



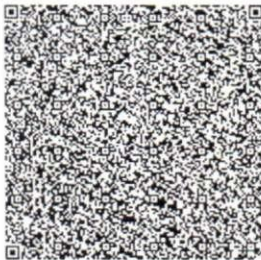
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INDIA NON JUDICIAL

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Certificate Issued Date : 30-Nov-2015 03:28 PM
Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL92130373029588913405N
Purchased by : SONAL KUMAR SINGH
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SONAL KUMAR SINGH
Second Party : Not Applicable
Stamp Duty Paid By : SONAL KUMAR SINGH
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Udacity, Inc.
2465 Latham Street, 3rd Floor
Mountain View, California 94040
United States of America

...(Complainant)

v.

Alex Wang
995 Shangchuan Road
Pudong, Shanghai 210016
China

...(Respondent)

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The Parties

The Complainant in this proceeding is: Udacity, Inc., a U.S. corporation, organized under the laws of the State of Delaware. The Complainant's contact details are: Greg Brauner, 2465 Latham Street, 3rd Floor, Mountain View, California 94040, USA. Telephone Number + 1-650-938-9090, + 1-650-9389092. Email id: greg@udacity.com.

Respondent in this proceeding is Alex Wang , 995 Shangchuan Road Pudong, Shanghai, 210016, China. Telephone Number +86-02186868888. Email id: HiMeMe@foxmail.com. (According to WHOIS information).

The Domain Name & Registrant

The disputed domain name is **UDACITY.IN**. The name of the Registrant is Alex Wang as per the complaint.

Procedural History

I have been appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name UDACITY.IN.

.IN registry has supplied the copy of the Complaint and Annexures to me.

On 29.09.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexure to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 29.09.2015 with the instructions to file his say within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

NIXI through an email dated 29.09.2015 provided the proof of sending the copy of the complaint to the Respondent by DTDC courier and also stated in the same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 01.10.2015, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

On 07.10.2015, NIXI forwarded the email of the Respondent to the Tribunal wherein the Respondent inquired about the format of the response to the complaint.



On 13.10.2015, the Respondent filed its reply to the complaint along with the relevant annexures and documents.

On 23.10.2015, the Tribunal informed the parties that it is in receipt of the reply filed by the Respondent along with the annexures in support thereof. The Tribunal further informed that on the basis of the documents on record, it shall proceed to decide the complaint.

On 23.10.2015, the Complainant informed the Tribunal that it is in receipt of the reply filed by the respondent and is in the process of making the rejoinder to the same. And the Complainant requested the Tribunal to grant them time till Monday, October 26, 2015 to file their rejoinder.

On 23.10.2015, the Tribunal informed the parties about its receipt of email by the Complainant seeking time to file the rejoinder. The Tribunal granted the Complainant time till October 26, 2015 to file the same.

On 26.10.2015, the Complainant filed their rejoinder to the reply of the complaint filed by the respondent.

On 28.10.2015, the Respondent filed its reply to the rejoinder filed by the complainant.

On 28.10.2015, the Respondent re-sent the reply to the rejoinder filed by the complainant as the one sent earlier had an error.

On 28.10.2015, the Tribunal informed the parties that the pleadings have been closed and the Tribunal will proceed to deliver its award on the basis of documents on record.

On 29.10.2015, the Complainant informed the Tribunal that they have reviewed the response to the rejoinder filed by the Respondent and that no new and/or additional facts have been stated. The complainant further requested the Tribunal not to consider the same and that if the same is being considered then to provide an opportunity to the complainant to file their response thereto.

On 29.10.2015, the Respondent requested the Tribunal to consider his reply to the rejoinder filed by the complainant.

On 05.11.2015, the Tribunal informed both the parties that the proceedings have been closed and the Tribunal would decide the matter on the basis of the materials placed on record. The Tribunal also stated that the request of the Complainant has been taken note of and would be considered in the facts and circumstances of this matter. The Tribunal further stated that as the Complainant himself has admitted that there is no additional fact or plea raised by the Respondent in the reply to the Rejoinder, there is no occasion to give him an opportunity to file his reply to reply to the Rejoinder.



On 19.11.2015, The Tribunal informed both the parties that as it was going through the material placed on record by both the parties, it came to the notice of the Tribunal that the complainant had filed certain emails exchanged in their complainant. The Tribunal directed the complainant to file the emails actually exchanged as downloaded by the server in order to determine the authenticity of the same by 20.11.2015.

