



सत्यमेव जयते

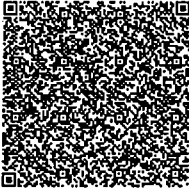
INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL23072265461454W
 Certificate Issued Date : 04-Jan-2024 11:53 AM
 Account Reference : IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
 Unique Doc. Reference : SUBIN-DL71730309289261916612W
 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
 Second Party : OTHERS
 Stamp Duty Paid By : AJAY GUPTA ARBITRATOR
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



Please write or type below this line

IN-DL23072265461454W

INPRP Case No. 1799

Disputed Domain Name: "SONYZEE.IN"

Sony Group Corporation
 Sony Pictures Entertainment Inc.
 Sony Corporation of America
 Culver Maxx Entertainment India Pvt. Ltd.

Vs.

Pawan Kumar

[Signature]

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
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INDRP ARBITRATION CASE No.1799
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

SONY GROUP CORPORATION
Sony Pictures Entertainment Inc.
Sony Corporation of America; and
Culver Max Entertainment
India Private Limited

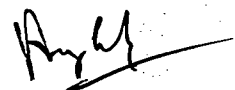
... Complainant

VERSUS

PAWAN KUMAR

...Respondent

DISPUTED DOMAIN NAME: **"SONYZEE.IN"**



INDRP ARBITRATION CASE NO.1799
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

SONY GROUP CORPORATION
Sony Pictures Entertainment Inc.
Sony Corporation of America; and
Culver Max Entertainment India
Private Limited
10202 West Washington Boulevard
Culver City, California 90232 (USA).

... Complainant

VERSUS

PAWAN KUMAR
A-28, Sector 57
NOIDA-201301 (U.P.).

... Respondent

Disputed Domain Name: **"SONYZEE.IN"**



1. THE PARTIES

1.1 The Complainants in this administrative proceeding are the following entities :

- Sony Group Corporation (also known as Sony Group Kabushiki Kaisha and formerly known as Sony Corporation and Sony Kabushiki Kaisha): a Japanese corporation;
- Sony Pictures Entertainment Inc.: a Delaware (USA) corporation and an indirect subsidiary of Sony Group Corporation;
- Sony Corporation of America: a New York (USA) corporation and a subsidiary of Sony Group Corporation; and
- Culver Max Entertainment Private Limited (formerly known as Sony Pictures Networks India Private Limited): an Indian company and a wholly owned indirect subsidiary of Sony Pictures Entertainment Inc., Sony Corporation of America and Sony Group Corporation.

1.2 It is submitted on behalf of the above mentioned entities, that given their legal relationship and the roles of each with respect to this proceeding, it is appropriate that this Complaint is filed on behalf of all of these entities, the Complainant has cited relevant precedent under the Uniform Domain Name Dispute Resolution Policy ("UDRP") and INDRP decisions in this complaint. It is further submitted that a previous panel under the INDRP allowed consolidation of the same entities as here in Sony Group Corporation et al. Vs. AnghaaUtpad, NIXI Case No. 1706 (transfer of <sonyzee.co.in>).



- 1.3 This panel accept the above submissions and hold that references herein to "Complainant" shall refer to each or all of the entities as listed above.
- 1.4 The Complainant's Authorized Representative in this administrative proceeding is Douglas M. Isenberg, Esq. THE GIGALAW FIRM, DOUGLAS M. ISENBERG, ATTORNEY AT LAW, LLC 5600 Roswell Road Building C Atlanta, Georgia 30328 USA.
- 1.5 In this arbitration proceeding, the Respondent is Pawan Kumar, A-28, Sector 57, NOIDA-201301 (UTTAR PRADESH) INDIA as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. THE DOMAIN NAME AND REGISTRAR

- 2.1 The disputed domain name is "SONYZEE.IN" and the Registrar with which the disputed domain name registered is GoDaddy.com, LLC. 14455 N. Hayden Road, Suite #219 Scottsdale, Arizona 85260 Telephone : 1-480-505-8800 legal@godaddy.com USA.

3. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 3.1 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.

under the IN Dispute Resolution Policy and Rules framed thereunder.

3.2 The history of this proceeding is as follows :

3.2.1 By Rules 2(a) and 4(a), NIXI on 26.12.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures/documents, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, IN Domain Resolution Policy and the Rules framed thereunder. That I submitted the Statement of Acceptance & Declaration of Impartiality and Independence dated 26.12.2023 to NIXI.

