



उत्तर प्रदेश UTTAR PRADESH

BL 255725

**Dr. Bodhisatva Acharya**  
ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

**ARBITRATION AWARD**

DISPUTED DOMAIN NAME :< www.zappos.co.in >

In the matter of:  
Zappos IP Inc,  
2280 Corporate Circle, Suite 100  
Henderson, Nevada-89074

Filed by its authorized representative attorney -  
S.S RANA & Co.  
317, lawyers Chambers,  
Delhi High Court,  
New Delhi -110003

..... .Complainant.

***Vs.***

**Ms. Jessica Frankfurter**  
Arcisstrasse 21AW  
Munich, Bavaria Land  
Germany

..... Respondent.

## **AWARD**

### **1. The Parties:**

**The complainant** in this arbitration proceeding is Zappos IP Inc, 2280 Corporate Circle, Suite 100, Henderson, Nevada-89074 filed by its **authorized representative attorney** S.S RANA & Co., 317, Lawyers Chambers, Delhi High Court, New Delhi - 110003.

**Respondent** Ms. Jessica Frankfurter, Arcisstrasse 21AW, Munich, Bavaria Land, Germany

### **2. The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.zappos.co.in](http://www.zappos.co.in)

### **3. Procedural History:**

The Complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name [www.zappos.co.in](http://www.zappos.co.in) following the clause 4 of the policy of .IN Registry and .IN Registry appointed Dr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on February 12<sup>th</sup>, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on February 23<sup>rd</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the April 2<sup>nd</sup>, 2013 as Ex-parte.



#### 4. Factual Background:

- (a) The Complainant's business was initially named ShoeSite.com and was eventually named Zappos.com in July, 1999. The business was started with an online business selling shoes but the vision was never limited to shoes. The complainant was always focused on being a service Company which happened to sell shoes. Another reason the name of the business was changed to Zappos was to expand the approach and focus on other things as well like clothing, handbags, accessories etc. The Complainant obtained registration of the internet domain name <shoeSite.com> in July 1998 and after the name of the business changed to zappos.com the internet domain name <Zappos.com> was registered in July, 1999. Upon opening its virtual doors in 1999, the business promoted itself under the name ShoeSite.Com and had Homemade Fliers advertising the same. The company was started with a small capital and limited sales. In December 1999, Mr. Swinmurn and the small group of workers who started the company had used up their investor seed money and were still no where near profitability. It was then that the now CEO Mr. Tony Hsieh, who had become a millionaire in the year 1998 by selling his online advertising company to Microsoft for \$ 265 million approached Mr. Swinmurn and showed interest in investing in the company.
- (b) From its inception in 1999, Zappos.com had been used as the corporate name, address of the principal Internet website, and the primary symbol and identifier of the goods and services offered. The trade marks Zappos.com and ZAPPOS have been used and registered in numerous countries worldwide and are well known and famous. In order to secure statutory rights in the said trademarks, the complainant has obtained several registrations in various countries of the world including India and has, thus, secured its proprietary rights there in. The various countries where the complainant or its subsidiaries have been obtained registration of trademark ZAPPOS. The Complainant appeared in Inc Magazine's annual list of the 500-fastest growing private companies in the U.S. four years in a row (2004,2005,2006 and 2007), with gross merchandise sales of over \$1 Billion in 2008. The Company was named Best of the Web for 2006 by Internet Retailer, and was included in Time Magazine's 2006 "25 Sites you can't live without". The Complainant's Customer Loyalty Team is Available 24/7, 365 days a year. In January 2009, the Complainant debuted on FORTUNE Magazine's Annual "100 Best Companies to work for" list as that year's highest-ranking newcomer. In 2008, the Complainant hit a major financial milestone when gross merchandise sales for the year surpassed \$ 1 billion driven primarily by repeat customers and word of mouth.
- (c) From its initial days starting from the small home of Mr. Swinmurn in California, the complainant has been transformed from a small start-up Company to one of the most successful internet-based businesses in the world. The Complainant reported net sales of US\$ 8.6 million in 2001 which



Quadrupled to US\$ 32 million in 2002 growing to annual gross merchandise sales of US\$ 1 billion in the year 2008 making the Complainant one of the fastest growing companies in the Fortune 500 list of companies. Worldwide sales figures in respect of the Complainant's products sold and services offered under the trademark **ZAPPOS** and variations thereof, runs into millions of US Dollars. The Complainant's sites are accessible to consumers in every location of the world that offers access to the internet. Each and every page of all its sites prominently displays the **Zappos.com** and **ZAPPOS** mark. More than a million active customers from many countries have made purchases through the **Zappos.com** Sites. When these orders are shipped, each customer receives an e-mail message that contains the **Zappos.com** or **ZAPPOS** mark on its exterior surface, shipping label and packaging slip. The Complainant's reputation and valuable goodwill in the trade mark **ZAPPOS** and variation thereof have not come from sales alone. In order to promote its reputation, the Complainant has taken numerous steps through the years. The Complainant has made significant investments to promote its goods and services under the trademarks **ZAPPOS** and variations thereof.

