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# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

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Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL07892921703476R
Purchased by	: SANJAY KUMAR SINGH ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH ARBITRATOR
Second Party	: Not Applicable
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BEFORE SH. SANJAY KUMAR SINGH ARBITRATOR  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

HYTECK SAS FRANCE --- Complainant -

SATISH JAGMADE --- Respondent -

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Hyteck SAS France,  
25 rue de l'écloie de meedeeine,  
75006 Paris, France'.

Through  
Authorized representative,  
M/S Lall&Sethi,  
D-17, South Extension-II,  
New Delhi-110049.

COMPLAINANT

Vs

SatishJamgade  
Kherwadi, Bandra,  
Mumbai  
Maharashtra -400051

RESPONDENT

I. PARTIES

A. THE COMPLAINANT

1. HyteckSAS, head office located at '25 rue de l'écloie de meedeeine, 75006 Paris, France' hereinafter to be referred as 'Complainant') is a corporation duly organized and existing under the laws of the France. It includes its parent company, predecessors, subsidiaries, sister concerns, licensees, affiliates, assigns etc.),
2. The Complainant's authorized representative in the present proceedings are its attorneys, M/S Lall&Sethi, of the address D-17, South Extension-II, New Delhi-110049. The contact details are as follows:

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Telephone no:+91-11-4289-9999, Fax No:+91-11-4289-9900 and E-mail address [rmalik@indiaip.com](mailto:rmalik@indiaip.com) & [azaidi@indiaip.com](mailto:azaidi@indiaip.com)

3. The Complainant has preferred both material & electronic methods for communications in the said proceedings.

**B. THE RESPONDENT/REGISTRANT**

4. The Complainant has submitted that upon the information and belief based upon the WHOIS search database available on the INDRP website etc. the Registrant of the Disputed Domain Name, AROMA-ZONE.IN is 'Domains' with the following contact details:

- Name: SatishJamgade
- Address-Kherwadi, Bandra, Mumbai
- State-Maharashtra
- Postal Code-400051
- Phone- +91.9764681458
- [Email-satish\\_jamgade@outlook.com](mailto:satish_jamgade@outlook.com)
- Country-India

The Complainant has submitted that such belief is based upon information obtained from the databases by

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conducting several database queries, which returned consistent results. The Complainant has submitted the copies of the same attached as **Annexure B**. The Complainant has submitted that the administrative contact details and registrant contact details are the same as that of the Respondent. The Complainant has provided the Registrant ID as CR346342501.

## II. The Domain Name and the Registrar

1. The Complainant has submitted that the present dispute concerns the WWW.AROMA-ZONE.IN domain, which was registered on November 13, 2018 as per the information provided on the Databases.
2. The Complainant has submitted that upon information and belief, the Sponsoring Registrar of the Disputed Domain Name GoDaddy.com, LLC, is duly accredited with the IN Registry and is listed on the website of the IN Registry, reference is made to **Annexure C** which is attached with the complaint. The website of the Sponsoring Registrar is www.godaddy.com, its address in India is of the address 003, Tower 4A, DLF Corporate Park, MG Road, Gurgaon, Haryana-122002 India and they can be contacted at legal@godaddy.com and abuse@godaddy.com

Signed by K. S. L. L.  
12/08/2019

### III. Jurisdiction Basis Proceedings

1. The Complainant has submitted that this dispute is appropriately within the scope of the INDRP and the constituted panel appointed by the INDRP governed by the INDRP and the Rules.
2. The Complainant has submitted that in accordance with Paragraph 4 of the Policy, the Respondent is required to submit a mandatory arbitration proceeding because:
  - a. The Disputed Domain Name is identical to the Complainant's well-known and earlier trade mark AROMA-ZONE which also forms part of its domain names including but not limited to AROMA-ZONE.COM, AROMA-ZONE.ORG. AROMAZONE.COM. CN and AROMA-ZONE.FR (hereinafter collectively known as 'AROMA-ZONE')
  - b. The Respondent has no rights or legitimate interest with respect to the Disputed Domain Name; and
  - c. The Disputed Domain Name was registered and is being used in bad faith.