3.2.2 That commencing the arbitration proceedings, an Arbitration Notice Dated 26.12.2023 was emailed to the Respondent on 26.12.2023 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days i.e. by 04.01.2024.

3.2.3 The Complainant complying with the directions dated 26.12.2023 of this panel, on 27.12.2023 via email furnished the proof of service of the copy of amended complaint to the Respondent through email as well as courier/shipment.

3.2.4 However, since the Respondent failed to file the reply of Complaint, if any, within time, i.e. 04.01.2024 as directed, this panel again in the interest of justice via its email dated 05.01.2024 granted a further period of 05 days i.e. by 09.01.2024 to the Respondent to file

the reply of the complaint. The Respondent, despite the receipt of Notice Dated 26.12.2023, copy of the complaint and reminder dated 05.01.2024 neither replied to the Arbitration notice nor filed a reply to the complaint; hence, on 10.01.2024 the Respondent was proceeded ex-parte.

4. THE RESPONDENT'S DEFAULT

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle 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 proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is **"sonyze.in"**.

4.2 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."

4.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given

direction to file a reply to the complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 states, "In the 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 arbitration award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. BACKGROUND OF THE COMPLAINANTS & THEIR SUBMISSIONS ABOUT THE TRADEMARK "SONY", ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION :

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

ABOUT COMPLAINANT

- 5.2 It is submitted that the Complainant Sony Group Corporation was founded in 1946 and consists of the following major segments: Game & Network Services, Music, Pictures, Entertainment Technology & Services, Imaging & Sensing Solutions, and Financial Services. It is submitted that Sony Group Corporation is a public company trading on the Tokyo and New York stock exchanges and Complainant Sony Group Corporation had approximately 113,000 employees (as of March 31, 2023) and the consolidated sales and

operating revenue (fiscal year ended March 31, 2023) was of 11,539,800 million yen. It is further submitted that Sony Group Corporation is the owner of the SONY Trademark.

- 5.3 It is submitted that the Complainant Sony Pictures Entertainment Incorporation's global operations encompass motion picture production, acquisition, and distribution; television production, acquisition, and distribution; television networks; digital content creation and distribution; operation of studio facilities; and development of new entertainment products, services and technologies.
- 5.4 It is submitted that the Complainant Culver Max Entertainment India Private Limited (formerly known as Sony Pictures Networks India Private Limited) has several general entertainment channels, film, sports and kids entertainment channels in India, as well as Sony LIV, a digital entertainment video service available over-the-top to viewers in India and international markets. It is further submitted that Culver Max Entertainment Private Limited reaches out to more than 700 million viewers in India and is available in 167 countries.
- 5.5 It is submitted that complainant Sony Corporation of America is the registrant of the domain name <sony.com>, which was created on July 7, 1989.
- 5.6 It is submitted that the Complainant (or its predecessors or related entities) has prevailed in numerous proceedings under domain name dispute policies, including the INDRP, for domain names that are identical or confusingly similar to the SONY Trademark, including one that also includes the ZEE Trademark. The Complainant in this regard has

relied on cases of Sony Group Corporation et al. Vs. AnghaaUtpad, NIXI Case No. 1706 (transfer of <sonyzee.co.in>); Sony Group Corporation Vs. Game the Shop, NIXI Case No.INDRP-1593 (transfer of <sonycentral.co.in>); Sony Corporation Vs. Deborah R. Heacock, NIXI Case No.INDRP-669 (transfer of <sonymobileco.in>); Sony Kabushiki Kaisha also trading as Sony Corporation Vs. Daniele Melchiori, NIXI Case No.INDRP-591 (transfer of <sonymusic.in>); Sony Kabushiki Kaisha also trading as Sony Corporation v. Fujiko Kikuno, WIPO Case No.D2000-1372 (referring to "Complainant's famous trademark SONY" in decision ordering transfer of <sonysonpo.com>); Sony Corporation v. Domain Privacy Service and St. Kitts Registry, WIPO Case No.D2008-0795 (referring to SONY as "a well-known mark" in decision ordering transfer of <sonytelevision.com>); Sony Corporation Vs. Whoisguard Protected, Whoisguard, Inc./ VINCENT, ZESDORN, WIPO Case No.D2017-1226 (ordering cancellation of <sonyhr.com> where "Complainant's SONY mark is extremely distinctive, widely known and has a strong online visibility"); It is also submitted that Complainant Sony Group Corporation was formerly known as Sony Corporation and Sony Kabushiki Kaisha, also trading as Sony Corporation v. Richard Mandanice, WIPO Case No. D2004-1046 (stating that "[t]here is no doubt that the existence of the SONY trademark is well established" in decision ordering transfer of <sony-z5.com>).

