



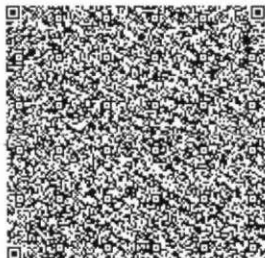
सत्यमेव जयते

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BEFORE THE SOLE ARBITRATOR UNDER THE In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Zaarly, Inc.,
 93589, 548 Market St.,
 San Francisco, CA 94104, USA

(Complainant)

v.

Prithvi Kumar
 10/48, First Main Road,
 CIT Colony, Mylapore,
 Chennai, Tamil Nadu 600004, India

(Respondent)

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Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
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The Parties

The Complainant in this proceeding is Zaarly, Inc., having its office at 93589, 548 Market St., San Francisco, CA 94104, USA

The Respondent in this proceeding is Prithvi Kumar, having his office at 10/48, First Main Road, CIT Colony, Mylapore, Chennai, Tamil Nadu 600004 India

The Domain Name & Registrant

The disputed domain name WWW.ZAARLY.IN is registered with DNS1.BIGROCK.IN. The Registrant is Prithvi Kumar of Chennai.

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.ZAARLY.in.

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

On 029.08.2012, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 29.08.2012, itself I sent an email to Complainant requesting it to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 29.08.2012 with the instructions to file his say latest by 14.09.2012.

On 29.08.2012 itself, the Tribunal received a mail from the counsel of the Complainant stating that they had received a mail from the Respondent, dated 11.08.2012 offering them to sell the disputed domain name for an amount of USD 4,500.

On 19.09.2012, the Tribunal 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 email address

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as well as to the postal address of the Respondent. The documents produced by the Complainant show that the Respondent has been duly served with the copy of the Complaint. Though the copy of the complaint was sent by the Complainant to the Respondent, the Complainant on 29.08.2012, through its counsel informed the Arbitrator, that it is the duty of the .IN Registry to serve the copy of the Complaint to the Respondent.

Since with the email dated 29.08.2012, the email allegedly received from the Respondent on 11.08.2012 offering to sell the disputed domain name for USD 4500, was not attached, the Tribunal directed the Complainant on 05.10.2012 to send the copy of the said email dated 11.08.2012 of the Respondent.

The said email was forwarded by the Complainant to the Tribunal on 08.10.2012.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

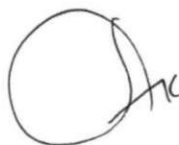
The Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and annexures / document.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The Complainant, Zaarly, Inc., is a company organized and existing under the laws of the State of Delaware of the United States of America. It has its headquarters in San Francisco, California. The Complainant was founded in February, 2011 by Bo Fishback, Eric Koester, and Ian Hunter during Los Angeles Startup Weekend business competition. World-famous actor, Ashton Kutcher, immediately invested the first \$1million in seed capital along with other famous, well-known actors and technology investors (including Groupon founder's Lightbank). Zaarly received immediate, significant international press as a result of its unique formation story and its high-profile investor team.



By way of background, Zaarly is a company centered around a real-time, location-based, buyer-centric marketplace for consumers and businesses. Zaarly's mobile device applications and web-based services/community enable a number of services for worldwide users within this global, e-commerce marketplace facilitating local transactions and financial transactions between consumers and businesses for a wide range of goods and services. Zaarly offers a robust, worldwide marketplace that enables people to easily buy and sell things locally. Zaarly has acquired a substantial and valuable body of goodwill in the well-known ZAARLY® applied-for and registered mark, which it has extensively used and promoted in the U.S. and abroad.

Zaarly soft-launched its goods and services at SXSW (South-By-Southwest) Interactive Conference. Zaarly formally launched on May 18, 2011, with front-page news stories in USA Today, The Wall Street Journal, and other worldwide major news publications. Since then, Zaarly has raised additional capital in excess of \$14 million USD, backed by internationally-recognized venture capital firms Kleiner Perkins Caufield & Byers and Sands Capital Management. Former eBay CEO and current Hewlett-Packard (HP) CEO, Meg Whitman, has joined Zaarly's 6-member Board of Directors. Because of the high-profile nature of Zaarly's launch and subsequent success, the business has received considerable international press in the Wall Street Journal, New York Times, USA Today, Forbes, Yahoo News, Plugged.in, Tech Circle, Mashable, etc.

The Complainant has used the trade mark and trade name ZAARLY extensively, exclusively and continuously all over the world and by virtue of such extensive sales and publicity, ZAARLY has acquired an enviable reputation and goodwill amongst consumers and the members of the trade. At present, the mark is exclusively associated with the high quality goods and services of the Complainant. The Complainant has exercised exclusive control over this name which is both fanciful and unique worldwide.

The Complainant has applied for registration and/or used its ZAARLY trademarks in over 45 countries around the world, including India. The ZAARLY Trademark is already Registered in the United States, the European Union, China and Japan. Additionally, Zaarly has pending Applications for the mark ZAARLY (expected to mature into Registrations) in numerous countries, including Pakistan, Russia, South Korea, Malaysia, Australia, Canada, Mexico, and Brazil. These Registrations and Applications, as can be seen, cover a wide range of wares, services and international classes.



Additionally the complainant has spent enormous amounts of resources in publicizing, marketing, advertising and promoting its mark ZAARLY and by virtue of the same and the immense goodwill that has accrued to the mark ZAARLY, the mark ZAARLY is generally known by many consumers worldwide. The Complainant is the owner of a number of domain names that feature the mark ZAARLY.