### IV. About the Complaint:

1. The Complainant has submitted that it specializes inter alia in the design and distribution of

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cosmetic, make-it-yourself cosmetics, aromatherapy and food supplement products under its trade mark AROMA-ZONE (hereinafter also referred to as "well-known and earlier trade mark") which is recognized for revolutionizing its industry by introducing the concept of "Do It Yourself".

2. The Complainant has submitted that the history of its' renowned and flagship brand AROMA-ZONE dates back to as early as 1999, when an informative website, inspired by a family passion for essential oils and plants, was created. Soon thereafter, people from around the world including Mexico, Spain and India gained awareness of the website AROMA-ZONE became one of the first website offering online sales of essential oils. The Complainant has submitted that in 2006, the website developed their do it yourself offer and gave access to over 1,000 cosmetic DIY recipes, together with a rich catalogue of raw materials, containers, utensils, and eventually finished products. The Complainant has submitted the Print outs from the Complainant's corporate website [www.aroma-zone.com](http://www.aroma-zone.com) evidencing the rich history of the Complainant and above-said information has been annexed by the complainant as **Annexure-D**.

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3. The Complainant has submitted that in the year 2005, the Complainant launched the innovative concept of home cosmetics and expanded its product range under well-known and earlier trade mark AROMA-ZONE to creams, shower gels, hair care, makeup etc. After building its success on the Internet, the Complainant began accelerating the opening of boutiques and inaugurated its first concept store in 2009 in Paris. The Complainant has further submitted that subsequently to meet the growing demand, the Complainant went on to open a multisensory Spa in Paris, a boutique in Lyon and currently has more stores in the pipeline. The Complainant has submitted the select prints from the Complainant's website and other third-party website as **Annexure-E**.
4. The Complainant has submitted that as a trade name and trade mark, AROMA-ZONE is used in relation to inter alia an array of beauty products, essential oils, vegetable oils, vegetable butters, gels, plant powders and dry extracts, cosmetics which include fragrances, lip balms, powders, blushes, mascaras, soaps, shower gels, hair care, beauty tools, skin care and personal products. The Complainant's started its business under the well-known and earlier trade

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mark AROMA-ZONE as an informative website which has eventually grown to become a medium wherefrom the Complainant's products are sold and shipped to all the major cities and countries of the world including India. As such, the Complainant's domain AROMA-ZONE.COM is one of the most important commercial assets for the Complainant. The Complainant has submitted Printouts of the Complainant's website [www.aroma-zone.com](http://www.aroma-zone.com) showing the complete list of products available for sale and the shipping locations as **Annexure-F**.

5. The Complainant has submitted that in addition to the above, the Complainant maintains an official blog <http://blog.aroma-zone.com/dedicated> to providing information on aromatherapy including tutorials, recipes etc. The Complainant has submitted that it is accessible by the public anywhere in the world including India. The Complainant has submitted the select prints from the Complainant's blog as **Annexure-G**.

6. The Complainant has submitted that to protect its rights in the well-known and earlier trade mark, the Complainant has filed trade mark applications/obtained registration for the trade mark

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AROMA-ZONE and its formatives in various jurisdiction of the world including India. The details of the registration of the Complainant in India are given herein below:

Trade Mark	Application No.	Date of Application	Class
AROMA ZONE	2858587	December 18, 2013	3, 5, 11, 21, 29, 41, 42 and 44

**Goods and Services:**

**Class 3-** Bleaching preparations and other substances for laundry use; soaps; perfumes, essential oils, cosmetics, hair lotions; dentifrices; depilatories; make-up removing products; lipstick; beauty masks; shaving products; perfumery; pebbles scented with essential oils; preparations of shower gels, massage gels and soaps including essential oils and vegetable oils in their formulation; vegetable oils and essential oils for cosmetic purposes; essential oils.

**Class 5-** Pharmaceutical and veterinary products; sanitary products for medical purposes; dietetic food and substances for medical or veterinary use;

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food for babies; food supplements for humans and animals; materials for dressings; disinfectants; medicated baths, medicinal herbs; plasters; material for dental fillings and dental impressions; products for destroying vermin; fungicides, herbicides, chemical preparations for medical or pharmaceutical use; herbal teas; parasiticides; natural substances for medical purposes.

