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Purchased by	: AJAY GUPTA ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AJAY GUPTA ARBITRATOR
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Stamp Duty Paid By	: AJAY GUPTA ARBITRATOR
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**INDRP ARBITRATION CASE NO. 1500**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)**

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

**JD SPORTS FASHION PLC**  
**VERSUS**  
**LITESH SINGH WEBIZZOO TECHNOLOGIES**  
**DISPUTED DOMAIN NAME: "JDSPORTZ.IN"**

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**INDRP ARBITRATION CASE NO.1500**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)**

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR :AJAY GUPTA

**JD SPORTS FASHION PLC**

VERSUS

**Litesh Singh Webizzoo Technologies**

DISPUTED DOMAIN NAME : "JDSPORTZ.IN"



**INDRP ARBITRATION CASE NO.1500**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)**

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

**JD SPORTS FASHION PLC**

Hollinsbrook Way  
Playworth, Bury  
Lancashire BL9 8RR  
United Kingdom

... Complainant


VERSUS

**LITESH SINGH**

Webizzoo Technologies  
M.D. Mukherjee Road  
Khorda, Kolkata-700116 [WEST BENGAL]  
India

... Respondent

Disputed Domain Name: **JDSPORTZ.IN**



## **The Parties**

1. The Complainant JD SPORTS FASHION PLC in this arbitration proceedings is multi brand retailer and distributor of branded sportswear and fashion wear under mark JD/JDSports, which is the Complainant's very trade name and its contact address is Hollinsbrook Way, Playworth Bury, Lancashire BL9 8RR (United Kingdom);
2. The Respondent, in this arbitration proceeding, is, Litesh Singh, Webizzoo Technologies, M.D. Mukherjee Road, Khardha, Kolkata-700116 (WEST BENGAL) – [INDIA], as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

## **The Domain Name and Registrar**

3. The disputed domain name is JDSportsZ.IN The Registrar with which the disputed domain name registered is Godaddy.com LLC (R101-AFIN) Corporate Headquarters 14452 IN Hayden Road Scottsdale AZ 85260 USA

## **Procedural History [Arbitration Proceedings]**

4. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India(NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

The history of this proceeding is as follows :

- 4.1 In accordance with the Rules 2(a) and 4(a), NIXI on 08.02.2022 formally notified the Respondent of the complaint, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under. That the Arbitrator submitted the Statement of Acceptance and Declaration of



Impartiality and Independence dated 08.02.2022 vide mail dated 08.02.2022, as required by NIXI.

- 4.2 That commencing the arbitration proceedings an Arbitration Notice Dated 09.02.2022 was sent to the Respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. As the complainant had not filed the complete details of Respondent, the complainant was directed by NIXI to file the amended copy of complaint which was subsequently filed by the Complainant. This panel vide its mail dated 09.02.2022 directed the Complainant to serve amended copy of the complaint to respondent and also directed to furnish the proof of service to this panel. That complying with the directions of this panel the complainant vide its mail dated 11.02.2022 serve the copy of amended complaint to the respondent and proof of service including courier receipt was also mailed to this panel vide mail dated 11.02.2022. The Respondent on receipt of the Complaint and arbitration notice contacted the complainant vide its mail dated 11.02.2022 with copy to this panel, NIXI and others mentioning therein his contact number and asking complainant to contact him on his phone number 9674247019 for discussion about the domain. That complainant in response to mail dated 11.02.2022 of the Respondent, informed the respondent vide its mail dated 14.02.2022 to contact the Arbitrator for further course of action.
- 4.3 That the Respondent, however, neither contacted this panel nor filed the formal reply of complaint within time period as directed by this panel vide Arbitration Notice Dated 09.02.2022. This panel vide its mail dated 19.02.2022 in the interest of justice once again afforded the last and final opportunity to respondent to file reply of complaint within four days, i.e., 22.02.2022. The respondent, however again failed to file the reply of complaint within the further extended period.
- 4.4 That despite repeated opportunities given by this panel Respondent failed to file the formal reply of the Complaint as directed by this panel. Further, no communication or mail has been received by this panel from Respondent in this matter. The respondent has repeatedly not followed the instructions of this panel hence, the respondent was proceeded ex-parte on 23.02.2022 in accordance with the INDRP Rules and the present complaint is being decided on merits of complaint.