- 5.7 It is further submitted that on December 21, 2021, Complainant and Zee Entertainment Enterprises Limited ("Zee") of India announced "definitive agreements" for a merger of their companies.

TRADEMARK /SERVICE MARK

5.8 It is submitted that Complaint is based on the trademark / service mark SONY. The details for some of the Complainant's word marks for SONY in the United States of America are :

- U.S. Reg. No. 770,275 for SONY (registered May 26, 1964) in international class 9, for use in connection with "television cameras".
- U.S. Reg. No. 801,885 for SONY (registered January 11, 1966) in international class 36, for use in connection with "electrical sound recording apparatus, Including electric record players, electrically driven record changers, and automatic phonograph record changers".
- U.S. Reg. No. 886,339 for SONY (registered February 17, 1970) in international class 16, for use in connection with "pens, pencils, notebooks, albums, and address notes".

The details for some of the Complainant's word marks for SONY in India are :

- India App. No.196,589 for SONY (application date June 20, 1960) in international class 9, for use in connection with "radio apparatus including radio apparatus with transistors and parts thereof".
- India App. No. 362,146 for SONY (application date May 23, 1980) in international class 9, for use in connection with "video tape recorders, video tapes (blank tapes) recorded video tapes, audio cassette tapes, audio tape recorders, television receiving sets and monitor televisions and other scientific, nautical,

surveying electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments, coin or counter freed apparatus, talking machines, cash registers, calculating machines, fire-extinguishing apparatus".

- India App. No. 2,308,689 for SONY (application date March 30, 2012), in international class 41, for use in connection with, inter alia, "providing Non downloadable films and television programs via a video-on-demand service".

ABOUT RESPONDENT

5.9 The Complainant submits that the Respondent registered the Disputed Domain Name on December 10, 2021 more than 65 years after Complainant obtained its first registration for the SONY Trademark and more than 32 years after Complainant registered the domain name <sony.com>. It is further submitted by the Complainant that the Respondent is not using the Disputed Domain Name in connection with an active website.

6. THE ISSUES INVOLVED IN THE DISPUTE

6.1 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."

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

7. PARTIES' CONTENTIONS

- 7.1 **The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

COMPLAINANT

- 7.2 The Complainant submits that it owns thousands of trademark registrations around the world for marks that consist of or contain the coined term "Sony," the oldest of which were registered in the 1950s. These registrations are referred to herein as the "SONY Trademark."
- 7.3 The Complainant has submitted few of the Trademarks registered in India which are as follows :
- India App. No. 196,589, application date June 20, 1960;
 - India App. No. 362,146, application date May 23, 1980
- 7.4 The Complainant has submitted following registrations for the SONY Trademark in Japan :

- Japan Reg. No.491,710, registered November 20, 1956
- Japan Reg. No. 500,036, registered April 15, 1957
- Japan Reg. No. 500,037, registered April 15, 1957

7.5 The Complainant has also submitted following registrations for the SONY Trademark in United States of America :

- U.S. Reg. No. 770,275, registered May 26, 1964
- U.S. Reg. No. 801,885, registered January 11, 1966
- U.S. Reg. No. 886,339, registered February 17, 1970

7.6 The Complainant submits that previous panels under the INDRP have found that Complainant has rights in and to the SONY Trademark. The Complainant in support of its submissions has relied on cases: Sony Group Corporation et al. Vs. AnghaaUtpad, NIXI Case No. 1706 (transfer of <sonyzee.co.in>); Sony Group Corporation Vs. Game the Shop, NIXI Case No. INDRP-1593 (transfer of <sonycentral.co.in>); Sony Corporation Vs. Deborah R. Heacock, NIXI Case No. INDRP-669 (transfer of <sonymobileco.in>); and Sony Kabushiki Kaisha also trading as Sony Corporation Vs. Daniele Melchiori, NIXI Case No. INDRP-591 (transfer of <sonymusic.in>).