**Class 11-** Electric diffusers for essential oils.

**Class 21-** Utensils and containers for household or kitchen use: combs and sponges; brushes (except paintbrushes); hand-operated cleaning instruments; bottles; toilet utensils or cases; glasses (receptacles); non-electric diffusers for essential oils.

**Classs 29-** Vegetable oils.

**Class 41-** Training in home-made cosmetics, via online training downloadable recipes and videos. Cosmetics training . workshops and animated training; instructions in the use of essential oils and vegetable oils.

**Class 42-** Evaluations and assessments in the

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fields of science and technology provided by engineers; research and development of new products for others; programming for computers; consultancy relating to computers; styling (industrial design); technical project studies; software development (design); creation and maintenance of websites for others; conversion of computer programs and data (others than physical conversion); conversion of documents from a physical medium to an electronic medium; hosting of websites; vehicle roadworthiness testing; design of interior décor; packaging design services; research in the field of cosmetic and aromatherapy formulations for the other; chemical and bacteriological research and analysis; design and development of software for cosmetic and aromatherapy formulations; hosting websites for others for the sale of essential oils, vegetable oils, cosmetics absolutes and all related products and derivatives.

**Class 44-** Agricultural, horticultural and forestry services; medical services; veterinary services; health and beauty treatments for human beings and

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animals; hospital services; nursing homes; plastic surgery; beauty salons; hairdressing salons; pet grooming; medical aromatherapy services and aromatherapy advice in home-made cosmetics, via online training downloadable recipes and videos, cosmetic training workshops and animated training.

The aforesaid registration is valid and subsisting and by virtue of the same, the Complainant has the exclusive right to use the aforementioned trade mark. Additionally, by virtue of the registration and by virtue of the provisions of Section 31 of the Trade Marks Act, 1999, the registration is the prima facie evidence of its validity. The Complainant has submitted the copy of the statement of protection of the aforesaid registration as **Annexure-H**.

7. The Complainant has submitted that in addition to the above, the Complainant has applied for/attained registrations for its well-known and earlier trade mark AROMA-ZONE and its formatives in several jurisdictions of the world including but not limited to France, United States of America, European Union, Switzerland, Israel, Canada, Iceland, Singapore, Australia, Philippines and New Zealand. The

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Complainant has submitted the copies of the registration certificates obtained from the Trade marks Offices of few of these countries as **Annexure-I**.

8. The Complainant has submitted that over the years, the Complainant has derived vast revenues from the products sold and services provided under their well-known and earlier trade mark AROMA-ZONE and its formatives, which also evidences the extent and success of the Complainant's products and services under the said well-known and earlier trade mark, among its consumers and members of trade. The Complainant has further submitted that with a workforce of more than 120 employees, its turnover has increased on average by 25% per year for the last three years, reaching nearly 660 million in 2017. The has submitted a chart which reflects the Complainant's global revenues from the Fiscal years 2010 to 2017 from the extensive sale of its high quality products and services provided under their well-known and earlier trade mark AROMA-ZONE and its formatives;

Fiscal (June-July)	Period	Total Net Sales in Euros (In Excess of)
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2010	10,017,400
2011	12,793,500
2012	15,687,500
2013	21,080,300
2014	30,508,300
2015	41,950,900
2016	48,679,800
2017	53,916,400

The Complainant has submitted that the above figures have been obtained from the original books of accounts and records maintained by the Complainant in the ordinary course of business. The Complainant has submitted the copies of few India specific sales invoices as **Annexure-J**.

9. The Complainant has submitted that it is the prior adopter and user of the well-known and earlier trade mark AROMA-ZONE and various other AROMA-ZONE formative marks. It has been using the well-known and earlier trade mark AROMA-ZONE since 1999 and operates from top-level brand specific domain names aroma-zone.com, aroma-zone.org etc. in addition to several other country-specific domain names such as aroma-

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zone.fr, aroma-zone.eu, aroma-zone.us. to name only a few. The Complainant's website is accessible by consumers all over the world including in India. The Complainant has submitted a comprehensive list of the domain names owned by the Complaint, which form AROMA-ZONE as a part, and select prints from the Complainant's website as **Annexure-K**. The Complainant's domain name, AROMA-ZONE.COM, was created on December 28, 1999. The Complainant has submitted the printout of the registration details of the domain name AROMA-ZONE.COM from WHOIS as **Annexure-L**.

