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17.5.2013

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J. NELSON
STAMP VENDOR
L. No. 13651/E V/98
HIGH COURT CAMPUS
CHENNAI 104

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 08th May 2013

AutoZone Parts, Inc.
Memphis, Tennessee 38101, USA

... Complainant

Versus

GaoGou
Yerect International Limited
Toronto, Canada

... Respondent

Sridharan

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Complainant

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**GaoGou
Yerect International Limited
Toronto, Canada**

...

Respondent

1. The Parties

- 1.1 The complainant **AutoZone Parts, Inc.** is an entity organised and existing under the laws of United States of America having its registered office at P.O. Box 2198, Dept. 8074 Memphis, Tennessee 38101 United States of America represented by Suzanne Werner of Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424, United States of America.
- 1.2 Respondent is GaoGou of Yerect International Limited at 175 Bloor Street, East Suite 1100 South Tower, Toronto, Canada M4W 3R8.

The Domain Name and Registrar

- 1.3 The disputed domain name autozone.in created on 16.04.2012 is registered with Bharat domains d.b.a.Bharat.in (R129-AFIN).

2. Procedural History

- 2.1 On 25th March 2013, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 5th April 2013, I received hardcopy of the Complaint.
- 2.3 On 8th April 2013, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 8th April 2013, I received a soft copy of the Complaint.
- 2.5 On 9th April 2013, I received Respondent's reply.

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2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

- 3.1 AutoZone is one of the largest retailers of automotive parts and accessories in the world. Through licensed affiliates, AutoZone owns and operates more than 5,000 AUTOZONE branded retail stores in North and South America. AutoZone also sells automotive parts and accessories around the world through its website located at the domain name <autozone.com>. Through this site, Internet users worldwide can browse and purchase automotive parts and accessories, including a wide selection of AUTOZONE branded products.
- 3.2 Since 1987, Complainant and its predecessors have continuously and exclusively used the service mark and trademark AUTOZONE in connection with the sale of automotive parts and accessories. Complainant owns trademark and service mark registrations for its AUTOZONE mark in more than 40 countries around the world, including Canada and India. (Exhibits C and D.) Each of these registrations is valid and subsisting in law, and was duly and lawfully issued.
- 3.3 Complainant has spent millions of dollars over the years promoting and marketing its goods and services under the AUTOZONE mark. For example, for years AutoZone has engaged in substantial television advertising, including on some of the most popular television networks and cable channels in North America, including ABC, CBS, FOX, NBC, SPEED, SPIKE, and the DIY Network. Each of these networks is broadcast in Toronto, where the respondent is located. A true and correct print-out of the channel line-up for Bell Canada, one of the largest satellite television providers in Toronto, is attached at Exhibit E. In April and May 2008, AutoZone had permanent advertising at a soccer stadium in Mexico City that resulted in coverage on Univision, Telefutera, and Galavision, with more than 12 million viewers worldwide. AutoZone's television commercials have also appeared during sporting events, including football and basketball games, and professional sporting events, including basketball, baseball, soccer, and boxing matches.
- 3.4 On the Internet, AutoZone advertises through its own website, located at <autozone.com>, as well as third party websites, such as the websites of NASCAR, UFC, and WWE. From 2010 through August 2011, AutoZone recorded approximately 900 million impressions from its digital advertising worldwide, with more than 5.3 million impressions in Canada. In 2012, AutoZone recorded more than 91 million unique visitors to its website, including more than 970,000 from Canada and more than 75,000 from India. A true and correct copy of AutoZone's 2012 website traffic data from its service provider is attached at Exhibit F. Since 2002, the total number of hits to its website from Canada is approximately 4.2 million, and the total number from India is approximately 200,000. (Exhibit F.) AutoZone's advertising efforts have resulted in substantial sales of products to consumers throughout North America and in numerous other countries around the world.
- 3.5 As a result of AutoZone's significant promotional and marketing efforts, the AUTOZONE mark is famous in North America and beyond and exclusively identifies AutoZone and its goods and services.
- 3.6 Respondent is located in Toronto, Canada. Without AutoZone's knowledge or consent, Respondent registered the disputed domain name <autozone.in> on April 16, 2012 through Bharat Domains d.b.a. Bharat.in, an accredited and authorized registrar of .IN domain names. (Exhibit B.) As of the date of this Complaint, the price to register a domain

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name through Bharat Domains d.b.a. Bharat.in is \$17.99. A true and correct copy of the pricing for Bharat Domains d.b.a. Bharat.in domains as of the date of this Complaint is attached at Exhibit G.

