



69695

Sr. No.....
Amount.....
Purpose/Use.....

05 JUL 2015

ANIL KUMAR SHARMA VARGHSE
Panchayat Bhawan
Gurgaon (Haryana)

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

FDC Limited

B-8, M.I.D.C Industrial Area,
Waluj, District – Aurangabad – 431136
Maharashtra, India

Branch Office at:

A-41, Okhla Industrial Area,
Phase – I, New Delhi – 110020
India

....Complainant

Mr. Satish Mani

Robemall Apparels Pvt. Ltd.
147/10, 80 feet Road,
JP Nagar,
Banagalore – 560078

..... Respondent

Disputed Domain Name: www.zifi.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is FDC Limited a company incorporated under the Companies Act, 1956 having its registered office at the address B-8, M.I.D.C. Industrial Area, Waluj, District Aurangabad-431 136, Maharashtra and branch office at the address A-41, Okhla Industrial Area Phase I, New Delhi – 110020. The Complainant is represented by its authorized representatives S.S. Rana & Co., 317, Lawyers Chambers, High Court of Delhi, New Delhi – 110003.

The Respondent in this arbitration proceeding is Mr. Satish Mani, Robemall Apparels Pvt. Ltd. of 147/10, 80 Feet Road, JP Nagar, Bangalore – 560078 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.zifi.in. The Registrar is GoDaddy.com, LLC.

The Registrant is Mr. Satish Mani, Robemall Apparels Pvt. Ltd. of 147/10, 80 Feet Road, JP Nagar, Bangalore – 560078.

3) Procedural History:

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 thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula 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 Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on July 13, 2015, and the notice was issued to the Respondent on July 14, 2015 at his email address with a deadline of 10 days to submit his reply to the arbitration.
- The Arbitrator also directed the Complainant to provide by email copy of complaint and Annexures to the Respondent which was duly complied.
- Vide email dated July 15, 2015 Mr Samad Iqbal Shariff, representing Robemall Apparels Pvt. Ltd. informed that they are unaware about the dispute and request to make him understand the case in brief.
- Vide email dated July 15, 2015 Arbitrator stated that as the complaint has been forwarded to him by the Complainant which has details of their



grievance against the domain www.zifi.in and further granted Mr. Samad Iqbal Shariff time until July 25, 2015 to respond.

- Vide email dated July 15, 2015 Respondent informed that he has not received the copy of Complaint.
- Vide email dated July 15, 2015 Arbitrator instructed M/s. S.S. Rana (Complainant's representative) to send the copy of Complaint along with its Annexures to Respondent and also directed the Respondent Mr. Samad Iqbal Shariff to send the Authorization as his name and email address does not appear in WHOIS records thus the Registrant of domain name Mr Satish Mani or a Director of Robemall Apparels Pvt. Ltd.
- Vide email dated July 15, 2015 Mr. Samad Iqbal Shariff informed that he is the Company Secretary of the company Robemall Apparels Pvt. Ltd and he is anyways authorized as his name appears on the ROC list.
- Vide email dated July 16, 2015 learned Arbitrator further directed Mr. Samad Iqbal Shariff to file POA or board resolution in his favour to represent Robemall Apparels Pvt. Ltd. which has not been complied till date.
- As the Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before August 3, 2015.
- The Respondent submitted its response on July 30, 2015. On August 01, 2015 the Arbitrator called upon the Complainant to file its Rejoinder in response to the Respondent's response by August 10, 2015 and also once again directed the Respondent to file a POA or board resolution authorising him to represent Robemall Apparels Pvt Ltd. which was not complied by the Respondent.
- The Complainant's representative filed their rejoinder on August 7, 2015.

In the circumstances the complaint is being decided based on submission of both the parties. While, Mr. Samad Iqbal Shariff failed to submit its authority to represent Respondent, it has been considered while deciding the Complaint.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.