10. The Complainant has submitted that its website www.aroma-zone.com which forms well-known and earlier trade mark AROMA-ZONE as the main element is one of the frequently visited websites in the world. The Complainant has submitted the printouts from www.alexa.com about the rankings of the Complainant's website as **Annexure-M**.
11. The Complainant has submitted that the Complainant's well-known and earlier trade mark AROMA-ZONE has also been extensively discussed and advertised on various online website, newspapers, blogs and magazines wherein the Complainant's website and products under

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the well-known and earlier trade mark AROMA-ZONE have been highly rated and praised. These articles are accessible to consumers in India as well. The Complainant has submitted the copies of online publications of articles and listings as **Annexure-N.**

12. The Complainant has submitted that the Complainant's products and services under the well-known and earlier trade mark AROMA-ZONE have also received numerous awards and recognition. The Complainant has submitted that in 2012, twelve of the Complainant's products under the well-known and earlier trade mark AROMA-ZONE were elected for Beauty Test Awards. The Complainant has furthermore submitted that its well-known and earlier trade mark AROMA-ZONE was also recognized by the Palamares National Women Equity, 2018. The Complainant has submitted that copies of online publications of articles evidencing the above-said information as **Annexure-O.**

13. The Complainant has submitted that it has extensive presence on social medial and alternative advertising platforms like TWITTER (<https://twitter.com/AromaZone> FR), FACEBOOK ([www.facebook.com/aromazone/](http://www.facebook.com/aromazone/)), INSTAGRAM ([www.instagram.com/aromazone](http://www.instagram.com/aromazone) official/?hl=en),

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PINTEREST ([https://www.pinterest.com/aroma\\_zone](https://www.pinterest.com/aroma_zone)) and a business profile on LINKEDIN ([www.linkedin.com/company/aroma-zone/?original/Subdomain=in](http://www.linkedin.com/company/aroma-zone/?original/Subdomain=in)). The Complainant has submitted that it has an active presence on YOUTUBE ([www.youtube.com/channel/UCoa4NIgeJ4VyYDZ31DGKztQ](http://www.youtube.com/channel/UCoa4NIgeJ4VyYDZ31DGKztQ)) showcasing videos pertaining to its products, reviews and tutorials. The Complainant has submitted the Print outs of the home pages of the aforementioned website as **Annexure-P**.

14. The Complainant has submitted that recognized as a pioneer in e-commerce, its well-known and earlier trade mark AROMA-ZONE has quickly federated an influential online fan community, the AZA-AROMA Addicts, which became the brand's first prescribers. The Complainant also utilizes the tool of "hashtag marketing" and as of date, there are over 70,000 posts with the hashtag "#aromazone" and "#aromazoneaddict" on Instagram alone. The said information and posts are accessible to consumers in worldwide including India. The Complainant has submitted the printouts of the abovementioned social media website evidencing the aforesaid information as **Annexure-Q**.

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15. The Complainant has submitted that by virtue of the extensive use, promotion and enormous business activities throughout the world, as mentioned in the preceding paragraphs, the well-known and earlier trade mark AROMA-ZONE has acquired substantial goodwill and reputation globally, including in India. The Complainant has further submitted that due to the inherent distinctive character, extensive use and acquired recognition, the well-known and earlier trade mark AROMA-ZONE has come to be exclusively associated and identified, in the minds of the public and others connected with the trade, with goods and services originating from the Complainant alone. The Complainant has further submitted that it alone has the exclusive right to use the well-known and earlier trade mark AROMA-ZONE, as part of its domain name, trade mark and/or company name and/or in any other manner whatsoever. The said well-known and earlier trade mark of the complainant merits protection from a third party's act of cyber piracy and/or cybersquatting including that of the Respondent.
16. The Complainant has submitted that the fame and goodwill associates with the well-known and earlier trade mark AROMA-ZONE is also made apparent by the

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fact that a common law search for the Complainant's trade mark AROMA-ZONE on a popular search engine www.google.com as on April 22, 2019 reflects over 3,25,00,000 hits and more importantly, all the results on the initial few search pages, pertain only to the Complainant's AROMA-ZONE domain and brand name. The Complainant has submitted a copy of the first few pages of the search results as **Annexure-R**. The Complainant has submitted that launched in 2000, AROMA-ZONE was as a scientific blog dedicated to aromatherapy and the virtues of essential oils, before turning into a pioneer in e-commerce. The Complainant has submitted that AROMA-ZONE is one of the first e-commerce websites to integrate secure payment and is a popular name in the field of aromatherapy. The domain name AROMA-ZONE.COM is one of the most important commercial assets for the Complainant.