- 3.7 Respondent is using the disputed domain name <autozone.in> as the address for a website that consists of sponsored advertisements with links to third parties. These advertisements include advertisements for direct competitors of the Complainant, including Advance Auto Parts, Pep Boys, and O'Reilly Auto Parts. A true and correct print-out of the single page website located at disputed domain name <autozone.in> is attached at Exhibit H. Respondent generates revenue through Google's AdSense Program by placing these sponsored advertisements on its website.
- 3.8 On October 26, 2012, Complainant's counsel sent a cease and desist notice to Respondent, objecting to Respondent's registration and use of the disputed domain name <autozone.in>. Counsel requested the Respondent to transfer the disputed domain name <autozone.in> to the Complainant. That same day, counsel for the Complainant received an e-mail response from Respondent in which Respondent offered to sell the disputed domain name <autozone.in> for \$1,890. On October 29, 2012, counsel for the Complainant declined Respondent's offer and stated that Complainant does not, as a general practice, pay third parties for the transfer of infringing domain names. Nevertheless, in an effort to resolve the matter amicably and without the need for incurring the expense of this proceeding, Complainant offered to pay Respondent \$150 for transfer of the disputed domain name <autozone.in> to the Complainant.
- 3.9 On October 30, 2012, Respondent sent an email to counsel for the Complainant rejecting the Complainant's \$150 offer and making a counteroffer of \$1,690. That same day, counsel for the Complainant responded and declined the counteroffer. Counsel made a final offer of \$200 for transfer of the disputed domain name <autozone.in> to the Complainant. Respondent rejected that offer on October 31, 2012. True and correct copies of the correspondence between Parties are attached at Exhibit J.

B Respondent

- 3.10 The Respondent has not said anything in his reply about his activities, how he adopted the disputed domain name. The Reply is very short and will be discussed below.

4. Parties Contentions

A Complainant

- 4.1 Complainant owns valid and enforceable rights in the AUTOZONE mark by virtue of its longstanding use and registration of the mark in the United States, Canada, India, and numerous other countries around the world.
- 4.2 Consumers who see the disputed domain name <autozone.in> are certain to associate it with the Complainant because it includes the AUTOZONE mark in its entirety. The only distinction between the disputed domain name <autozone.in> and the AUTOZONE mark is the addition of the .in top-level domain. However, the top-level domain is irrelevant to the inquiry of whether the domain name is confusingly similar to Complainant's trade mark AutoZone.
- 4.3 Complainant has engaged in substantial advertising, promotion and use of the AUTOZONE mark throughout North America and beyond for more than twenty years, and owns numerous registrations for its mark around the world. It is therefore inconceivable that

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Respondent could have registered the disputed domain name <[autozone.in](#)> without knowledge of Complainant and its mark AutoZone and without intent to cause confusion between the disputed domain name and AutoZone mark of the Complainant.

- 4.4 AutoZone is not the Respondent's personal name, and Complainant has found no evidence that Respondent has either used the AUTOZONE mark in connection with any legitimate business enterprise or that it owns any registrations anywhere in the world for the mark. Respondent also has no connection or affiliation with the Complainant, nor has it at any time received from Complainant a license or consent, express or implied, to use the AUTOZONE mark in domain name or in any other manner.
- 4.5 Upon information and belief, Respondent is a cyber-pirate who registers and sells for a profit domain names that are confusingly similar to the marks of others. Respondent currently owns registrations for a number of domain names in the .in TLD that incorporate the well-known marks of others, including <mgmresorts.in>, <samsungapps.in>, <diorhomme.in>, <maytag.co.in>, <kellog.co.in> and <sikkens.co.in>. True and correct copies of the WHOIS records for <mgmresorts.in>, <samsungapps.in>, <diorhomme.in>, <maytag.co.in>, <kellog.co.in> and <sikkens.co.in>. An INDRP panel recently found that Respondent's registration and use of the <christianlouboutin.co.in> domain name for a website with links to third party sites, including sites on which footwear was sold, constituted bad faith.
- 4.6 Respondent's registration and use of the disputed domain name <[autozone.in](#)> is a blatant attempt to benefit from the longstanding goodwill and fame associated with the AUTOZONE mark of the Complainant. Respondent's use of the disputed domain name <[autozone.in](#)> to display pay-per-click links, including those to Complainant's direct competitors, is an attempt to profit from consumer confusion and trade on the AUTOZONE mark. Such commercial use of the AUTOZONE mark does not give rise to any bona fide rights or interest in the disputed domain name <[autozone.in](#)> for Respondent.
- 4.7 Upon information and belief, Respondent has never used the disputed domain name <[autozone.in](#)> in connection with any bona fide offering of goods and services.
- 4.8 The INDRP Policy includes three circumstances that constitute evidence of registration or use of a domain name in bad faith. These three circumstances are not exhaustive, and the Arbitrator of this dispute may consider other circumstances which support a finding that the Respondent acted in bad faith.
- 4.9 Here, Respondent has violated the INDRP Policy in all three ways. With regard to INDRP Policy ¶ 6(i), Respondent has registered or acquired the disputed domain name <[autozone.in](#)> primarily for the purpose of selling, renting, or otherwise transferring it to Complainant for an amount in excess of Respondent's out-of-pocket costs directly related to the disputed domain name <[autozone.in](#)>, as shown by Respondent's various offers to sell the disputed domain name <[autozone.in](#)> to the Complainant for \$1,690 or more – an amount that is more than 80 times Respondent's legitimate out-of-pocket costs for the disputed domain name <[autozone.in](#)>.
- 4.10 With regard to INDRP Policy ¶ 6(ii), Respondent has registered the disputed domain name <[autozone.in](#)> to prevent Complainant from reflecting the mark in a corresponding domain name and has engaged in a pattern of such conduct. Respondent's registration is blocking Complainant from registering its mark in the .in TLD, and Respondent is refusing to transfer the disputed domain name <[autozone.in](#)> unless Complainant ransoms the name from Respondent. As set forth above, Respondent has engaged in a pattern of registering famous marks that block the trademark owners from securing appropriate registrations for their marks in the .in TLD, including the owners of the well-known marks.