7.7 The Complainant submits that, numerous previous panels under the UDRP have found that Complainant has rights in and to the SONY Trademark. Indeed, previous UDRP panels have said that the SONY Trademark is "famous" (Sony Kabushiki Kaisha also trading as Sony Corporation Vs Fujiko Kikuno, WIPO Case No. D2000-1372), "well-known" (Sony Corporation Vs. Domain Privacy Service and St. Kitts Registry, WIPO Case No. D2008-0795), "extremely distinctive, widely known and has a strong online visibility" (Sony Corporation Vs. Whoisguard Protected, Whoisguard, Inc. / VINCENT, ZESDORN, WIPO Case No. D2017-1226, and "well established" (Sony Kabushiki Kaisha, also trading as

Sony Corporation Vs. Richard Mandanice, WIPO Case No. D2004-1046). The Complainant submits that a previous panel under the INDRP found that the domain "sonyzee" is identical or confusingly similar to the SONY Trademark. Sony Group Corporation et al. v. AnghaaUtpad, NIXI Case No. 1706 (transfer of <sonyzee.co.in>).

7.8 The Complainant submits that the Disputed Domain Name contains the SONY Trademark in its entirety which is the prior registered trade mark of the complainant. Hence, the disputed domain name is identical or confusingly similar to the trademark for purposes of the INDRP. The Complainant has relied upon the case of Kenneth Cole Productions Inc v. Viswas Infomedia, NIXI Case No. INDRP/093. and also on Morgan Stanley v. Gayatri Technologies, NIXI Case No. INDRP-1653 (finding confusing similarity where disputed domain name "incorporates the... [m]arks in their entirety"); and Meta Platforms Inc. Vs. Mika Khan, NIXI Case No. INDRP-1642 ("[i]t is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity").

7.9 The Complainant submits that in addition, the Disputed Domain Name contains a third-party's trademark ("ZEE"). The Complainant submits that ZEE trademark included in the Disputed Domain Name is owned by Zee – which has entered into definitive agreements to merge with Complainant and is protected by numerous registrations, including India App. Nos. 3,478,087 (application date February 8, 2017) and 3,478,088 (application date February 8, 2017). In addition, the ZEE trademark appears on the list of "well-

known marks" from the Government of India's Controller General of Patents Design & Trade Marks.

- 7.10 The Complainant submits that Zee supports the filing of this Complaint by Complainant and consents to transfer of the Disputed Domain Name to Complainant. It is submitted that Section 1.12 of WIPO Overview 3.0 states: "Where the complainant's trademark is recognizable within the disputed domain name, the addition of other third-party marks (i.e., <mark1+mark2.tld>), is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element. The complaint may include evidence of the third-party mark holder's consent to file the case, and request that any transfer order be issued in favor of the filing complainant only." Accordingly, inclusion of the ZEE trademark in the Disputed Domain Name does nothing to avoid confusing similarity with the SONY Trademark, and the consent from Zee makes clear that it is appropriate for Complainant to file this Complaint and for the Panel to order transfer of the Disputed Domain Name to Complainant. The Complainant submits that, a previous panel under the INDRP reached this same conclusion in an almost identical case, Sony group Corporation et al. v. AnghaaUtpad, NIXI Case No.1706 (transfer of <sonyzee.co.in>) and accordingly, the Disputed Domain Name is identical or confusingly similar to the SONY Trademark.

RESPONDENT

- 7.11 The Respondent has not replied to Complainant's contentions.

8. PANEL OBSERVATIONS

- 8.1 This Panel on pursuing the documents and records submitted by Complainant observes that, complainant owns

many trademark registrations around the world for marks that consist of or contain the coined term "Sony". It is further observed by this panel that previous panels under the INDRP and UDRP have found that Complainant has rights in and to the SONY Trademark. The Complainant in support of its submissions has also cited the decision in NIXI Case No.1706 Sony Group Corporation et al. v. AnghaaUtpad (transfer of <sonyzee.co.in>), where the previous panel found that the domain "sonyzee" is identical or confusingly similar to the SONY Trademark.

