



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

- Page # 1 -

### e-Stamp

Certificate No.

: IN-DL75066209746647T

Certificate Issued Date

: 23-Apr-2021 02:34 PM

Account Reference

: IMPACC (SH)/ dlshimp17/ DWARKA/ DL-DLH

Unique Doc. Reference

: SUBIN-DLDLSHIMP1750387144532400T

Purchased by

: KAMAL DAVE

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0  
(Zero)

First Party

: KAMAL DAVE

Second Party

: Not Applicable

Stamp Duty Paid By

: KAMAL DAVE

Stamp Duty Amount(Rs.)

: 100  
(One Hundred only)



Please write or type below this line.....



In the matter of the Arbitration Act 1996 as Amended by  
Arbitration & Conciliation (Amendment) Act, 2015;

and

INDRP Rules of Procedure;

and

.IN Domain Name Dispute Resolution Policy (INDRP)

and

- Page # 1 -

#### Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



- Page # 2 -

In the matter of an arbitration between

NJOY, LLC

9977 N. 90th St.

Suite #160

Scottsdale, Arizona 85258

United States

...Complainant

AND

Rajeeva BC

1286, 11th Main, 12th Cross, 1st Stage,

Vijayanagar, Mysuru,

Karnataka-570017,

India

...Respondent

in respect of Disputed Domain Name(s):

[www.njoy.in]

**INDRP Case No: 1382**

**FINAL AWARD**



**THE PARTIES AND THEIR REPRESENTATIVES**

**Claimant :**

NJOY, LLC

9977 N. 90th St.

Suite #160



- Page # 2 -



Scottsdale, Arizona 85258  
United States

Respondent

Rajeeva BC  
1286, 11th Main, 12th Cross, 1st Stage,  
Vijayanagar, Mysuru,  
Karnataka-570017,  
India

B. THE DOMAIN NAMES AND REGISTRAR

1. The claimant has claimed that the disputed domain name [www.njoy.in] is registered with  
Registrar: Endurance Domains Technology LLP,  
Mumbai, Maharashtra
2. However, according the respondent has stated that he had registered with Registrar : Dynadot, LLC.

C. THE ARBITRAL TRIBUNAL – APPOINTMENT

1. As per the records, on 27th May 2021 NIXI sent intimation to the Arbitrator & the parties including the Respondent regarding the appointment of arbitrator to decide the dispute in respect of domain [www.njoy.in].
2. As per the records, I, the undersigned (i.e. Kamal Dave) was appointed as arbitrator by NIXI, in accordance with INDRP Rules of Procedure and .In domain name dispute resolution policy (INDRP), vide appointment order dated 26th May 2021 after I submitted declaration of impartiality and independence at all times with NIXI.





3. The .IN Domain Name Dispute Resolution Policy (INDRP) & Rules of Procedure of INDRP mandates appointment of arbitrator by NIXI, Accordingly clause 5 (b) of INDRP Rules of Procedure provides for it, which reads, *"The .IN Registry shall appoint, an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator"*.

D. PROCEDURAL HISTORY :

1. After my appointment on 27th May 2021 as arbitrator and its intimation by NIXI to me, I passed Procedural Order No 1 on 27th May 2021, thereby directing the complainant & respondent through email at their registered email addresses to file their respective pleadings i.e. complaint & reply and their respective rejoinder & reply to rejoinder and also directed parties to file their respective written arguments as per schedule of dates.
2. However, during the passing of Procedural Order No 1 on 27th May 2021 at 12:53 hrs, a inadvertently typographical error occurred in the date of appointment. Therefore to rectify this technical defect, on 27th May 2021 itself i.e. at 12:59 hrs and I passed corrigendum Procedural Order No 1 with corrected date of appointment.
3. On 05<sup>th</sup> June 2021, I allowed the request of the complainant for grant us additional time till 07<sup>th</sup> June 2021 and 11<sup>th</sup> June 2021 respectively for submitting the scanned copy and physical copy of the affidavit.
4. Pursuant to the Corrigendum Procedural Order No 1, the complainant submitted the complaint and served the thereof to the respondent.
5. On 18<sup>th</sup> June 2021 the respondent submitted scanned copy (PDF) of his reply dated 15<sup>th</sup> June 2021 without supporting affidavit along-with





medical prescription report of COVID-19 positive and stated that he served the copy of reply to the complainant & NIXI.