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- 4.11 Indeed, Respondent even admitted to this pattern of conduct when it stated "[s]o far, at least 90 multinational companies have purchased our domain names, but no price under 1500 USD." This admission clearly shows that Respondent is a habitual cyber-squatter, and such action constitutes bad faith registration and use of the disputed domain name <autozone.in>.
- 4.12 Finally, with regard to INDRP Policy ¶ 6(iii), Respondent has intentionally attempted to attract internet users to Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location. Respondent has no association with the Complainant, and yet Respondent is capturing internet traffic meant for Complainant and is redirecting that traffic to unrelated websites for Respondent's own financial gain. These sites include the sites of a number of Complainant's direct competitors, including Advance Auto Parts, Pep Boys, and O'Reilly Auto Parts. Such use of the AUTOZONE mark in the disputed domain name <autozone.in> supports a finding of bad faith registration and use in violation of the INDRP Policy.

B. Respondent

- 4.13 Respondent has stated in his reply the following.
- a) The Complainant has no trademark or service mark in India.
 - b) AUTOZONE is a common vocabulary, AUTO and ZONE, not a proper noun, so everyone could register it.
 - c) He has not registered or is not using the disputed domain name <autozone.in> with bad faith.

5. Discussion and Findings

- 5.1 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
 - (III) Respondent's domain name has been registered or is being used in bad faith.
- 5.2 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

- 5.3 The Complainant is the proprietor of the mark AUTOZONE. Complainant has been using AUTOZONE as a trade mark continuously since 1987. Complainant has active web site www.autozone.com and internet users from any part of the world including India can browse and purchase automotive parts and accessories, including a wide selection of AUTOZONE branded products. Complainant owns trademark and service mark registrations for its AUTOZONE mark in more than 40 countries around the world, including India. In the United States, the Complainant obtained registration for the mark

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AUTOZONE under Registration No. 1501718 on 23.08.1988. In India, the Complainant has got registration for the mark AUTOZONE under Registration No.838295 registered on 25.01.1999. The Complainant's domain name www.autozone.com was created on 14.12.2010. The disputed domain name <autozone.in> was registered on 16.4.2012. Obviously, the Complainant is the prior adopter of AUTOZONE mark. The above facts have established that the Complainant has common law rights in respect of its AUTOZONE mark.

- 5.4 The Respondent in his reply has not stated what his business is and how long he has been in the said business. He has not given any reason for his adoption of the disputed domain name. Respondent simply contended that the complainant's mark AUTOZONE is a common word, a combination of commonly used expressions AUTO and ZONE. Complainant has no trade mark or service in India. We have seen above that the complainant has registration for the mark AUTOZONE in India and other parts of the world. Respondent's contention that AUTOZONE is a mere combination of very common expressions AUTO and ZONE and is descriptive have no force because Respondent has failed to come out with any reason for the adoption of the disputed domain name containing the mark AUTOZONE of the Complainant. Therefore, I reject the contention of the Respondent.
- 5.5 The Complainant's AUTOZONE mark is famous and well known throughout the world including India. It is clearly seen that the disputed domain name <autozone.in> wholly incorporates the prior AUTOZONE mark of the Complainant. The suffix ".in" is descriptive and is not distinguishing part of the domain name. The specific top-level and /or second-level of a domain name such as ".in" needs to be disregarded when determining the similarity or identity with the Complainant's AUTOZONE mark. The disputed domain name <autozone.in> is similar to the Complainant's domain name www.autozone.com
- 5.6 I, therefore, find that:
- (a) The Complaint has common law and statutory rights in respect of its AUTOZONE mark.
 - (b) The disputed domain name <autozone.in> is:
 - (i) Identical to the Complainant's prior AUTOZONE trade mark, and
 - (ii) Similar to the Complainant's domain name www.autozone.com