8.2 This panel after going through the submissions and records of the complainant has observed that ZEE trademark included in the Disputed Domain Name is owned by Zee which has entered into agreements to merge with Complainant and is protected by numerous registrations. After going through the record, it is also observed that Zee supports the filing of this Complaint by Complainant and consents to transfer of the Disputed Domain Name to the Complainant.

8.3 This panel, therefore, is of opinion that the disputed domain name "sonyzee.in" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to Respondent. The Panel is of the view that there is a 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 "SONY" of the Complainant and inclusion of the ZEE trademark in the Disputed Domain Name does nothing to avoid confusing similarity with the SONY Trademark.



8.4 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.

8.5 This Panel, therefore, in light of the contentions raised by the Complainant concludes 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.

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

COMPLAINANT

8.6 The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It is further submitted that in a case almost identical to the instant proceeding, a previous panel under the INDRP found that the registrant of the domain name <sonyzee.co.in> had no rights or legitimate interests in the domain name, reliance is placed on Sony Group Corporation et al. Vs. AnghaaUtpad, NIXI Case No. 1706.

8.7 The Complainant submits that it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the SONY Trademark in any manner. Accordingly, where, as here, "[t]he Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark," the panel should find a lack of rights or legitimate interests under the

INDRP. Sony Ericsson Mobile communications AB v. Salvatore 12 Morelli, NIXI Case No.INDRP/027. The Complainant, also relied on Six Continents Hotels, Inc. v. Patrick Ory, WIPO Case No. D2003-0098 ("There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Domain Name."); and Marriott International, Inc. v. Thomas, Burstein and Miller, WIPO Case No. D2000-0610 (transferring domain name <marriottreward.com> where "[n] evidence was presented that at any time had the Complainant ever assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the marks MARRIOTT REWARDS or MARRIOTT in any manner").

- 8.8 The Complainant submits that here, just as in case of Accenture Global Services Limited v. Vishal Singh, NIXI Case No. INDRP-999: Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, or

the site of official authorized partners of the Complainant, while in fact it is neither of these. As a result, the panel said that the respondent lacks rights or legitimate interests in respect of the disputed domain name.

8.9 The Complainant submits that, upon information and belief, Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services and, therefore, Respondent cannot establish rights or legitimate interests under Paragraph 7(a) of the INDRP. It is further submitted by the Complainant that the Respondent is not using the Disputed Domain Name in connection with an active website. It is submitted that numerous panels have repeatedly said, "Passively holding a domain name does not constitute a bona fide offering of goods or services." Philip Morris USA Inc. v. Gabriel Hall, WIPO Case No. D2015-1779. See also, e.g., L'Oréal v. Haya Manami, WIPO Case No. D2015-0924 ("The Domain 13 Name points to an inactive page. Consequently, Respondent is not using the Domain Name in connection with a bona fide offering of goods or services...").

8.10 The Complainant submits that, to its knowledge, Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph 7(b) of the INDRP. It is submitted that the domain name information provided by NIXI to Complainant on December 14, 2023 identifies the registrant of the Disputed Domain Name as "pawan kumar"

– not as “Sony” or any variation thereof. “This fact, combined with the lack of evidence in the record to suggest otherwise, allows the Panel to rule that Respondent is not commonly known by any of the disputed domain names or any variation thereof....” Alpha One Foundation, Inc. Vs Alexander Morozov, Forum Claim No.0766380. The Complainant submits that in addition, given Complainant’s registration of the SONY Trademark for more than 60 years (including in India), it is exceedingly unlikely that the Respondent is commonly known by this trademark. Reliance is placed on Six Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel, WIPO Case No. D2004-0246 (“given the Complainant’s established use of its... marks, it is unlikely that the Respondents are commonly known by any of these marks”).

- 8.11 The Complainant submits that by failing to use the Disputed Domain Name in connection with an active website, Respondent is not “making a legitimate non commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue” pursuant to paragraph 7(c) of the INDRP. Verizon Trademark Services LLC v. Jeff Goodman/Goody Tickets LLC, WIPO Case No.D2015-1750 (finding no legitimate noncommercial or fair use where “Respondent is not currently resolving the disputed domain name to an active website” and the disputed domain name “incorporates Complainant’s well-known mark”); and Confédération Nationale du Crédit Mutuel Vs. Nicola Bazar, WIPO Case No.D2013-1572 (finding no legitimate non-commercial or fair use where the disputed domain name “direct[s] to a page ‘under maintenance’”). It is submitted by the complainant that accordingly Respondent has no

rights or legitimate interests in respect of the Disputed Domain Name.