6. On 24<sup>th</sup> June 2021, the complainant sent email stating that the respondent wishes to amicably settle the matter and the complainant stated that the Complainant reserves its right to furnish a substantive response and rebut all claims/ allegations therein.
7. On 25<sup>th</sup> June 2021, in response to the email of the complainant dated 24<sup>th</sup> June 2021 the respondent sent email reconfirming the reply dated 15<sup>th</sup> June 2021 submitted by him.
8. On 26<sup>th</sup> July 2021, I again directed the parties to act in accordance with the Corrigendum Procedural Order No 1. And also directed the parties to file declaration/ submissions on affidavit to amicably settle the matter as compromised.
9. On 28<sup>th</sup> July 2021, through email the complainant sought clarification, And which I clarified through email dated 28<sup>th</sup> July 2021 itself.
10. On 30<sup>th</sup> July 2021, the respondent submitted scanned copy of its reply on affidavit and the courier receipt of dispatch of the original.
11. On 30<sup>th</sup> July 2021, the complainant submitted through email scanned copy their submission on affidavit along-with compromise deed signed by only the complainant and affidavit of the counsel to file the original. As the compromise deed is signed by the complainant only and does not bear the signatures of the respondent thus cannot be considered to be a valid compromise deed.
12. Accordingly the matter is decided on merits.





E. PROCEEDINGS :

1. The complainant tendered submissions through his complaint and filed scanned copy of affidavit in its support of his complaint on 30<sup>th</sup> June 2021, and the contents of complaint read along-with affidavit in its support are reproduced as follows :

*"...As required by the IN Domain Name Dispute Resolution Policy, the three legal grounds that may be established are substantiated as follows:*

*I. The domain < NJOY.IN> is identical and/or confusingly similar to the Complainant's trade mark NJOY in which the Complainant has rights (Paragraph 4(i) of the INDRP)*

*The NJOY mark has been in continuous and exclusive use—by NJOY, Inc., from 2007 to February 2017, and NJOY, LLC from February 2017 through the present—i.e. a period that began well before the date on which the Respondent registered the domain <NJOY.IN>. By virtue of long standing use and registration, the Complainant's trademark NJOY qualifies to be a well-known mark.*

*The impugned domain name <NJOY.IN> comprises of the Complainant's trade mark NJOY in toto. Therefore, the domain name <NJOY.IN> is visually, phonetically, conceptually, deceptively and confusingly identical to Complainant's corporate and trade name NJOY, LLC, trade mark NJOY and the Complainant's domain <NJOY.COM>.*

*The NJOY mark has been in continuous and exclusive use—by NJOY, Inc., from 2007 to February 2017, and NJOY, LLC from February 2017 through the present—i.e. a period that began well before the date on which the Respondent registered the domain <NJOY.IN>. By virtue of long standing use and registration, the Complainant's trademark NJOY qualifies to be a well-known mark.*

*The impugned domain name <NJOY.IN> comprises of the Complainant's trade mark NJOY in toto. Therefore, the domain name <NJOY.IN> is visually, phonetically, conceptually, deceptively and confusingly identical to Complainant's corporate and trade name NJOY, LLC, trade mark NJOY and the Complainant's domain <NJOY.COM>.*

*Given the identity of the impugned domain name <NJOY.IN> with the Complainant's name and mark NJOY, the same is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with Complainant, when it is not so. It has been held by prior panels deciding under the*





INDRP that there is confusing similarity where the disputed domain name wholly incorporates the

Complainant's trade mark such as Kenneth Cole Productions v. Viswas Infomedia INDRP/093. Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent's domain name <NJOY.IN> from the Complainant's trademark NJOY. This has been held by prior panels in numerous cases, for instance in Dell Inc. v. Mani, Soniya INDRP/753.