**VI. Factual and Legal Grounds:**

**A. The Respondent's domain name is identical to a name, trade mark or service mark in which the Complainant has rights:**

1. The Complainant has submitted that based upon information and belief, the respondent registered the

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Disputed Domain Name on November 13, 2018. An extract of the Databases where the creation date is mentioned has been annexed by complainant.

II. The Complainant has submitted that the Disputed Domain Name, AROMA-ZONE.IN, is identical to the well-known and earlier trade mark AROMA-ZONE and domain name AROMA-ZONE.COM of the Complainant inasmuch as the trade mark AROMA-ZONE is subsumed in its entirety in the Disputed Domain Name. AROMA-ZONE is enriched in the minds of the members of trade and public and the same forms a prominent part of the Disputed Domain Name. The Complainant has relied on **EPSON Europe BV v. M31 Internet Palma, S.L.** Case No.D2005-0604 (if the disputed domain name did not include the trade mark EPSON, Its significance and importance would have been completely different in the sense that it would not specifically relate to Complainant or its products).

29. The Complainant has submitted that in addition, at the time when the respondent registered the Disputed Domain Name, the trade mark AROMA\_ZONE was already registered in India and owing to the reasons aforementioned, the same was liable to be protected as a well-known trade mark as defined under section 2

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(1) (zg) of the Trade Marks Act, 1999, which merits enhanced protection. The Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to complainant's rights, goodwill and reputation in the well-known and earlier trade mark AROMA-ZONE as has been established by way of documentary evidence being filed with the present complaint.

III. The complainant has submitted that the first condition, that respondent's domain name is identical/ virtually identical to a name, trade mark or service mark in which the complainant has rights, as per Paragraph 4 (i) of the Policy, has been satisfied.

**B. The respondent has no rights or legitimate interest in respect of the Disputed Domain Name;**

I. The Complainant has submitted that its well-known and earlier trade mark AROMA-ZONE being highly distinctive, there can be no plausible justification for the adoption of the Disputed Domain Name. The complainant has further submitted that such adoption and use of the Disputed Domain Name creates a likelihood of confusion and deception amongst the members of trade and public that the goods or

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services from the website under the Disputed Domain Name originate from the Complainant, which is not the case. The complainant has submitted that such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the well-known and earlier trade mark AROMA-ZONE of the Complainant.

- II. The Complainant has submitted that it is pertinent to mention that the respondent herein had itself approached the complainant vide email dated November, 13, 2018 wherein the Respondent made an offer to sell the Disputed Domain Name to the Complainant on the pretext that the same will help the Complainant increase traffic on its website and protect its brand name. The Complainant has further submitted that the contents of the email also make it clear that the Respondent was fully aware of the Complainant's business and propriety as well as the detail of domain names under ownership of the Complainant. The Complainant has submitted a copy of the redacted version of the email correspondence has been annexed by complainant as **Annexure-S**.

- III. The Complainant has submitted that the Respondent is not affiliated with complainant in any way nor is the Respondent licensed to use the well-known and earlier

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trademark AROMA AROMA-ZONE of the Complainant. The Respondent is not an authorized vendor, supplier, distributor or customer relations agent for Complainant's goods or service. The Complainant has further submitted that the Respondents has never been legitimately recognized as AROMA-ZONE, which forms an imperative part of the Disputed Domain Name. The Complainant has relied on Broadcom Corp. V. Ibecom PLC. FA FA0411000361190 (finding no rights or legitimate interests where there was nothing in the record to indicate that Respondent was commonly known by the domain name). The Complainant has relied on Inc. V. Yi FA0301000139720 (finding that the WHO IS information, and its failure to imply that Respondent is commonly known by the disputed domain name, is a factor in determining that policy 4(c) (ii) does not apply). The Complainant has submitted copies of the aforementioned orders as **Annexure-T**.