In the past, the Complainant had to take steps to prevent other unauthorized uses of its trademarks in domain names. In particular, a complaint was filed against a cyber squatter who had registered the domain name <ZAARLY.XXX>. The Complainant had made several contentions against the malafide use and registration of the domain name of <ZAARLY.XXX> which consisted of the distinctive trademark ZAARLY. It was decided by the Administrative Panel (Arbitrator) in this case that the domain name was confusingly similar to the trademark ZAARLY owned by the Complainant, the Registrant had no legitimate interest in the domain name in question and that the domain name was registered by him in bad faith to make wrongful gains out of the transactions. The domain name <ZAARLY.XXX> stood blocked by request of the Complainant as per the order of the Panel in this matter.

On 13th May, 2011, the Registrant registered the domain name <ZAARLY.IN>. The webpage does not contain any content. On becoming aware of the domain name registration, the Complainant, through its agents in the United States, communicated with the Registrant via email asking him to transfer the domain name to the Complainant in exchange for a reimbursement of costs. The Registrant responded that he has had offers in excess of \$5,000 USD to sell the domain. Unwilling to let a third party dishonestly and in bad faith adopt and use its well-known trade mark/name ZAARLY as a part of its domain name, the Complainant has filed this Complaint under the INDRP.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

- A. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
- B. The Respondent has no rights and legitimate interest in respect of the domain name.
- C. The Respondent has registered and is using his domain name in bad faith.



(b) Respondent

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

Discussions and Findings:

As mentioned above the Respondent has failed till now to give response to the contentions of the Complainant and has not even replied to the submission and 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 fair opportunity has been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted exparte.

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 thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to reply.

Upon perusal of the submissions and documentary evidence of the complainant, it is amply clear and proved that it is the complainant who has the statutory and common law rights in the mark "ZAARLY".

Further, in view of the Arbitrator, 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.

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i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights:

The averments have been made by the Complainant in its complaint that the domain name of the Respondent www.zaarly.in is confusingly similar and identical to his name/mark ZAARLY. The Respondent had applied for the domain name that is identical with the complainant's name and mark ZAARLY.

The complainant is the proprietor of the registered trademark "ZAARLY" in various countries around the globe, including India and its services and the name itself has gained considerable popularity. The Complainant has various domain names registered in various countries in the name of "ZAARLY".

The Complainant Company was incorporated in February, 2011 while the domain name WWW.ZAARLY.IN was registered by the Respondent on 13th May, 2011. Also, at the time of registration, the Complainant's trademark had already acquired the status of a well-known mark. The Respondent can neither show any rights superior to that of the Complainant in the trademark ZAARLY nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name. The only logic of getting an identical mark registered in such a case is in the reason that the Respondent got the mark ZAARLY registered with the intention to trade upon the fame of the Complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of Section 4(b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

In one of the earliest cases, Yahoo! Inc. v. Akash Arora & Anr., a single judge of Delhi High Court granted relief to the Yahoo! Inc. petition seeking injunctive relief against the Defendants who were attempting to use the domain name 'yahooindia.com' for internet related services. Yahoo! Inc., which was the owner of the trade mark "Yahoo" as well as the domain name <yahoo.com> contended that by adopting the deceptively similar domain name, the Defendants had copied the source code of the plaintiff's prior created website.

It is further stated that the complainant is the registered proprietor of the "ZAARLY" trademark in numerous countries in the world including INDIA and 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.

The complainant has established its prior adoption of the mark /name ZAARLY. The complainant has filed sufficient evidence to show that it has trademark rights in the mark ZAARLY. Given the prima facie fact that the Respondent has incorporated the Complainant's trademark in its entirety in the Disputed Domain Name, there is no doubt left that the Disputed Domain Name is identical or confusingly similar to Complainant's registered mark.

The above submission of the Complainant has not been rebutted by 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.

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

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.*



The domain name WWW.ZAARLY.IN was registered by the Respondent on May 13, 2011. At this time, the Complainant had already made use of the mark ZAARLY as a trademark and corporate name in several parts of the world. The complainant had also registered the domain names WWW/.ZAARLY.TV, WWW/.ZAARLY.SE, WWW/.ZAARLY.NU, WWW/.ZAARLY.NL among others and enjoyed considerable reputation in respect of the ZAARLY mark and domain name. Further, the complainant's corporate name comprises the word ZAARLY. Therefore it is obvious that the Respondent was aware of the Complainant's trademark rights in the ZAARLY mark/name.

The Respondent is not and has never been known by the ZAARLY name or by any similar name. The Respondent did not have any active business in the name of ZAARLY. The registration of the disputed domain by the Respondent is thus a typical example of "cyber squatting". The fact that the Respondent's website carries nothing but sponsored links of other companies providing financial services further proves that the Respondent is just a cyber squatter.

Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent that would not constitute an infringement of the Complainant's rights in the trademark. Thus, mere registration of such a well-known trademark would be an evidence of the Respondent's bad faith.

The above submission of the Complainant has not been rebutted by 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)

iii) 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 in bad faith to make unlawful gains out of the transactions. The Registrant has not used, or made any demonstrable preparations to use, the domain name with a bona fide offering or advertisement of goods or services.



The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's Mark to improperly benefit Respondent financially, in violation of applicable trademark and unfair competition laws.

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 Respondent's website.

The above submission of the Complainant has not been rebutted by 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).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

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. <WWW.ZAARLY.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 October 2012.



A.K. Singh

Sole Arbitrator

Date: 10th October, 2012