Reliance is also placed on a prior decision of this Panel in M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705 wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."

In the present dispute as well, the Complainant has acquired rights in the trade mark NJOY by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain <NJOY.IN> incorporating the Complainant's identical company name, trade mark and trade name NJOY in toto.

This evident identity between the Respondent's domain name and the Complainant's marks, domain names and company name incorporating NJOY is likely to mislead, confuse and deceive the Complainant's customers as well as the general lay public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name. As evidenced in the preceding paragraphs, Complainant's rights over the marks NJOY predate the Respondent's registration of the impugned domain <NJOY.IN> by more than a decade.

The identity between the Complainant's mark NJOY and the domain <NJOY.IN> is grossly exacerbated by the fact that the Respondent was using the domain for a parked





page displaying advertisements/ links to electronic cigarettes and smoking alternatives, which are the primary products in relation to which the Complainant uses the mark NJOY and variants thereof. The identity is further exacerbated by the fact that the Respondent is now using the domain for a parked page displaying redirect links that bring the user to advertisements for smoking cessation and "NJOYS." Therefore, the conditions under the INDRP Paragraph 4(i) stand suitably established.

II. The Respondent has no rights or legitimate interests in respect of the domain name (Paragraph 4 (ii) and Paragraph 7 of the INDRP)

For the facts stated hereinabove, the Respondent has no right or legitimate interest in the domain name <NJOY.IN>. Complainant has not authorized the Respondent at any point of time to register the impugned domain name. Further, the Respondent cannot assert that it is using the domain name in connection with a bona fide offering of goods and services in accordance with Paragraph 7(i) of the INDRP, as it is not operating any website from the impugned domain and is instead using the domain in connection with a parked page hosting commercial/ sponsored links. Such links cannot constitute a bona fide offering of goods and services. Reliance is placed on Case No. INDRP/ 481 L'oreal v. Yerect International Limited.

The Respondent does not have any right or legitimate interest in the name/mark NJOY within the meaning of Paragraph 7 (ii) of the INDRP. The Respondent is not making a legitimate, noncommercial or fair use of the domain name. It appears that the Respondent has deliberately chosen to use the domain name <NJOY.IN>, which is phonetically, visually, conceptually, deceptively and confusingly identical/ similar to the Complainant's trademark NJOY, prior domain name NJOY.COM and corporate name NJOY, LLC so as to suggest a direct connection or affiliation with the Complainant's trademark NJOY and to create a direct affiliation with Complainant and its business when in fact there is none.

Further, such confusion is greatly aggravated by the fact that the Respondent was using the domain <NJOY.IN> in connection with a parked page displaying advertisements/ commercial links/ sponsored content for electronic cigarettes and smoking alternatives which is identical or highly related to the Complainant's area of business under the name/ mark NJOY. Even now, the Respondent is using the impugned domain to display advertisements/ hyperlinks that redirect to third party websites—including smoking cessation websites—and are likely generating pay-per-click revenue for the Respondent.





Accordingly, the Respondent cannot assert that they are currently making a legitimate, non-commercial or fair use of the domain name, in accordance with Paragraph 7 (iii) of the INDRP. In fact, any use of the domain name <NJOY.IN> by the Respondent in relation to any goods and/ or services is likely to create a false association and affiliation with the Complainant, NJOY, LLC and its well-known trade mark NJOY as well as its official website at NJOY.COM. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate, non-commercial or fair use of the domain name in accordance with Paragraph 7 (iii) of the INDRP.

Further, in accordance with paragraph 7(ii) of the INDRP, the WHOIS records for the impugned domain do not indicate that the Respondent is commonly known by the domain name, nor does it appear to have been known as much prior to the date on which Respondent registered the domain name, which appears to only be an attempt to encash upon the value, reputation and goodwill of Complainant's well-known mark NJOY. Accordingly, Respondent is not making a legitimate, non-commercial fair use of the domain name.