34. The Complainant has submitted that it is difficult to conceive that the Respondent did not know of Complainant's well-known and earlier trade mark AROMA-ZONE when Respondent registered the Disputed Domain Name. The Manner illegal adoption and misuse of the Complaint's well-known and earlier trade mark,

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is discussed further in 'Clause C' below. The Respondent is knowingly, with intent of commercial gain, trying to mislead and divert the consumers for the Complainant to its website. Further the Respondent has registered the Disputed Domain Name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant for valuable consideration. The Respondent merely wants monetary gains from such adoption of domain name. Such adoption and use of the Disputed Domain Name is likely to tarnish the well-known and earlier trade mark of the Complainant. Therefore, the Respondent does not have and/or cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered to make unlawful monetary gains.

35. The Complainant has submitted that accordingly, the second condition, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (ii) of the policy has been satisfied.

C. The domain name(s) was registered and is being used is bad faith.

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- I. The Complainant has relied on the bad faith of the Respondent in registering the Disputed Domain Name can be simply established from the fact that the Respondent has registered the Disputed Domain Name by adopting the well-known and earlier trade mark AROMA-ZONE of the Complainant in its entirety. The Respondent's illegitimate interest become further discernible owing to the fact that the Respondent had itself approached the Complainant via email offering to sell the Disputed Domain Name to the Complainant on the pretext that the same will help the Complainant increase traffic on its website and protect its brand name. The Contents of the referenced email also make it clear that the Respondent was fully aware of the Complainant's business and propriety as well as the details of domain names under ownership of the Complainant. In any case, the trade mark AROMA-ZONE of the Complainant is so well-known that it cannot be considered that the Respondent was not aware of the same at the time of its adoption. The Complainant has relied on **Victoria's Secret Stores Brand Mgmt., Inc. V. Michael Bach, FA 1426668** (Although Complainant has not submitted evidence indicating actual knowledge by

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Respondent of its rights in the trade mark, the Panel finds that, due to the fame of Complainant's [VICTORIA'S SECRET] mark, Respondent had actual notice at the time of the domain name registration and therefore registered the domain name in bad faith under policy 4(a)(iii) and **Amazon.com Inc. V. Kurothov, Case No.D2002-0516** (Respondent evidently is familiar with the sphere of Internet-based commerce. In that sphere the Complainant's trade mark AMAZON.COM is so well known, being practically a euphemism for an Internet bookstore (among other things), that it is inconceivable Respondent was unaware of the trade mark, its connotations and its commercial attractiveness). The complainant has annexed copies of the aforementioned orders as **Annexure-U**.

II. It is clear from the submissions made hereinabove, that the Respondent was well aware of the goodwill and reputation of the Complainant's well-known and earlier trade mark AROMA-ZONE at the time of adoption of the Disputed Domain Name, and has registered the same only for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant for valuable consideration.

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III. The Complainant has relied on **Entrepreneur Media, Inc. V. Smith** 279 F.3d 1135, 1148 (Where an alleged infringer chooses a mark he knows to be similar to another one can infer an intent to confuse) and **Twitter, Inc. V. Ozkan, WIPO D2014-0469** (Under the circumstances, the Panel does not hesitate in ruling that Respondent registered the disputed domain name in bad faith. Complainant's trade mark is famous, and there are few conceivable good faith uses for the disputed domain name by others. The Panel infers that Respondent knew of Complainant's trademarks and Respondent registered its confusingly similar domain name in an attempt to draw Internet users to its own website). The Complainant has relied on **Crocs, Inc. V. Chustz**, FA0706001002536 (finding bad faith where Respondent's use of Complainant's mark in its domain was "capitalizing on the illusion of direct affiliation with Complainant's business and goodwill) and **Microsoft Corp. V. ABK et al.**, FA1211001473573 (Respondent is also disrupting Complainant's business by causing the public to associate Complainant's [sic] with Respondent's malware warnings, potentially malicious download links, and survey/offer schemes that contain no privacy policies and lack reliable

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contact information). The registration of the Disputed Domain Name by the Respondent with actual knowledge of Complainant's rights is evidence of bad faith registration.