### **The Respondent's Default**

5. The Respondent failed to reply the complaint despite being given repeated opportunities. It is a well established principal that once a Complainant makes a prima-facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "jdsportz.in".
6. The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

*"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."*

7. The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonable available means calculated to achieve actual notice to the Respondent of the complaint.
8. The panel finds that the Respondent has been given fair opportunities to present his case. The Respondent has not followed the repeated instructions of this panel to file the reply of complaint. The 'Rules' paragraph 12 provides that *"In event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to law."* In the circumstances, the panel's decision is based upon the Complainant's assertions, evidences, inferences and merits only as the Respondent has not replied and is proceeded ex parte.

### **Background of the Complainant and its statutory and common law rights Adoption :**

9. The Complainant, in the present arbitration proceedings to support its case, has relied and placed on records documents as Annexures and made the following submissions :

*Angel*

- 9.1 The Complainant submits that the Complainant is a leading multi brand retailer and distributor of branded sportswear and fashion wear. The Complainant popularly known as 'JD SPORTS' was established in 1981 with a single store in the North West of England and has since then evolved as a leading international multichannel retailer of sports, fashion and outdoor brands.
- 9.2 The Complainant submits that 'JD' is the principal trade mark of the Complainant and also forms the dominant part of corporate name of the Complainant. It is further submitted by the complainant that the Complainant has obtained registration for the trade marks JD / JD SPORTS in India and in several other jurisdictions. That the complainant has generated good and valuable reputation and vast amount of good will has accrued to the Complainant in the brand/trade name JD /JD SPORTS through strong digital presence over several years.
- 9.3 The Complainant submits that the Complainant's trademarks JD/JD SPORTS have been derived from the initials of the founders', i.e., David Makin and John Wardell. The Complainant in order to expand the business has pursued an aggressive growth strategy which has led to the business of the Complainant growing organically and through acquisitions with extensive market exposure. At present the Complainant's group of companies operates more than 3300 stores spread over 29 countries around the world. In August 2018, the Complainant opened offshore technology development center in Hyderabad, India to offer its global customers a multichannel retail experience by developing and testing various software applications and systems using web-applications, digital marketing tools, e-commerce applications etc. The Complainant further submitted that information on the Complainant can be accessed on [www.jdsports.co.uk](http://www.jdsports.co.uk), [www.jdsports.com](http://www.jdsports.com) and [www.jdplc.com](http://www.jdplc.com).

**Complainant Submissions about the trademark JD/JD SPORTS:**

10. The Complainant has made the following submissions regarding trade mark registration and domain name and filed records/documents in the form of annexures to support its complaint :
- 10.1 The Complainant submits that the complainant has secured statutory protection for the trade mark JD/JD SPORTS in several jurisdictions such as

Australia, European Union, New Zealand, USA, Malaysia, Singapore etc. and also in India.

- 10.2 The Complainant further submits that the Complainant has devoted an enormous amount of time, effort and energy in promoting and advertising the said marks in the print and online media and the said marks are consequently identified solely with the Complainant. The Complainant has built a strong on-line retail business. Further, several of JD SPORTS products are available on several e-commerce sites.

**Submissions of Complainant about the Respondent and its use of the domain name :**

11. The Complainant submits that the Respondent has adopted and registered the disputed domain name, which is identical to the trade mark and corporate name of the Complainant. Thereby wrongfully, illegally and dishonestly trading upon the reputation of the Complainant. That the Respondent's domain name www.jdsportz.in in question is identical to the Complainant's well known trade mark 'JD' and the trade mark/trade name JD SPORTS. That the Respondent has no claims, rights or legitimate interests in respect of disputed domain name. That the impugned domain name www.jdsportz.in has been registered in bad faith.

**The issues involved in the dispute**

12. The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

**"Types of Disputes**

*Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises :-*

*'The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.*

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

*The disputed domain name has been registered or is/are being used in bad faith.'*

*The above mentioned 3 essential elements of a domain name dispute are being discussed hereunder in the light of the facts and circumstances of this complaint."*

### **Parties Contentions**

**The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

### **Complainant**

13. The Complainant submits that the Respondent's domain name www.jdsportz.in is confusingly similar to the Complainant's trademarks JD/JD SPORTS. The Complainant has overwhelming common law as well as statutory rights in its trade/service marks JD/JD SPORTS. Therefore, the Complainant is the sole legitimate owner of the trade/service mark JD/JD SPORTS.
14. The Complainant submits that Respondent's registration and use of the domain www.jdsportz.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship or approval of the Complainant, when it is not so.
15. The Complainant submits that the distinctive and the dominant element in the Respondent's domain is the word JD/JD SPORTS hence, the domain www.jdsportz.in is confusingly similar to the trade/service mark JD/JD SPORTS in which the Complainant has statutory and common law rights.
16. The Complainant further submitted that the disputed domain name clearly incorporates the famous trademarks JD/ JD SPORTS of the complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard the Complainant relies on the decisions of this Hon'ble NIXI Arbitration and Mediation Centre passed in the case of JD SPORTS FASHION PLC Vs DOUBLE FIST LIMITED INDRP case No. 1167 <jdsports.co.in>.