4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- a) The Company was initially incorporated under the Companies Act, 1913 under the name of Fair Deal Corporation Private Limited on September 23, 1940. The Complainant's name was changed from Fair Deal Corporation Private Limited to FDC Pvt. Ltd. and a fresh certificate of incorporation dated 2nd May 1986 was issued. Thereafter the Company became a deemed public company under the provisions of Section 43A (1-A) of the Companies Act, 1956 and the name was changed to the present name by deleting the word Private with effect from 16th September 1988.
- b) In July 2001, the Complainant launched its medicinal products and pharmaceutical formulations under the brand ZIFI containing Cefixime as the main active drug, which is an oral third generation cephalosporin antibiotic used to treat gonorrhea, tonsillitis, and pharyngitis. Through its mark ZIFI, the Complainant has been actively developing antibiotics for treating a wide variety of infections with a highly effective and affordable anti-infective therapy. Newer anti-infective combinations have also been successfully launched by the Complainant Company for treating a wide variety of infections with highly effective and affordable anti-infective therapy.
- c) Over a period of 14 years since its launch, the Complainant's mark ZIFI has established itself as an active partner of a large number of clinicians in effectively treating more than 300 million patients from the day of its introduction in India.
- d) The Complainant's mark ZIFI has a wide variety of Adult medicinal products, some of which are as under :
 - ZIFI 200 TABLET
 - ZIFI - CV 200 TABLET
 - ZIFI LBX 200 TABLET
 - ZIFI-O TABLET
 - ZIFI-AZ TABLET
 - ZIFI TURBO TABLET
 - ZIFI - OZ TABLET
- e) Apart from the adult range, ZIFI is also available for its use in children medicinal products. It is available as Dispersible tablet, Oral powder for suspension, Oral drops and Readymix suspension. Such additional products under the ZIFI brand are as under:
 - ZIFI-AZ KID DT
 - ZIFI 50 / 100 DT/ DS/ RMX/ 25 MG DROPS



- ZIFI-CV 50 / 100 DT / DS
- ZIFI CV 100 DRY SYRUP
- ZIFI DROPS
- ZIFI-O 100 DT
- ZIFI-AZ 100 DT

- f) The Complainant submits that they have further launched new medicines under the ZIFI brand such as: ZIFICV, ZIFI-LBX, ZIFI-O, ZIFI-OZ, ZIFI-AZ and ZIFI TURBO which have also stood up to the requirements of the clinicians and have become leaders in their respective market segment. The Complainant has also spread its products line to various medicines related to Typhoid, Bronchitis, Dental products and medicines, Fever and Infection Management, Anti - Infective range for Adults and Pediatrics and also Fever and infection management.
- g) The Complainant is the proprietor of a world renowned family of **ZIFI** prefixed trademarks and it owns and uses its **ZIFI FAMILY OF TRADE MARKS** in several countries including India. It is pertinent to point out that ZIFI is a prominent, significant and distinguishing feature of the Complainant's various trademarks, which are registered and being used extensively in various countries including India, and are recognized and associated by the public at large with the goods and business of the Complainant alone.
- h) The Complainant has obtained various trademarks registrations for its trademark ZIFI, ZIFI 200, ZIFI 100 DT, ZIFI 50 DT, ZIFIPOX, ZIFILAC. Further, the Complainant has also made applications for registration of its marks ZIFI BITES and ZIFI.CO.IN which are pending registrations.
- i) The Complainant registered the domain name zifi.co.in on November 27, 2014, and is also operating the corresponding website www.zifi.co.in which can be accessed from anywhere in the world, including India. The Complainant has, in a detailed manner, mentioned and specified on its website about all its medicines and drugs under the trademark ZIFI and ZIFI FAMILY OF TRADE MARKS for both Adults and Pediatrics. The Complainant has also mentioned a few case studies on its website to show how its products have helped patients to overcome their medical problems.
- j) The Complainant has been providing its products under its trade mark ZIFI and ZIFI FAMILY OF TRADE MARKS, which are of superior quality, and whereby it has done substantial business. They further, submitted the worldwide sales and revenue figures in respect of the various products sold under the ZIFI FAMILY OF TRADE MARKS runs into crores of Indian Rupees.
- k) The Complainant's reputation and goodwill in its trademark ZIFI and its variations thereof has not come from sales alone. It has also spent substantial amounts for promoting its various medicines under its trademark ZIFI and ZIFI FAMILY OF TRADE MARKS by means of national print and electronic promotion. Crores of Rupees are spent each year for promoting its trade marks in India and various



countries of the world. They have also enclosed the details of the year-wise promotional expenses for the mark ZIFI and ZIFI FAMILY OF TRADE MARKS.