On 20.11.2015, The Complainant informed the Tribunal that the correspondences in question were exchanged through a third party, domain manager, who is based in the USA and therefore, asked time till October 25, 2015 to file the same.

On 23.11.2015, The Complainant informed the Tribunal that the extension sought is till November 25, 2015 which was inadvertently mentioned as October 25, 2015.

On 25.11.2015, The Complainant filed the said correspondences.

On 25.11.2015, The Respondent reiterated to the Tribunal that the said correspondences has nothing to do with the respondent and that the complainant never contacted the respondent.

I have perused the entire record including all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:

The case of the Complainant is that :

1. The Complaint is based on the Complainant's exclusive rights in the mark UDACITY - a term coined by the Complainant which stands for 'we are audacious, for you, the student.
2. Complainant was founded in 2011, it has developed from a start-up company to one of the leading online higher education providers. Through its unique online courses designed in tandem with industry giants like Google, AT&T, Facebook, Salesforce, and Cloudera, the Complainant has continuously delivered online university-level courses created and taught by Silicon Valley engineers and analysts for the last three years in connection with the mark UDACITY.
3. As of August 21, 2015, the Complainant offers six separate curricula programs to earn a NANODEGREE certification and over 100 individual courses. To date, the Complainant has enrolled over 160,000 students from more than 190 countries in its UDACITY online courses.



4. The Complainant holds registrations in the United States, the European Union, China, and Canada for the mark UDACITY in relation to *'education services, namely, providing university-level online courses'* with the earliest registration dating back to January 18, 2012.
5. In India, Complainant's mark UDACITY under trade mark application No. 2365810 dating back to July 18, 2012 has been published in the Trade Marks Journal No. 1597 dated July 15, 2013 in relation to services under Class 41 viz. *'education services, namely, providing university-level online courses'*.
6. The Complainant has pending applications for the mark UDACITY in connection with the above services in Brazil in addition to a pending international application in Australia, Egypt, Japan, the Republic of Korea, Mexico, the Philippines, Russia, Singapore, Turkey, and Vietnam.
7. The Complainant has established common law rights to the mark UDACITY through extensive and continuous commercial use throughout the world. As a result of such use, the Complainant's coined mark/name UDACITY has become a distinctive identifier, associated exclusively with the Complainant's services and thereby falls within the definition of a "well-known trade mark" under Section 2(1)(zg) and Section 11(6) of the Trade Marks Act, 1999 and Article 6bis of the Paris Convention.
8. This distinctiveness and well-known nature of the mark UDACITY is exemplified by the 582,000 search results for the term "Udacity" generated from <http://www.google.co.in>, almost all of which are related to the Complainant, as well as the Complainant's over 580,000 followers and 9 million page views on Google+, 103,000 followers on Twitter, and 122,000 'likes' on Facebook.
9. The Complainant has continually used the mark UDACITY since 2012 and has received considerable media attention for its commercial success. The media extensively covered the Complainant's launch as well as the Complainant's subsequent activities. In particular, Udacity has garnered media attention for its partnership with Georgia Tech and AT&T to offer the first online massive open online master's degree program in computer science for less than USD 7,000 in tuition specifically targeted to students in India—Udacity's second largest market for student enrollment.
10. The Complainant has received considerable media attention for its success in attracting high-profile venture capital. In September 2014, the Complainant raised USD 35 million in new venture capital, bringing its total outside funding to USD 55 million.



11. The Complainant's trade mark registrations, in conjunction with the Complainant's applications to register the mark UDACITY and common law rights in the mark UDACITY, unambiguously demonstrate the Complainant's exclusive rights in the mark.