Respondent herein registered the impugned domain <NJOY.IN> several years after NJOY, Inc. adopted the trade mark NJOY in relation to their business. Further, Respondent is presently not making any use of the domain with a bona fide offering of goods or services, in fact, the domain is being used in relation to a parked page with no express content and only redirect links being hosted thereon. Additionally, as stated above, the Respondent was earlier using the impugned domain to display links to electronic cigarettes and smoking alternatives, the same category of goods sold by the Complainant under the name/ mark NJOY. In the circumstances of this case the Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 7 (iii) of the INDRP since there is no apparent legitimate justification for the Respondent's registration of the <NJOY.IN> domain name that is visually, phonetically, conceptually, deceptively and confusingly identical to the Complainants' trade name/mark.

Further, the continued ownership of the disputed domain <NJOY.IN> by the Respondent, despite not having any legitimate or fair reason to do so, prevents the Complainant from reflecting their trademark in the subject domain name. In *Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079), it was held that use of the





trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

It is not possible to conceive of any plausible use of the domain name <NJOY.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known trade mark NJOY. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name.

III. The domain name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)

As per paragraph 6(iii) of the INDRP, it is stipulated that a "bad faith" registration and use of a domain name can be established *inter alia* by showing circumstances indicating that the Respondent has registered and was previously using the domain name to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location.

In consideration of the Complainant's longstanding reputation, and the ubiquitous presence of the Complainant's mark NJOY on the Internet, Respondent was, or should have been, aware of the Complainant's trade marks long prior to registering the domain name. In view of the aforesaid, it is submitted that the Respondent had constructive notice of the Complainant's mark NJOY which is registered in India (where the Respondent is situated) and many other jurisdictions around the world. See *Caesars World, Inc. v. Forum LLC* (WIPO Case No. D2005-0517), *HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG vy. Dzianis Zakharenka*, (WIPO Case No. D2015-0640).

Respondent's knowledge of the Complainant's mark NJOY is further evidenced by their erstwhile use of the disputed domain <NJOY.IN> on a parked page showing advertisements/ links to electronic cigarettes and smoking alternatives which are the Complainant's primary product. It is further submitted that the URLs/ hyperlinks currently embedded on the parked page at <NJOY.IN> redirect the internet traffic/ users to third party websites. It is submitted that this redirection of internet traffic is likely generating pay-per-click revenue for the Respondent. The Respondent's intent appears reflective of





*a blatant attempt to ride on the association and goodwill of the Complainant's brand as acquired among the consuming public and thereby drive traffic towards the Respondent's domain and website by misleading, confusing and deceiving Complainant's customers and the general lay public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name and website as hosted thereon.*

*Furthermore, the fact that the mark NJOY has been consistently used by the Complainant, and by NJOY, Inc., before it, and is fanciful/unique in relation to electronic cigarettes and related goods further aggravates the Respondent's bad faith, in as much as, the Respondent is using the identical name/ mark with respect to the impugned domain name <NJOY.IN>. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <NJOY.IN> which incorporates the Complainant's mark NJOY in toto and was earlier displaying links to electronic cigarettes and smoking alternatives— which are the primary products of the Complainant sold and marketed under the mark NJOY—and which now contains links that redirect users to advertisements for smoking cessation. In light of the continuous and exclusive use of the mark NJOY by the Complainant including as part of their trade/ corporate name over many years, this mark has no meaning other than as an identifier of the Complainant. Hence, the Respondent had no reason to adopt an identical name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.*

*Additionally, the fact that the Respondent is currently using the domain in relation to a parked page with no express content and only redirect links being hosted thereon gives the impression that it is a case of passive holding and the same is tantamount to the fact that the Respondent does not hold any legitimate interest in the domain name. Reliance is placed on this panel's decision in Flipkart Online Services Private Limited v. Azeem Ahmed Khan wherein it was held that "parking of domain names incorporating someone else's trademark constitutes bad faith". Reliance is also placed on Instagram, LLC v. Contact Privacy Inc. / Sercan Lider (WIPO Case No. D2019-0419) wherein it was held that "passive holding can be sufficient to find bad faith use'. In another decision in Johnson & Johnson y. Daniel Wistbacka (WIPO Case No. D2017-0709) while discussing the elements constituting bad faith with respect to passive holding of respondent's*





domain name as noted in the landmark case of *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No. D2000 - 0003), it was held that,