- l) The Complainant's mark have been featured and have gained widespread popularity in popular magazines and Journals in the concerned trade in India, and are also featured on a large number of websites on the internet, some of which are as follows:

http://www.drugsupdate.com	http://www.drugs.com
http://businesstoday.intoday.in	http://www.medschat.com
http://www.medindia.net	http://www.indiamart.com

- m) The Complainant has always rightfully considered the name, trademark ZIFI to be its invaluable intellectual property and it has never hesitated to take legal action against other parties for misuse of its trademarks. They have also listed some successful infringement/ opposition actions taken by the Complainant to protect its trade marks.
- n) The Complainant submits that the Respondent's domain name www.zifi.in is identical /similar to Complainant's famous domain name www.zifi.co.in and trademark ZIFI and variations thereof in which the Complainant has common law rights. The Respondent/Registrant has registered or acquired the domain name prominently for the purpose of misleading and creating confusion in the minds of general public as well as potential customers so that the impugned domain name comes to be associated with that of the Complainant. The Respondent's domain name is bound to cause confusion and deception as it is identical to the name and trademark of the Complainant.
- o) The Respondent/Registrant has no right or legitimate interest in the impugned domain name as it incorporates the trademark ZIFI which is the registered trademark of the Complaint. The Respondent/ Registrant is not making legitimate/fair use of the domain name. further, search revealed that the Registrant is currently not operating the corresponding website www.zifi.in and the same has been parked free with GoDaddy.com. No active, website is hosted on www.zifi.in and the message displayed on the landing page of the said domain is parked for free.
- p) The Respondent/Registrant's domain name has been registered with bad faith. The main objective of registering the domain name <zifi.in> by the Respondent/Registrant is to enrich himself and earn illegal profit 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. It is submitted that in the present instance, any Indian user searching for the Complainant's website, will be taken to the Respondent's domain name/website, which enhances the possibility of confusion and/or deception.
- q) It is submitted that Respondent's domain name www.zifi.in which is phonetically, deceptively, visually and confusingly similar to the Complainant's trademark ZIFI and ZIFI FAMILY OF TRADEMARKS is being used by Respondent, without permission, license and authorization. Such un-authorized use of the Complainant's registered trademark by the Respondent, is undoubtedly to take unfair advantage of the reputation and goodwill of the Complainant's business and is bound to cause confusion and deception in the minds of the general public and trade. Hence, it is



submitted that the Respondents have no right or legitimate interests in respect of the domain name www.zifi.in.

5) Summary of the Respondent's contentions:

The Respondent in support of his case has made the following submissions

- a) The Respondent's company was incorporated under the Companies Act, 1956 on 29th December 2010. Robemall is into the business of manufacturing apparels and fashion accessories under the brand name "ZOVI" and sell it exclusively through online portal www.zovi.com. Robemall has registered the domain www.zovi.com and www.zovi.in since 2010 along with www.zifi.in.
- b) The Respondent states that the contents of the complaint letter, unless specifically admitted herein, is denied in toto and complainant is put to proof of all allegations made therein.
- c) The Respondent submits that the brand "**ZOVI**" is a very well-known brand in the e-commerce industry and its portal www.zovi.com has significant number of visits over the period of time. Annual site visits on www.zovi.com (2014-2015) are 366,075,488 (as per Google Analytics).
- d) The Respondent further submitted that Robemall has significant growth over the period of last 4 years in terms of its sales revenue. Robemall has also spend heavily on its marketing and advertising to reach out to the customers. Robemall's business is entirely dependent on the number of customer's visits on the portal. If any competitor registers the similar name which can misguide the customers will lead to big loss in terms of marketing and advertising to the brand.
- e) It is denied that the allegations made by the complainant that Robemall has registered the domain with the intention of misleading and creating confusion in the minds of general public. Robemall registered the domain www.zifi.in because the name ZIFI is similar to the Robemall Brand ZOVI. Domain was registered with the intention to protect ourselves from the confusion created between ZOVI and ZIFI in general public as the entire business is online.
- f) The Respondent further submits that the domain is parked for free because it sounds similar to the name ZOVI. We own this domain to avoid competitor using it as it sounds similar. The domain was registered with the initial intention of routing it to our main domain www.zovi.com i.e when customer visits to buy through our portal and if by mistake types ZIFI because of spell error they must be routed to www.zovi.com.
- g) The Respondent submits that the allegation of complainant that Robemall has registered a domain name with bad faith and enrich himself and earn illegal profit and to mislead the general public and trade is denied and false. Robemall did not