Respondent has no rights or legitimate interests in respect of the disputed domain name

- 5.7 It is already seen that:
- (a) The Complainant is the prior adopter and user of the AUTOZONE mark. The Complainant's AUTOZONE mark is well known in many countries across the globe including India.
 - (b) The Complainant's AUTOZONE mark was adopted in the year 1987. The mark AUTOZONE was registered in India in 1999. The Complainant's domain name www.autozone.com was created on 14.12.2010. The disputed domain name <autozone.in> was registered on 16.4.2012.
- 5.8 Respondent did not register the disputed domain name until 16.04.2012. Complainant has adopted and used the mark AUTOZONE and a domain name containing the mark AUTOZONE before Respondent registered the disputed domain name <autozone.in>. It is

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unlikely that the Respondent was unaware of Complainant's existence of trademark and domain name rights before registering the disputed domain name <[autozone.in](#)>.

- 5.9 I visited the web site of the Respondent under the disputed domain name <[autozone.in](#)>. In the home page, at the top left side prominently appears the disputed domain <[autozone.in](#)> with a link "enquire about this domain name". A click on the link leads you to another window wherein the visitor is prompted to submit his offer for the purchase of the disputed domain name. The home page gives links to web sites of others including the competitors of the Complainant. It is obvious that the Respondent never intended to use the disputed domain name <[autozone.in](#)> in connection with a bona fide offering of goods or services.
- 5.10 Respondent in his reply has not come forward with any reason for his adoption of the disputed domain name.
- 5.11 In the absence of any detailed submission from the Respondent, I accept the argument of the Complainant that:
- (a) AutoZone is not the Respondent's personal name, and Complainant has found no evidence that Respondent has either used the AUTOZONE mark in connection with any legitimate business enterprise or that it owns any registrations anywhere in the world for the mark. Respondent also has no connection or affiliation with the Complainant, nor has it at any time received from Complainant a license or consent, express or implied, to use the AUTOZONE mark in domain name or in any other manner.
 - (b) Respondent is a cyber-pirate who registers and sells for a profit domain names that are confusingly similar to the marks of others. Respondent currently owns registrations for a number of domain names in the .in TLD that incorporate the well-known marks of others, including <[mgmresorts.in](#)>, <[samsungapps.in](#)>, <[diorhomme.in](#)>, <[maytag.co.in](#)>, <[kellog.co.in](#)> and <[sikkens.co.in](#)>. True and correct copies of the WHOIS records for <[mgmresorts.in](#)>, <[samsungapps.in](#)>, <[diorhomme.in](#)>, <[maytag.co.in](#)>, <[kellog.co.in](#)> and <[sikkens.co.in](#)>.
 - (c) An INDRP panel recently found that Respondent's registration and use of the <[christianlouboutin.co.in](#)> domain name for a website with links to third party sites, including sites on which footwear was sold, constituted bad faith.
 - (d) Respondent's registration and use of the disputed domain name <[autozone.in](#)> is a blatant attempt to benefit from the longstanding goodwill and fame associated with the AUTOZONE mark of the Complainant.
 - (e) Respondent's use of the disputed domain name <[autozone.in](#)> to display pay-per-click links, including those to Complainant's direct competitors, is an attempt to profit from consumer confusion and trade on the AUTOZONE mark. Such commercial use of the AUTOZONE mark does not give rise to any bona fide rights or interest in the disputed domain name <[autozone.in](#)> for Respondent.
 - (f) Respondent has never used the disputed domain name <[autozone.in](#)> in connection with any bona fide offering of goods and services.
- 5.12 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <[autozone.in](#)>.