RESPONDENT

8.12 The Respondent has not replied to Complainant's contentions.

9. PANEL OBSERVATIONS

9.1 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.

9.2 This panel observes that the Complainant by placing documents/records and evidence along with the complaint has been able to prove that the Complainant is trading and doing its business under the 'SONY' around the world including in India. The Complainant by its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'SONY' mark in respect of its business.

9.3 Whereas, it is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the SONY Trademark in any manner.

9.4 It is also observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the

Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services therefore, Respondent cannot establish rights or legitimate interests under Paragraph 7(a) of the INDRP.

9.5 It is further observed by this panel that the Respondent has failed to rebut the contention of the Complainant, that by failing to use the Disputed Domain Name in connection with an active website, Respondent is not "making a legitimate non commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue"

9.6 Once the Complainant makes a prima 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 place any evidence to rebut the allegations of the Complainant.

9.7 It is further observed by this panel that para 6 of the IN Domain Name Dispute Resolution Policy (INDRP) states :

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

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name

corresponding to the domain name in connection with a bona fide offering of goods or services; (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

- 9.8 This panel observe that the Respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b): 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 "SONYZEE.IN".

The domain name was registered or is being used in bad faith.

COMPLAINANT

- 9.9 The Complainant submits that the Disputed Domain Name should be considered as having been registered or being used in bad faith by Respondent. It is submitted that in a case almost identical to the instant proceeding, a previous panel under the INDRP found that the registrant of the domain name <sonyzee.co.in> registered or used the domain name in bad faith. Sony Group Corporation et al. v. nghaaUtpad, NIXI Case No. 1706 and the panel in the instant proceeding should reach the same conclusion, for the same reasons.

9.10 The Complainant submits that the SONY Trademark is clearly famous and/or widely known, given that it is protected by thousands of trademark registrations around the world, the oldest of which were registered more than 60 years ago . It is submitted that , previous panels have referred to the SONY Trademark as "famous" (Sony Kabushiki Kaisha also trading as Sony Corporation v. Fujiko Kikuno, WIPO Case No.D2000-1372), "well-known" (Sony Corporation Vs. Domain Privacy Service and St. Kitts Registry, WIPO Case No. D2008-0795), "extremely distinctive, widely known and has a strong online visibility" (Sony Corporation v. Whoisguard Protected, Whoisguard, Inc./VINCENT, ZESDORN, WIPO Case No. D2017-1226), and "well established" (Sony Kabushiki Kaisha, also trading as Sony Corporation v. Richard Mandanice, WIPO Case No. D2004-1046).

9.11 It is submitted that indeed, "[i]t is implausible that [Respondent] was unaware of the Complainant when [it] registered the Domain Name given the fame of the Trade Mark." Six Continents Hotels v. Lin hongyu, Cheng Qi Lin, WIPO Case No. D2017-2033. Accordingly, "[t]he only explanation of what has happened is that the Respondent's motive in registering and using the [domain name] seems to be... simply to disrupt the Complainant's relationship with its customers or potential customers or attempt to attract Internet users for potential gain. These both constitute evidence of registration and use in bad faith: paragraph 4(b)(iii) & (iv) of the Policy." Pencil, LLC v. Jucco Holdings, WIPO Case No. D2006-0676. Similarly, given the global reach and popularity of Complainant's services under the SONY Trademark as described above, as well as the strength of the ZEE trademark "it is inconceivable that

Respondent chose the contested domain name without knowledge of Complainant's activities and the name and trademark under which Complainant is doing business." *Pencil LLC v. Domain Deluxe*, WIPO Case No. D2003-1035.


9.12 It is submitted that because the Disputed Domain Name is "so obviously connected with" Complainant, Respondent's actions suggest "opportunistic bad faith" in violation of the Policy. *Research In Motion Limited v. Dustin Picov*, WIPO Case No. D2001-0492. In light of the long history of Complainant's trademarks and Complainant's significant presence and brand recognition, "[i]t is likely that the Respondent knew of the Complainant's mark, and has sought to obtain a commercial benefit by attracting Internet users based on that confusion." *Western Union Holdings, Inc. v. Manuel Rodriguez*, WIPO Case No. D2006-0850. See also, e.g., *OSRAM GmbH v. Azarenko Vladimir Alexeevich, Azarenko Group Ltd*, WIPO Case No. D2016-1384 (finding bad faith where "Respondent must have been aware of the Complainant and its said trademark when it registered the disputed domain name" and "the Panel cannot conceive of any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's long-established trademark rights"); and *Volkswagen AG v. Fawzi Sood*, WIPO Case No. D2015-1483 ("[g]iven the fame of the Complainant's marks the Respondent must have known of the Complainant's rights at point of registration of the Domain Name").