register the domain name with any intension of unlawful gain. Domain zifi.in was registered only with the intension to protect the brand ZOVI as it sound similar.

- h) The Respondent further informed that Robemall has no unlawful intentions or bad faith. The business nature of the Robemall and the Complainant is absolutely different. Robemall is protecting its brand ZOVI. Robemall being into fashion industry has nothing to do with the pharmaceutical business of the complainant. Robemall's nature of business is different from complainant business in every aspect.
- i) The Respondent further like to respond that the domain name www.zifi.in was registered in the year 2011 simultaneously with the other domains i.e www.zovi.com and www.zovi.in. They have not misled or misused the domain in last 4 years, this proves the good faith and no unlawful intentions. Respondent further stated that they do not intend to mislead or gain any unlawful advantage by owing this domain. They want to profit the web exclusive business to restrict competitors from misguiding the customers by registering the similar name like domain.
- j) Robemall further denies all the allegations filed by the complainant in the complaint. Robemall has no unlawful intentions to gain any benefit from the registered domain www.zifi.in. Robemall with the good faith was protecting its own brand ZOVI which sounds similar to ZIFI. Fashion industry being very competitive, it is very common that competitors register the domain name and copy the brand which is similar to the establish brand ZOVI. The complaint has been filed by the Complainant only to harass Robemall and its brand.

6) Summary of the Complainant's rejoinder on behalf the Complainant to the reply filed on behalf of the Respondent/Registrant :

The Complainant in support of his case has made the following submissions

- a) The complainant disputed the similarity of marks and questioned the explanation that the domain was registered with the intention to protect the Respondent from the confusion created between ZOVI and ZIFI in general public as their business is online. The complainant argued that is an afterthought.
- b) The Complainant submits that domain name <zifi.in> completely incorporates the Complainant's registered trade mark ZIFI, and is identical to the aforesaid trade mark in which the Complainant has statutory and common law rights. Further, the Respondent has not been commonly known by the name/trade mark ZIFI and has not provided proof of legitimate rights in the said name and trade mark.
- c) The Complainant denied that the Respondent owns the domain <zifi.in> to avoid competitors from using the same. It is also denied that the domain <zifi.in> was initially registered with the intention of routing it to the main website www.zovi.com, so that incase of spelling error the customers who type ZIFI would



land on the Respondent's website www.zovi.com. It is reiterated stated that the domain names <[zovi.com](http://www.zovi.com)> and <[zifi.in](http://www.zifi.in)> are different from each other. Moreover, the marks are not even phonetically similar. Although it has been alleged by the Respondent that they had the intention of routing the domain <[zifi.in](http://www.zifi.in)> to the main website www.zovi.com, however, till date there is no website hosted at <[zifi.in](http://www.zifi.in)>. By no stretch of imagination can it be presumed that a customer of ordinary intelligence would mis-spell the name ZOVI as ZIFI. Rather it will ensure that <[zifi.in](http://www.zifi.in)> is used by Complainant and will not be mis-used by a third party.