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

- 5.13 The Complainant is the proprietor of the mark AUTOZONE. Complainant has been using AUTOZONE as a trade mark and trading style continuously since 1987. Complainant has active web site www.autozone.com and internet users from any part of the world including India can browse and purchase automotive parts and accessories, including a wide selection of AUTOZONE branded products. Complainant owns trademark and service mark registrations for its AUTOZONE mark in more than 40 countries around the world, including India. In the United States, the Complainant obtained registration for the mark AUTOZONE under Registration No. 1501718 on 23.08.1988. In India, the Complainant has got registration for the mark AUTOZONE under Registration No.838295 registered on 25.01.1999. The Complainant's domain name www.autozone.com was created on 14.12.2010. The disputed domain name <autozone.in> was registered on 16.4.2012. Obviously, Complainant's rights in the AUTOZONE mark pre-dates Respondent's registration of the disputed domain name <autozone.in>. The Respondent could not have ignored, rather actually influenced by, the well-known AUTOZONE marks of the Complainant at the time he acquired the disputed domain name <autozone.in>.
- 5.14 As seen above, Respondent is currently holding the disputed domain name <autozone.in> primarily for sale and gives links to other web sites of third parties and not for any other purpose. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <autozone.in> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered mark AUTOZONE.
- 5.15 On October 26, 2012, Complainant's counsel sent a cease and desist notice to Respondent, objecting to Respondent's registration and use of the disputed domain name <autozone.in>. Counsel requested the Respondent to transfer the disputed domain name <autozone.in> to the Complainant. That same day, counsel for the Complainant received an e-mail response from Respondent in which Respondent offered to sell the disputed domain name <autozone.in> for \$1,890. On October 29, 2012, counsel for the Complainant declined Respondent's offer and stated that Complainant does not, as a general practice, pay third parties for the transfer of infringing domain names. Nevertheless, in an effort to resolve the matter amicably and without the need for incurring the expense of this proceeding, Complainant offered to pay Respondent \$150 for transfer of the disputed domain name <autozone.in> to the Complainant.
- 5.16 On October 30, 2012, Respondent sent an email to counsel for the Complainant rejecting the Complainant's \$150 offer and making a counteroffer of \$1,690. That same day, counsel for the Complainant responded and declined the counteroffer. Counsel made a final offer of \$200 for transfer of the disputed domain name <autozone.in> to the Complainant. Respondent rejected that offer on October 31, 2012.
- 5.17 Respondent has registered the disputed domain name <autozone.in> primarily for the purpose of selling, renting, or otherwise transferring it to Complainant for an amount in excess of Respondent's out-of-pocket costs directly related to the disputed domain name <autozone.in>, as shown by Respondent's various offers to sell the disputed domain name <autozone.in> to the Complainant for \$1,690 or more – an amount that is more than 80 times Respondent's legitimate out-of-pocket costs for the disputed domain name <autozone.in>.
- 5.18 Respondent has registered the disputed domain name <autozone.in> to prevent Complainant from reflecting the mark in a corresponding domain name and has engaged in a pattern of such conduct. Respondent's registration is blocking Complainant from registering its mark in the .in TLD, and Respondent is refusing to transfer the disputed domain name <autozone.in> unless Complainant ransoms the name from Respondent. As set forth above, Respondent has engaged in a pattern of registering famous marks that

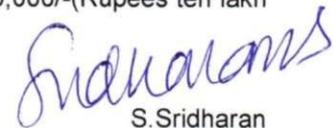
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block the trademark owners from securing appropriate registrations for their marks in the .in TLD, including the owners of the well-known marks.

- 5.19 Respondent even admitted to this pattern of conduct when it stated “[s]o far, at least 90 multinational companies have purchased our domain names, but no price under 1500 USD.” This admission clearly shows that Respondent is a habitual cyber-squatter, and such action constitutes bad faith registration and use of the disputed domain name <[autozone.in](#)>
- 5.20 Respondent has intentionally attempted to attract internet users to Respondent’s website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location. Respondent has no association with the Complainant, and yet Respondent is capturing internet traffic meant for Complainant and is redirecting that traffic to unrelated websites for Respondent’s own financial gain. These sites include the sites of a number of Complainant’s direct competitors, including Advance Auto Parts, Pep Boys, and O’Reilly Auto Parts.
- 5.21 Such use of the AUTOZONE mark in the disputed domain name <[autozone.in](#)> supports a finding of bad faith registration and use in violation of the INDRP Policy.
- 5.22 Thus it is clearly established that Respondent registered the disputed the disputed domain name <[autozone.in](#)> in bad faith.
- 5.23 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <[autozone.in](#)> into any fair/useful purpose. Respondent not even considered it worth responding on merits the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

- 6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.
- 6.2 It is hereby ordered that the disputed domain name <[autozone.in](#)> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/- (Rupees ten lakh only) towards costs of the proceedings.



S.Sridharan
Arbitrator