*..In particular it seems that the fifth element (i.e., impossibility to conceive of any plausible active use) is actually a conclusion which was made on the base of the preceding four elements and that this fifth element plays a decisive role in determining whether any particular passive holding can be regarded as a "bad faith" use of a domain name in dispute. In the present case like in the above cited case, the Panel cannot conceive of any plausible use of the disputed domain name that would be legitimate, absent an authorization from the Complainant. As the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that an active website connected to the disputed domain name is operated or endorsed by the Complainant, when such is not the case. The Panel accordingly reaches the conclusion that the passive holding of the disputed domain name amounts to use in bad faith given the circumstances of the case.*

*The facts and contentions enumerated above establish that Respondent's domain name registration for <NJOY.IN> is clearly contrary to the provisions of paragraph 4(iii) of the INDRP.*

*In view of the above, Complainant has established that the mark NJOY is distinctive and well-known, and that the Respondent had prior knowledge of the Complainant's aforesaid mark. Owing to the long-established nature of attached to the Complainant's mark NJOY, which is a result of extensive use and promotion in relation to its goods and as part of its trade/ corporate name since many years prior to the creation date of the impugned domain, it is implausible for the Respondent to have registered the domain name for any reason other than to trade off the reputation and goodwill of the Complainant's mark NJOY...."*

2. In response to the complainant filed scanned copy of his reply on affidavit on 30<sup>th</sup> July 2021, same is reproduced as follows

*"...The Respondent humbly submits his second reply as below:*

1. *I am in receipt of the notice and procedural order dated 27 May 2021, and in reply I had made my first reply on 18-06-2021 by means of e-mail since I was unable to make a proper reply on affidavit. I am now making this second reply to comply with the*





legal requirements. However, it is prayed that the contents of my first reply may please be considered and the same is not repeated here for the sake of brevity.

2. At the outset, it is humbly submitted that the Respondent hereby denies / rejects all the claims / allegations made by the Complainant but for those expressly admitted to herein.

3. I submit that I came up with the word 'Njoy' in my mind as a shorter form / hack for 'Enjoy' and registered the domain name 'Njoy.in' on 27 Mar 2015, to be used in the actual meaning of the english word 'enjoy' and for the purpose of hosting a travel related website.

4. I submit that while registering the said domain name, I was neither aware of the complainant's business, nor its brand name and the same was not registered / used in India, and the said name has never been used / advertised in India by the complainant till date.

5. I submit that the name 'Njoy' was genuinely conceived by me and the disputed domain name was not registered in bad faith or for illegitimate gains. I further state that I had no intention to benefit from the Complainant's brand name nor have I benefited from the same in any way.

6. I submit that after receipt of the complaint, I did a cursory search and it has come to my notice that the trademark / word "Njoy" has been owned / used by many other entities / firms in India, including by India's largest corporate house Reliance Industries Limited, which owns the domain name "Njoy.co.in". All these firms have been using the name 'Njoy' for legitimate purposes / activities / businesses allowed by the laws of the land. Hence, the Complainant herein is not exclusively entitled to the disputed domain name Njoy.in, which is specific to India.

7. I further submit that the Complainant is seeking the disputed domain name for illegal / illegitimate purposes of selling / importing / marketing of electronic cigarettes / vaping products which is completely banned in India. Hence, it is not automatically entitled to the said domain name Njoy.in.

8. I submit that the consumption of tobacco in electronic form / vaping is extremely harmful to human health and the Complainant is engaged in this sinful business of damaging human health, particularly of the younger generation, who can easily be attracted / induced and addicted to such harmful products.

9. It is submitted that the promotion of e-cigarettes as safer alternatives to traditional cigarettes is extremely dangerous as it can lead to an increase in the overall number of





smokers with the false perception that it is safer, while actually the e-cigarettes are even more harmful to health than the traditional cigarettes. The contentions of the Complainant in this regard are hereby denied as false and misleading.