- d) The brand name of the Respondent is ZOVI and they have registered the domain names <[zovi.com](http://www.zovi.com)> and <[zovi.in](http://www.zovi.in)>. Further, the Respondent has no rights or interests in the domain name <[zifi.in](http://www.zifi.in)>. Further, no *bonafide* use of the aforesaid domain name is being made by the Respondent. Therefore, the transfer of the disputed domain name in favour of the Complainant is not likely to cause any irreparable loss or injury to the Respondent as they are using <[zovi.com](http://www.zovi.com)> and <[zovi.in](http://www.zovi.in)>.
- e) The Respondent has not given any *bonafide* reason for registration of the domain name <[zifi.in](http://www.zifi.in)>. Further, the Complainant has been using the mark **ZIFI** in respect of the medicinal products and pharmaceutical formulations since the year 2001. Therefore, a basic search on the Trade Marks Registry's website would have revealed the registrations for the trade mark **ZIFI**. The business being different is of no consequence.
- f) The Complainant's registrations for the trade mark **ZIFI** significantly predate the registration of the domain name <[zifi.in](http://www.zifi.in)>. The Respondent at the time of registration of the domain name should have known that **ZIFI** is a prominently used mark in the pharmaceutical industry by the Complainant.
- g) It The Complainant has denied that since registration in 2011, the domain <[zifi.in](http://www.zifi.in)> has not been misled or misused in last 4 years, which proves the Respondent's good faith and lawful intentions. It is submitted that mere fact that the domain <[zifi.in](http://www.zifi.in)> has been booked but is not being used shows the *malafide* intention of the Respondent and that the domain has been registered in bad faith. It is also denied that they do not intend to mislead or gain any unlawful advantage. The Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a *bonafide* offer of goods or services. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.
- h) The Respondent is dealing in the business of manufacturing apparels under the name/trade mark ZOVI and has registered the domains incorporating the said trade mark i.e., <[zovi.com](http://www.zovi.com)>, <[zovi.in](http://www.zovi.in)> and <[zovi.co.in](http://www.zovi.co.in)>. Although the Complainant does not object to the use of the mark ZOVI by the Respondent but,



there appears to be no bonafide reason for registration of the domain name <zifi.in> which is similar/identical to the Complainant's mark. Further the Respondent has not provided any evidence of use of the trade mark **ZIFI** and also does not appear to have trade mark registrations for the said mark.

7) **Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark ZIFI leads to the conclusion that the Complainant has superior and prior rights in the mark 'ZIFI'. The Complainant's trademark registration for ZIFI dates back to March 2001. Its domain registration for www.zifi.co.in is of November 2014.

Further, it has to be noted that since the registration of the domain name www.zifi.in the Respondent has not used the domain. As per their own assertion, the main website / domain name of the Respondent is www.zovi.in. Further, they created the domain name www.zifi.in to block any third party from using it in relation to apparels. Interestingly, they never activated the domain name by setting up a website or even redirecting the visitors to their primary website www.zovi.in. Thus, it negates their own assertion that ZOVI and ZIFI are similar and it was created to redirect the consumers who would wrongly spell ZOVI as ZIFI.

Thus it can be said a) the web users are likely to associate the word 'ZIFI' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.zifi.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has statutory and common law rights, and rights on account of prior and longstanding use of the mark 'ZIFI'. The Complainant has in support submitted substantial documents. The disputed domain name contains the Complainant's 'ZIFI' mark in its entirety.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;



The Respondent has never used the disputed domain name for legitimate business services. It has not filed any evidence to show that it has rights or legitimate interest in respect of the disputed domain name 'www.zifi.in'. On the other hand, the Complainant has made out prima facie case that the Respondent lacks rights or legitimate interest in the domain name.

- (3) the domain name has been registered in bad faith.

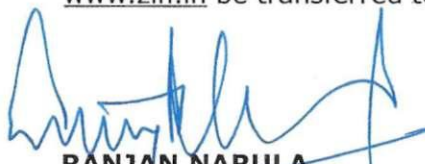
The Respondent has urged that it had registered the domain name in 2011 and not mislead or misused it for last 4 years, this proves good faith and no unlawful intention. On the other hand Complainant claims and has produced evidence to show its prior adoption of the mark ZIFI and alleged that it's use is continuous and extensive which must have come to the knowledge of the Complainant.

The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163; *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. D2001-0087; *Microsoft Corporation v. Montrose Corporation*, WIPO Case No. D2000-1568).

The Respondent has registered the disputed domain name but has not put it to any material use, merely having it in storage. Thus the Respondent is holding the disputed domain name passively. Such passive holding of a domain name that incorporates a well known trademark, without obvious use for an Internet purpose leads to the conclusion that such registration is in bad faith.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration of the domain name www.zifi.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.zifi.in be transferred to the Complainant.


RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

August 28, 2015