9.13 The Complainant submits that the Disputed Domain Name was created on December 10, 2021 – around the same time that Complainant and Zee announced definitive agreements for a merger of their companies. Such timing is an



indication of bad faith. Reliance is placed on, Tadashi Shoji v. Karolina Karp, WIPO Case No. D2009-0831 (bad faith may be found "if there are grounds to conclude that a domain name was registered in the... expectation [of] an anticipated merger of two well known company names"); General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No.D2001-0087 (finding bad faith where respondent registered domain name following "rumors [that] were widely reported of the possible merger of Complainant" and another company); and Thermo Electron Corp. and Fisher Scientific Co. LLC and Fisher Scientific Int'l Inc. v. Charlie Xu, Forum Claim No. 0713851 (calling the timing of registration of a domain name containing the names of two merged companies "a compelling indication of bad faith").

- 9.14 The Complainant further submits that bad faith also exists under the well-established doctrine of "passive holding" set forth in the landmark case Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, given that, Respondent is not currently using the Disputed Domain Name in connection with an active website. It is submitted that as described by WIPO Overview 3.0, section 3.3: From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence



of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. Reliance is also placed on "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No.D2017-0246 ("the overall circumstances of this case strongly suggest that the Respondent's non-use of the Domain Name is in bad faith"); and Hilton Worldwide et al. v. Steve Alek, Niagara Falls Corp, WIPO Case No. D2010-1063 ("where there are other indicators of bad faith, 'passive holding' of a domain name can constitute use in bad faith"). It is submitted that Panels under the INDRP have adopted the passive holding doctrine. , e.g., Morgan Stanley v. Gayatri Technologies, NIXI Case No. INDRP-1653 (finding bad faith where disputed domain name was not used in connection with an active website because "it is clearly more than a coincidence that the Registrant chose and registered a domain name that is confusingly similar to" complainant's trademark); Paramount Pictures Corporation v. E-Marketplace Pty Ltd, NIXI Case No. INDRP-1584 (finding bad faith where disputed domain name "does not host any active webpage")| Netflix, Inc. v. Ms. Neema Sharma, NIXI Case No. INDRP-216 (transfer where "Respondent never hosted websites under the disputed domain names"); and M/S Genpact Limited v. Shri Manish Gupta, NIXI Case No INDRP-056 (transfer where "respondent is holding the domain name... without hosting a proper website related to Respondent's products").

9.15 The Complainant submits that, the factors set forth in WIPO Overview 3.0, section 3.3, indicate that bad faith exists under the passive holding doctrine, specifically:

- (a) the SONY Trademark is very distinctive and has a strong reputation (and, as stated above, has been referred to in previous decisions under the Policy as "famous" and "well-known"), given that (as set forth in detail above) it has been registered for more than 60 years, is protected by thousands of trademark registrations worldwide, and is used by a well-known public company with significant operations and businesses across multiple industries around the world including India, approximately 113,000 employees (as of March 31, 2023) and consolidated sales and operating revenue of 11,539,800 million yen (for the fiscal year ending March 31, 2023);
- (b) Respondent's full identity is concealed in the Whois record as shown by use of the label "REDACTED FOR PRIVACY"; and
- (c) it is impossible to identify any good faith use to which the Disputed Domain Name may be put.

9.16 The Complainant submits that indeed, previous panels have found bad faith under the passive holding doctrine where a respondent registered a domain name that was confusingly similar to the SONY Trademark and refer to the case of Sony Group Corporation et al. v. AnghaaUtpad, NIXI Case No. 1706 (transfer of <sonyzee.co.in>); Sony Corporation v. Whoisguard Protected, Whoisguard, Inc. / VINCENT, ZESDORN, WIPO Case No. D2017-1226 ("passive holding of the disputed domain name [<sonyhr.com>] is further

evidence of the Respondent's bad faith"); and Sony Kabushiki Kaisha also trading as Sony Corporation v. Sin, Eonmok, WIPO Case No. D2000-1007 (ordering transfer of <mysony.com> where complainant argued that "[t]he Respondent's registration of the domain name 'mysony.com' is... a 'passive holding' that constitutes use of the domain name in bad faith").