RESPONDENT

1. The Respondent in the present proceeding is: Alex Wang , 995 Shangchuan Road Pudong, Shanghai, 210016, China. Email: HiMeMe@foxmail.com. Telephone Number: +86-02186868888.
2. The Respondent submits that before the disputed domain name was registered, the Complainant did not have any civil rights in India and other countries except in the USA.
3. The Respondent submits that before the disputed domain name was registered, the Complainant's mark in the USA cannot be a well known mark in the world.
4. The Respondent submits that the disputed domain name was registered on January 29, 2012. The Respondent further submits that the service mark registered by the Complainant cannot be a well-known trademark/service mark because they had applied for the same only 11 days ago and that they started their services only 13 days before the disputed domain was registered.
5. The Respondent states that the Complainant did not register the trade/service mark in India and other countries except the USA, before the disputed domain name was being registered.
6. The Respondent submits that before the disputed domain name was registered, the influence power of the service provided by the Complainant is very small and almost no one knew them. The Respondent further submits that the influence power shown by the Complainant is of August 21, 2015 and not that of January 29, 2012 i.e. when the disputed domain name was being registered.
7. The Respondent further submits that the complainant has not provided any evidence to show that they had advertised in India or started an office in India before the disputed domain name was registered.
8. The Respondent further submits that the Complainant cannot prevent the respondent from registering the disputed domain name on the "first come, first registration" principle.
9. The Respondent states that he has no intention to sell or rent the disputed domain name to others including the Complainant.



10. he Respondent also submits that his services are not connected with that of the Complainant and thus, the same cannot mislead the Internet users.
11. The Respondent submits that the disputed domain name was not registered or used in bad faith.

REJOINDER BY THE COMPLAINANT

1. The Complainant submits that the Registrant has not come before this Hon'ble Court with clean hands and has in fact concocted a false and frivolous story.
2. The Complainant submits that despite registering the domain name in the year 2012, the Registrant has not commenced any use thereof nor is offering any goods/services using the disputed domain name to date. The Complainant further stated that the registrant has failed to produce any evidence to show that it has rights or interest in the purported domain name beyond purely commercial interest in diverting legitimate customers from the Complainant's website.
3. The Complainant also submits that the registrant has completely disregarded the Complainant's prior rights vesting in the mark/name UDACITY. The complainant further states that the registrant has failed to provide any evidence to substantiate the Chinese meaning of the word 'UDACITY'.
4. The Complainant submits that its mark UDACITY under trade mark Application No. 2365810 was filed on July 18, 2012 claiming priority from the US Application No. 4243540 since January 18, 2012. The Complainant further submits that as per the Paris Convention for the Protection of Industrial Property, to which India is a signatory, the filing date for the Indian Application No. 2365810 dates back to January 18, 2012. The said mark has been advertised in the Trade Marks Journal No. 1597 dated July 15, 2013. Thus, the Complainant clearly has prior proprietary rights vesting in the mark/name UDACITY vis a vis Registrant.
5. The Complainant submits that the Registrant has simply been passively holding the disputed domain name since its registration on January 29, 2012. The complainant also states that the registrant has failed to show if it is using the said 950 domain names, out of which 925 are .IN domain names.
6. The Complainant further submits that merely because the email address used for correspondence re sale of domain name was not 'HiMeMe@foxmail.com' of the Registrant, it cannot be said that the same was not being done on behalf of the Registrant.



RESPONDENT'S REPLY TO REJOINDER

1. The Respondent submits that the Paris Convention for the Protection of Industrial Property does not carry out unconditionally. The respondent further states that generally the additional condition is either that the mark owner does some business activity or has a great influence in the countries concerned.
2. The Respondent submits that he was unaware of the existence of the complainant before he registered the disputed domain name. The respondent further submits that the content of the website udacity.in, a coming soon page, is a common practice of a startup when it is under development.
3. The Respondent states that though the respondent has registered a lot of domain names, he has not received any other trademark complaint so far other than that by the complainant which is a strong evidence to show that the same have not been registered by the respondent in bad faith and thus, the respondent is not cyber squatting.
4. The Respondent also states that he has not contacted anyone to sell the disputed domain name.

Parties Contentions

i) Complainant

The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent contends as follows:

- a. The Disputed Domain Name is not identical or confusingly similar to a mark in which Complainant alleges enforceable rights.
- b. The Respondent has rights or legitimate interest in the domain name.
- c. The Disputed Domain Name was not registered or used in bad faith.

Discussions and Findings:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"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"*.



Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the act.

Rule 12 (a) of the INDRP Rules of Procedure provided that *“An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable”*

In these circumstances, the decision of the Arbitrator is based upon the submissions of both the parties.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark “udacity.in”.

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant submits that the Disputed Domain Name, ‘udacity.in’, is identical to the mark UDACITY in which the Complainant has rights because the Disputed Domain Name contains the whole of the mark UDACITY and consists solely of the mark UDACITY. The spelling of the Disputed Domain Name is identical to the spelling of the mark UDACITY. The Tribunal is of the view that the only difference in the disputed domain name of the complainant and that of the respondent is in the extension “.in” and “.com” and such a difference is not sufficient to differentiate the mark of the complainant from that of the respondent.