### **Respondent**

17. The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

## Panel Observations

18. This Panel on pursuing the documents and records submitted by Complainant observe that the Complainant is a multi-brand retailer and distributor of branded sportswear and fashion wear. It is further observed by this panel that the Complainant has common law as well as statutory rights in its trade/service marks JD/JD SPORTS. It is also observed by this panel that the Complainant has successfully secured registrations for the JD/JDSPORTS marks in many countries including India.
19. It is further observed by this panel that the fact that Disputed domain "[www.jdsportz.in](http://www.jdsportz.in)" comprises the Complaint's trademarks "JDSPORTS" in their entirety and has the potential to cause consumer confusion and will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the Complainant and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.
20. This panel therefore is of opinion that disputed domain name "jdsportz.in" being identical/confusingly similar to the trade mark of Complainant will mislead the public and will cause unfair advantage to Respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "JDSPORTS" of the Complainant.

This is pertinent to note that paragraph No.4 of the INDRP policy states that :

*"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises." This is a positive assertion and sentence. Further paragraph 4(a) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of Para 4(a) is upon Complainant. To succeed he must prove them."*

21. It has been proved by the Complainant that it has trademark rights and other rights in the mark "JD & JDSPORTS" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering the trademark "JDSPORTS" in its entirety, the disputed



domain name "jdsportz.in" is confusingly similar to the trade mark of Complainant.

22. It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner and the respondent has miserably failed in following this condition.
23. This Panel therefore, in light of the contentions raised by the Complainant comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.
24. **The Respondent has no rights or legitimate interests in respect of the disputed domain name.**

#### **Complainant**

25. The Complainant submits that the Complainant is the sole legitimate owner of the trade mark JD and JDSPORTS. The Complainant has not licensed or otherwise permitted the Respondent to use trade/service mark JD/ JD SPORTS or to apply for any domain name incorporating the said trade/ service marks.
26. The Complainant further submits that the Respondent has not made any legitimate use of the domain name www.jdsportz.in since the date of its registration and is prejudicially blocking the domain register. It is submitted that the impugned domain name is a mere copy of the complainant's trademark jdsports, the Respondent has calculatedly replaced the letter 'S' with 'Z' , to create phonetic and visual similarity. Whereas, the associated webpage carries an identical trade mark JD SPORTS in a prominent manner. The malafide intent of the Respondent to infringe the Complainant's trade mark rights is apparent. Further, in view of the popularity and the well-known status of the Complainant's trade mark JD/JD SPORTS, the disputed domain name www.jdsortz.in is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship or approval of the Complainant.

27. The Complainant submits that considering the blatant infringement caused to the Complainant's trade mark rights, it is obvious that the sole purpose of the Respondent maintaining the Registration of the disputed domain [www.jdsportz.in](http://www.jdsportz.in) is to misappropriate and usurp the reputation and goodwill of the Complainant's trademarks JD and JD SPORTS.

### **Respondent**

28. The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

### **Panel Observations**

29. This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
30. This panel observes that the Complainant by placing documents/records along with complaint has been able to prove that Complainant is the sole proprietor of the JD/JDSPORTS marks and provides services under the mark JDSPORTS and has garnered immense goodwill and reputation under the JDSPORTS mark.
31. Once the Complainant makes a prime facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to rebut the allegations of the Complainant that the Complainant has not licensed or otherwise permitted the Respondent to use trade/service mark JD/ JD SPORTS or to apply for any domain name incorporating the said trade/service marks. The Respondent further failed to rebut the contention of the complainant that the Respondent has not made any legitimate use of the domain name [www.jdsportz.in](http://www.jdsportz.in) since the date of its registration and is prejudicially blocking the domain register. This panel further observe that the Respondent failed to rebut the contention of complainant that the impugned domain name is a mere copy of the complainant's trademark jdsports and the Respondent has calculatedly replaced the letter 'S' with 'Z', to create phonetic and visual similarity.

