present proceedings, demonstrate so.

The Tribunal concludes that the Complainant is a well known trademark in domestic and international market and has adopted "Zynga" as its trademark in numerous countries. The Complainant has provided enough substantial evidence showing the number of countries in which it has acquired "Zynga" as its domain name/Trademark and has proved that the Respondent is seeking to capitalize on the goodwill associated with the Complainant.

The Tribunal also gets support to the finding from the following cases:

1. Barney's Inc. Vs. BNY Bulletin Board, (WIPO Case No. D2000-0059), it was held that registration of a domain name containing a famous mark is strong evidence of bad faith.
2. N.R Dongre & Ors. Vs. Whirlpool Corp. and Anr. (JT 1996 (7) SC555), it was held that a well known Trademark even if only has existence or presence outside India, any registration with incorporation of such Trademark would amount to Bad faith and Infringement.

The Tribunal further concludes that the Respondent has registered the domain name in bad faith as it does not have any fix or concrete evidence to show that reason behind the adoption



of the disputed domain name. As stated in above points, the Respondent has been taking contradictory and false stands with respect to registration and adoption of the disputed domain name. This act of the Respondent clearly shows the bad intention and bad faith in registering the disputed domain name.

The Tribunal is of the view that as per the facts and circumstances it is clear that the Respondent has countered many contentions of the Complainant but it is also evident that he got the domain name registered in bad faith.

DECISION

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

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <zynga.co.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 January, 2012.



A.K. Singh

Sole Arbitrator

Date: 10th January, 2012