10. I submit that although the Complainant may have sought to register the trademark and made an application for the same in the year 2012, the Complainant deliberately chose not to register the domain name "Njoy.in" till 2015 when the Respondent registered the same. Hence, the Complainant had given up on the disputed domain name as not needed.

11. I further submit that the Complainant has not claimed the disputed domain name since the past more than 6 years, presumably since it owns the dot com extension of the same (ie.,NJOY.COM), and also since the business of the Complainant is banned / illegal / illegitimate in India.

12. It is submitted that the Respondent registered the domain name 'Njoy.in' on 27-03-2015, while the trademark was granted to the Complainant on 23-08-2018, which is after a gap of 3.5 years since the date of registration of the disputed domain name by the Respondent. Hence, the registration of the disputed domain name by the Respondent is much prior to the grant of the said trademark in favour of the Complainant.

13. It is submitted that the only relief that the Complainant is entitled to claim is against the alleged misuse of the domain name by the Respondent, and not against the domain name itself, which is the legitimate property of the Respondent herein.

14. It is submitted that towards the end of 2020, the parking of domain name had inadvertently got activated, and the same has already been deactivated, although the links on the parking page were not directed to the Complainant's or its competitors' website. The claim of the Complainant that the Respondent benefitted from the same is false, and is only made to create grounds for claiming the domain name from the Respondent.

15. It is submitted that the claim of the Complainant that the disputed domain name is bound to cause confusion and deception in the minds of the public and mislead them is totally unfounded. The Complainant is presently not operating in India, and the business of the Complainant company is illegal / illegitimate in the country.

16. It is submitted that due to the above reasons, the Respondent is of the opinion that the Complainant cannot automatically claim ownership of the domain name in dispute.





17. It is submitted that I am deeply hurt by the Complainant's allegation of its trademark violation, since the name was genuinely conceived by me and the domain name was registered. I have suffered immensely due to the legal proceedings initiated all of a sudden by the complainant, which was further exacerbated by my health condition since I was just recovering from Covid-19 infection as explained in my first reply earlier.

18. It is submitted however, that in the face of the Complainant's aggressive claims, its ability to engage highly competent lawyers compared to my present situation and further considering the already existing similar trademarks / words, I have no desire to retain the said domain name 'Njoy.in', and I hereby offer to surrender / transfer / delete the said domain name on the following terms and conditions.

19. It is submitted that due to my situation as explained earlier in my first reply, I offer to surrender / delete / return / transfer the domain name in dispute ie., "Njoy.in" to the Registrar / Complainant / any third party, as the Arbitrator may deem fit and order to be transferred.

20. It is humbly submitted that the Respondent has registered and renewed the domain name for a total of 7 years and the registration is valid till 26 March 2022, for which he has incurred time, cost and effort. Hence, the Respondent prays for a refund of the said amounts or any reasonable amount as the Hon'ble Arbitrator may deem appropriate and commensurate. However, the Respondent is willing to forgo the same if the Hon'ble Arbitrator deems otherwise.

21. It is submitted that the said offer of return / transfer of the disputed domain name shall constitute the full settlement of this dispute and provided that the Registrar / Complainant / anybody else shall not have any claim whatsoever against me in future.

22. It is submitted that this reply is necessitated by my present situation as explained above and to draw an immediate conclusion to the dispute and may not be treated as a waiver of my rights to contest the matter should the Complainant wish to proceed with the Complaint / any other claim in any form.

23. I further humbly submit that I fully reserve my right to defend myself against the claims of the Complainant and for damages for the suffering caused to me due to the legal proceedings initiated all of a sudden, should the Complainant choose to proceed further with the present complaint.

24. It is submitted that there is a change in the physical address of the respondent, and the correct address is as written above.





25. It is submitted that since March 2021, the domain is registered with Dynadot and not with Endurance Domains as stated in the complaint.

26. The respondent hereby states that the information submitted above is true to the best of his knowledge, understanding and belief and the same is true.