9.17 The Complainant submits that a further indication of bad faith is the fact that Complainant's registration of the SONY Trademark for more than 60 years (including in India) pre-dates Respondent's registration of the Disputed Domain Name. Accordingly, "Complainant [is] very well known and has been using his mark for [a] very long period, in his commercial/business activities.... The respondent must have known about complainant's mark at the time of registration of his domain name." Morgan Stanley v. M/s Keep Guessing, NIXI Case No. INDRP/024. It is accordingly submitted by the Complainant that, the Disputed Domain Name was registered and is being used in bad faith.

RESPONDENT

9.18 The Respondent has not replied to Complainant's contentions.

10. PANEL OBSERVATION

10.1 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 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 over the Registrar's documented out of pocket costs directly related to the domain name; or

(b) the Respondent has registered the domain name 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 users to its website or other online 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 a product or services on its website or location."

10.2 This panel while going through the complaint and documents which are placed in the form of exhibits has observed that the Respondent registered the disputed domain name in December 2021, by which time the Complainant has been using the mark SONY mark for 60 years. It is observed by this panel that the Complainant has statutory and common law rights in the mark SONY worldwide including in India and Complainant is also using the SONY mark on the internet, in other domain names, and as a trading name before registration of disputed domain name. It is observed by this panel that given the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain

name in good faith or without knowledge of the Complainant's rights in the mark SONY.

10.3 This Panel after going through the submissions on behalf of the complainant and examining of the records also hold that passive holding of the Disputed Domain Name "SONYZEE.IN" registered by the Respondent is confusing similar to the SONY Trademark and is the proof of the element of the bad faith.

10.4 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that the Disputed Domain Name was created on December 10, 2021 around the same time the Complainant and Zee announced definitive agreements for a merger of their companies and Such timing is an indication of bad faith.

10.5 The Complainant has rightly established that the Respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in clause 7 of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore the Panel concludes 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 and the Respondent has wrongfully acquired/registered the domain name in its favor in bad faith.

11. REMEDIES REQUESTED

11.1 The Complainant has prayed for transfer of disputed domain name <sonyzee.in> to the complainant and imposing of cost on the Respondent.

12. DECISION

12.1 The following circumstances are material to the issue in the present case :

12.1.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "SONY" is a well-established name globally including in India. The Complainant has established that the trademark SONY is inherently distinctive of the products, services, and business of the Complainant and has secured trademark protection for SONY by registering trademarks in many countries including India. The Disputed Domain Name contains a third-party's trademark ("ZEE"), the ZEE trademark included in the Disputed Domain Name is owned by Zee which has entered into definitive agreements to merge with Complainant and is protected by numerous registrations. Accordingly, inclusion of the ZEE trademark in the Disputed Domain Name does nothing to avoid confusing similarity with the SONY Trademark. Accordingly, the Disputed Domain Name is identical or confusingly similar to the SONY Trademark.

12.1.2 The Respondent, despite repeated opportunities given, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

12.1.3 The Complainant has rather has been able to establish by its contentions and records in the form of



annexures, that the Respondent has attempted to attract Internet users for commercial gain and passive holding of the Disputed Domain Name is evidence of bad faith. It is therefore established by the Complainant that the domain name by itself is being used for attracting internet users rather than any bona fide offering of goods/services thereunder. While considering the complaint and records in the form of annexures submitted by the Complainant, this panel has concluded that there exist circumstances as stated in para 7(C) of INDRP Policy.

12.1.4 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.

12.1.5 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.

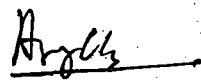
12.1.6 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once

such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name **[sonyze.in]** are in bad faith for commercial gains. 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

Following INDRP Policy and Rules, this Panel directs that the disputed domain name **[sonyze.in]** be transferred from the Respondent to the Complainant, requesting NIXI to monitor the transfer.

New Delhi, India
Dated: 18 January, 2024


[AJAY GUPTA]
Sole Arbitrator