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32. For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name.

**The disputed domain name has been registered or is being used in bad faith.**

**Complainant**

33. The Complainant submits that the Respondent is fraudulently offering fitness equipment for sale under the domain name www.jdsportz.in. The said products will have a common customer base with that of the Complainant's products. It is obvious that the Respondent is making monetary gains by attracting unwary customers by misrepresenting an association with the Complainant. Further, considering the incessant use, reputation and the well-known status of the Complainant's marks, the illegitimate use of the impugned domain name is amounting to brand dilution which cannot be compensated monetarily.
34. The Complainant submits that in various precedents that the domain names are fast emerging corporate assets and have evolved as a fulcrum of a company's visibility and marketing operations. Business transactions are primarily being carried out only through internet addresses rather than street addresses, or post boxes or even faxes. Hence, it becomes critical that unscrupulous individuals are not allowed usurp well known trademarks and domain names to unfairly benefit from such act.
35. The Complainant further submits that the very use of a domain name by someone with no connection with the Complainant suggests opportunistic bad faith as stated in INDRP Case No.792 Decision between T.V. Sundram Iyengar & Sons Private Limited Vs Mr. Rohit Kumar, Kumar Enterprise.

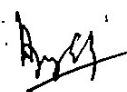
**Respondent**

36. The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

**Panel Observation**

37. Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

- (a) Circumstances indicating that the 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 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 Registrar's documented out of pocket costs directly related to the domain name; or
  - (b) the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
  - (c) by using the domain name, the Respondent has intentionally attempted to attract internet user to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or services on its website or location.
38. The panel is of the view that from the documents/records and evidence put before it by Complainant has establish that Respondent has no previous connection with the disputed domain name and has made no bona-fide use of the Disputed domain name.
39. It is very unlikely that Respondent before registering the domain name jdsportz.in had no knowledge of Complainant's rights in the trade mark JDSPORTS, which evidences bad faith. It is also a well settled principle that the registration of a domain name that incorporates a well known mark by an entity that has no relationship to the mark is evidence of bad faith.
40. This panel observe that the Complainant has successfully secured trademark registrations for the JD/JDSPORTS marks in many jurisdictions/countries including India and by using the disputed domain name, the Respondent has intentionally attempted to attract, internet users to the disputed domain's website by creating a likelihood of confusion with the Complainant's JDSPORTS marks.



41. By registering the disputed domain name with actual knowledge of the Complainant's trademark "JDSPORTS", the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the intellectual Property rights of another entity, which in the present case is the Complainant JD Sports Fashion PLC.
42. The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith. Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

### **Remedies Requested**

43. The Complainant has prayed to this Administrative Panel that the disputed domain <www.jdsportz.in> be transferred to the Complainant.

### **Decision**

44. The following circumstances are material to the issue in the present case :
  - (a) The Complainant through its contentions based on documents/ records and evidence has been able to establish that the Complainant is the leading multi brand retailer and distributor of branded sportswear and fashion wear and has evolved as a leading international multichannel retailer of sports, fashion and outdoor brands.
  - (b) The complainant has been further able to establish that the JD & JDSPORTS, which are the Complainant's very trade name, are popularly known exclusively in relation to the Complainant. It is observed by this panel that the Complainant owns and operates the domain name www.jdsports.co.uk, www.jdsports.com and www.jdplc.com., which incorporates the registered JD/JDSPORTS marks and prominently feature the same and the website hosted on the domain is accessible in many countries, including India. The Complainant has also been able to establish that, the Complainant has statutory rights in the Mark JDSPORTS through registration in



many countries including India. The Respondent however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.

- (c) Taking into account the nature of the disputed domain name and in particular the ".in" extension alongside the Complainant's mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.
- (d) The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights.
- (e) The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name. Whereas, the Respondent's adoption and registration of the disputed domain name are dishonest and done in bad faith.

45. This panel is of the view that it is for the Complainant to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that despite repeated opportunities given to him. Thus, it is clear that the Respondent's registration and use of the domain name [jdsportz.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.



## **RELIEF**

46. In accordance with Policy and Rules, the Panel directs that the disputed domain name [jdsportz.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India  
Dated : 25<sup>th</sup> February, 2022

  
**AJAY GUPTA**  
Sole Arbitrator