- (d) The Complainant's trade mark **ZAPPOS** is registered in India vide registration no: **1480364** dated August 21, 2006 in respect of the following goods and services:

|                 |  |
|-----------------|--|
| <b>Class 14</b> | Watches, jewelry and clocks in International class 14  |
| <b>Class 18</b> | All purpose carrying bags, backpacks, handbags, luggage, purses, tote bags and wallets in International Class 18   |
| <b>Class 24</b> | Bed Blankets, bed linen, bed sheets, bed skirts, comforters, duvet covers, duvets, pillow cases, and towels in International Class 24  |
| <b>Class 25</b> | Belts, coats, dresses, footwear, headwear, hosiery, jackets, pants, scarves, shirts, shoes, shorts, skirts, sleepwear, socks, sweaters and undergarments in International Class 25   |
| <b>Class 35</b> | Online retail store services, retail store services and mail order catalog services featuring footwear, socks, hats, belts, jackets, pants, shirts, shorts, T-shirts, sweatshirts, eyewear, shoe trees, shoe bags, hand bags, purses, wallets and bags in International Class 35 |

The said registration is valid and subsisting and by the virtue of the aforesaid registrations had the exclusive right to use the same. Millions have come to know the **ZAPPOS** mark through extensive advertising in a variety of media. The Complainant's unique approach to communication and customer service is helping to form influential relationships and drive growth. The complainant believes that customer experience and word of mouth are critical to business performance. The complainant follows the

policy that the "Real Social Media" to Zappos.com and the way the Company really builds relationships with customer is through telephone calls, e-mail and live chat conversations.

- (e) The Complainant also drives substantial goodwill and reputation from its highly spoken culture code and its CEO's inspirational leadership qualities. Zappos.Com and its CEO Mr. Tony Hsieh have been the subject of significant coverage in the business press, stories in The New Yorker (September 14, 2009), U.S. News and world Report (July 15, 2009), Business Week (May 12, 2009), CBS The Early Show (May 18, 2009). Mr. Tony Hsieh was also named one of the most successful young entrepreneurs. The Complainant in February, 2012 launched its new Emerging Designers Program developed internally by its staff for upcoming fashion designers to nurture young talent by placing their designs on the Zappos.com website for sale. Program provides talented people with the big break that every aspiring designer hopes for the opportunity to sell their line at a major retailer. The Complainant in February, 2012 launched its new Emerging Designers Program developed internally by its staff for upcoming fashion designers to nurture young talent by placing their designs on the Zappos.com website for sale. Program provides talented people with the big break that every aspiring designer hopes for the opportunity to sell their line at a major retailer.
- (f) The Complainant in December 2011 launched a new online feature titled "Zappos Now" ('ZN'), a monthly digital lifestyle magazine exclusively for the ipad mobile device that features editorial-style content on the hottest fashion trends and allows users to shop directly from the app. As a benefit of using the app, purchases made through ZN receive free next business day shipping, which is subject to no minimum purchase. Since the launch of the Complainant's digital magazine, minimum time spent per read has been 40 minutes. Zn offers a visual, inspirational and engaging iPad Mobile Device shopping experience focused on the latest fashion and lifestyle trends. Zn also offers social sharing features that allow users to share the articles and products they view with other rights from the application. The Complainant considers its trading style and the trade mark ZAPPOS be its valuable intellectual property and takes all necessary steps to protect the same. The domain name *Zappos.co.in* is registered in the name of Ms. Jessica Frankfurter (hereinafter called the 'Registrant') on September 06, 2011 and hence the Complaint was filed.
- (g) Lastly the complainant filed this complaint for Arbitration proceeding and the Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on February 12<sup>th</sup>, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on February 23<sup>rd</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the April 2<sup>nd</sup>, 2013 as Ex-parte



## 5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response.

## 6. Discussion & Findings:

- (a) The said domain name *Zappos.co.in* registered by the Respondent/Registrant, is deceptively, visually, and confusingly similar to the name and trademark ZAPPOS, in which the Complainant has statutory and common law rights. The respondent's domain name is identical and confusingly similar to Complainant's registered and famous domain name *Zappos.com* and trade mark ZAPPOS and variations thereof. The Respondent's domain name is bound to cause confusion and deception as it is identical to the name and trademark of the Complainant. The links provided on the landing page of website [www.zappos.co.in](http://www.zappos.co.in) refers to and has links to separate pages titled Zappos. The Respondent has used the said key words and links without the Complainant's permission or authorization with the sole intention to have web users land on their website. The Respondent has used the said key words and links without the Complainant's permission or authorization with the sole intention to have web users land on their website. The Respondent, by doing this act, generates revenue through click-through schemes which is evident from the "Sponsored listings" tag displayed on the landing page. The Respondent's domain name *Zappos.co.in* is bound to cause confusion and deception in the minds of the public as it is identical to the name and trademark of the Complainant.
- (b) The Respondent / Registrant has no right or legitimate interest in the impugned domain name. The Respondent is not making a legitimate or fair use of the said domain name for offering goods and services and is not even based in India. No website is hosted on [www.zappos.co.in](http://www.zappos.co.in) on the landing page and there is a message stating that "Buy this domain. The domain Zappos.co.in may be for sale by its owners" thus corroborating bad faith.

- (c) The Respondent's/Registrant's domain name has been registered and is being used on bad faith. The main objective of registering the domain name zappos.co.in by the Respondent/Registrant is to enrich himself and earn illegal profit by offering it for sale by auction and to mislead the general public and trade, as well as prevent the Complainant from using it or reflecting its name and mark in a corresponding domain name. The Registration of the domain name Zappos.co.in incorporating the name and registered trademark of the Complainant is malafide.
- (d) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

## **7. Decision:**

Hence the Arbitrator decides, the Disputed Domain Name www.zappos.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.zappos.co.in shall be transferred to the Complainant with immediate effect.

  
Dr. BODHISATVA ACHARYA  
SOLE ARBITRATOR  
NIXI

02/04/2013

DATED: April 2<sup>nd</sup>, 2013,  
PLACE: NEW DELHI,  
INDIA.