- IV. The Complainant has submitted that the adoption of the aforementioned Disputed Domain Name by the Respondent is solely for attracting online traffic and then offering for sale. This only shows the malafide intention of the Respondent to wrongfully gain monetary benefits at the cost of the goodwill and reputation of the Complainant's well-known and earlier trade mark AROMA-ZONE. Such acts constitute misrepresentation to the members of trade and public, with a view to mislead them into believing that the Respondent is affiliated with the Complainant. Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public.
- V. The Complainant has submitted that the activities of the Respondent rise to the level of a bad faith usurpation of the recognition of fame of Complainant's well-known and earlier trade mark AROMA-ZONE to improperly benefit the Respondent financially, in violation of applicable trade mark

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and unfair competition laws. The Complainant has submitted that these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the policy under paragraph 6 which promulgates that bad faith can be found where there is evidence of;

- a. The Complainant has submitted that Circumstances indicating that Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name; or
- b. The Complainant has submitted that Respondent has registered the domain name in order to prevent name in order to prevent the owner of the trade mark or service from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct.

The complainant has prayed for the transfer of the domain name

**Arbitral proceedings & AWARD:**

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

*Sanjay K. Dyl.*  
12/08/2019



2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "WWW.AROMA-ZONE.IN".
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has stated in his complaint that the respondent has no legitimate right or interests in the disputed domain name. The complainant further submitted that the respondent's Domain name "WWW.AROMA-ZONE.IN" is confusingly similar to complainant's highly successful internet sites AROMA-ZONE.COM, AROMA-ZONE.ORG. AROMAZONE.COM. CN and AROMA-ZONE.FR collectively known as 'AROMA-ZONE'.
7. The complainant as such has prayed for an award in the above matter for transfer of the domain name "WWW.AROMA-ZONE.IN" in favour of the complainant.
8. On 04-06-2019 I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.

*Singh* per Lgh.  
12/08/2019

9. On 15-06-2019I again served notice and informed the respondent to submit his reply and documents in his support.

However, the respondent has neither submitted his reply nor filed any documents in his support.

10. In the facts and circumstance stated above the award is hereby passed ex parte on the merits of the complaint and as per law of the land.

**OPINION & FINDING:**

The para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

**TYPES OF DISPUTES**

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

- "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."

*Sanjay Kumar Singh*  
12/08/2019

The para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

6. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- "i) Circumstances indicating that the Registrant has registered or 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; or
- ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a

*Sanjay van Singh.*  
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corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

The para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

7. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4

(ii):

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12/08/2019

- "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 bonafide offering of goods or services;
- ii) the Registrants (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 other fact, which is to be dealt with before going into merit is, that, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present

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controversy, in so far as they do not conflict with INDRP.

8. OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in the above referred case, 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.

Thus conclusion is that domain name and trademark, which may be used in different manner and different

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business or field, or sphere can still be confusingly similar or identical.

Thus the conclusion is that the domain name of the respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many above Indian case and referred cases JT 2004(5) SC 541 and 2004(5) SCC 287. The complainant has made submission that he has legitimate trademark in India, he is using trademark for many years.

Thus the conclusion is that the domain name "WWW.AROMA-ZONE.IN" is identical and confusingly similar to the trademark of complainant 'AROMA-ZONE' and the complainant has established that he has right in the trademark.

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B) Whether the respondent has no right or legitimate interest in the domain name got registered by him:

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

*Saugy K. Singh*  
12/08/2019

The respondent on other hand has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

Whether the respondent's domain name has been registered or is being used in bad faith:

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant.

Keeping in view above facts and circumstances and the case laws relied upon by the complainant it is thus clear that the respondent has registered the disputed domain name and in spite of notices, he has neither come forward to submit any response to the complaint of the complainant nor has provided any evidence in its support.

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Thus the conclusion is that the respondent has got registered his domain name "WWW.AROMA-ZONE.IN" in bad faith.

RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "WWW.AROMA-ZONE.IN" to him, as complainant has established bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.

No order as to costs.

Delhi

Date: 12-08-2019.

*Sanjay Kr Singh*  
(Sanjay Kumar Singh)  
Arbitrator