27. It is therefore most humbly prayed that the Hon'ble Arbitrator may be pleased to order considering this reply and the reply dated 18-06-2021 as the learned Arbitrator deems fit and proper in the interest of justice and equity. ...."

3. The complainant has not filed any response to the reply of the respondent and thus chosen to remain silent on the contentions raised by the respondent except the contention that the respondent wishes to amicably settle the matter. The contents of the email dated 24<sup>th</sup> June 2021 of the complainant is reproduced as follows :

"...Dear Mr. Dave,

We are in receipt of the Respondent's reply dated June 18, 2021 wherein he has agreed, inter alia, to surrender/ transfer the domain NJOY.IN to the Complainant as may be directed.

In view of the Respondent's intention to amicably settle the matter, we are not going into the merits of the Respondent's reply and hereby communicate our agreement to also similarly resolve the matter subject to the Respondent's transfer of the domain NJOY.IN to the Complainant.

Accordingly, as the parties agree to settle the matter amicably, we would humbly request you to kindly pass an appropriate order transferring the domain.

However, in case the INDRP proceedings are resumed, the Complainant reserves its right to furnish a substantive response and rebut all claims/ allegations therein.

Thank you for your consideration.

We look forward to hearing from you.

Kind regards,

Vikrant Rana | Arpit Kalra

Managing Partner | Sr. Associate Advocate..."





4. As per the provisions of the Rules, the complainant was required to prove the three pre-conditions namely :
  - The manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
  - The Respondent should be considered ineligible for rights or legitimate interests in respect of the impugned domain name; and
  - That the impugned domain name is being registered and/ or used in bad faith
5. The complainant alleged the existence of all the three conditions however the respondent categorically denied each and every allegation.
6. The respondent has submitted that although he intended to start a travel related business however, he has not adduced any evidence in this regard.
7. The respondent has categorically denied the allegations that he has parked the domain or that he is earning per-click revenue. And that the parking had inadvertently got activated and has deactivated it.
8. The respondent has submitted that he is not intending to use and intends to surrender the domain name.
9. The respondent has in his submission raised an important query that there Reliance Industries owns registered domain name as <njoy.co.in>. This contention has not been refuted by the complainant. In these circumstances it would be prudent to put a rider/ covenant on the complainant in the form of undertaking/ indemnity bond to be filed with NIXI whereby the complainant should undertake to surrender the domain name <njoy.in> with NIXI in case of any dispute raised by any third party till the disposal of dispute in accordance with law and/ or NIXI rules &






procedure; And the complainant should undertake to indemnify the NIXI and the arbitrator for any cost & consequences arising any proceedings including litigation, arbitration etc.

**F. AWARD**

1. I AWARD AND DIRECT respondent to surrender/ transfer all his rights including administrative rights in respect of the domain name [www.njoy.in] to the National Internet Exchange of India (NIXI).
2. I AWARD AND DIRECT the complainant to withdraw her complaint and all the proceedings against the respondent in respect of domain name [www.njoy.in] in terms of amicable disposal of dispute.
3. I AWARD AND DIRECT the National Internet Exchange of India (NIXI) to transfer the domain name [www.njoy.in] to the complainant after the complainant furnishes undertaking/ indemnity bond with them (NIXI) whereby the complainant should undertake to surrender the domain name <njoy.in> with NIXI in case of any dispute raised by any third party till the disposal of dispute in accordance with law and/ or NIXI rules & procedure; And the complainant should undertake to indemnify the NIXI and the arbitrator for any cost & consequences arising any proceedings including litigation, arbitration etc. .
4. I AWARD AND DIRECT that the proceedings stands concluded and parties to bear their own cost.

This is my FINAL AWARD made and published by me on this 30<sup>th</sup> day of July 2021, at New Delhi, the seat of arbitration.

  
Kamal Dave  
Sole Arbitrator

**KAMAL DAVE**  
Arbitrator  
FCI Arb., FAMINZ (Med / Arb), FMI Arb., BA  
LLB., PGD EDI/e-commerce, PGD IR & PM, DLL  
RZF-222/54, Street No. 31, Sadh Nagar-II,  
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