The Tribunal further holds that the Complainant has continually used the mark UDACITY since 2012 and has put documents on record to show the media attention it has received for its success and the same has not been disputed by the respondent. Also, the Complainant’s trade mark registrations in the United States of America, the European Union, China and

Canada along with its application to register the mark UDACITY in India and pending applications for the mark in Australia, Egypt, Japan, the Republic of Korea, Mexico, the Philippines, Russia, Singapore, Turkey and Vietnam demonstrate that the complainant has established rights in the said mark.

Also, the above submissions of the Complainant have not been specifically disputed by the Respondent, as such they are deemed to be admitted by him.

Thus, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii. The Registrant has no rights or legitimate interests in respect of the domain name.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii):

- i. 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;*
- ii. 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*
- iii. 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.*

The Complainant submits that there is no evidence that the Registrant has used or intends to use the Disputed Domain Name or a corresponding name in connection with a bona fide offering of goods or services.

The Complainant submits that the Registrant is not known by the name "Udacity" and/or the website 'www.udacity.in' and has no legitimate rights to the mark UDACITY. He further submits that the available WHOIS information and/or the website 'www.udacity.in' does not provide any indication that the Registrant or the Registrant's business operations are known by the Disputed Domain Name. The Complainant also submits that, the Registrant does not have any license, permission, contract, or other relationship with the Complainant that allows the Registrant to own or control the Disputed Domain Name.



The Complainant relies on *Microsoft Corp. v. K E Henry*, Case No. FA1364807; Nat. Arb. Forum Jan. 25, 2011 wherein the arbitral tribunal had held that the Registrant was not commonly known by the disputed domain name was based in part on WHOIS information. The Complainant states that the domain name 'udacity.in' originally stood in the name of one Ms. Annie Young as on January 29, 2012 and was subsequently transferred to the present Registrant on February 7, 2013 but the domain registrant's physical address and telephone number have remained consistent even after the said transfer. Thus, the Registrant has been passively holding the disputed domain name since its registration on January 29, 2012.

The Complainant further states that although the Disputed Domain Name currently resolves to a landing page stating "Coming Soon!", the Registrant is not using, and has never used, the Disputed Domain Name in connection with a bona fide offering of goods and/or services.

The Complainant also submits that the registrant has no rights or interest in the Disputed Domain Name beyond a purely commercial interest in diverting legitimate customers from the Complainant's website or in ransoming the Disputed Domain Name to the Complainant.

The Respondent submits that the word "Udacity" was originally made by him and that the same comes from two words, "Uda" and "City" through the English Word Formation. The Respondent further states that the words "Uda" means "quickly reach" in Chinese.

The Respondent further submits that his website is a startup and that he has developed the app/website about the novelties search and shopping in the city. The Respondent also submits that it is at the stage of "Coming Soon" and that they use the disputed domain name to start their services and that he has also obtained a protected registration as "udacity.co.in".

The Tribunal is of the view that the Respondent had registered the Disputed Domain Name in the year 2012 and has not carried out any activity on the same since then and has not put any material on record to demonstrate any preparation to use the said domain name for bonafide offering of goods and services.

The Respondent had registered the domain name in the year 2012 and has not used the same since then. Therefore, it is fair on the part of the Arbitrator to draw a conclusion that the registrant is not commonly known by the domain name as the same is merely lying idle and the same has not been used by the respondent.

The Tribunal is of the view that the registrant is not making a legitimate non-commercial or fair use of the domain name as the respondent is not using the said domain name at all.

Even otherwise, the above facts and annexures establish that the Registrant has no rights or legitimate interests in respect of the domain name.



iii. The Registrant domain name has been registered or is being used in bad faith

The Complainant submits that the registrant had acquired the Disputed Domain Name for the sole purpose of misleading consumers, blocking the Complainant's rights in the trade mark and domain name UDACITY, or reselling the Disputed Domain Name to the Complainant. The Complainant further states that the Registrant's acquisition of the Disputed Domain Name, passive holding thereof, and attempts to ransom the Disputed Domain Name establishes his bad faith.

The Complainant states that the intentions of the Registrant were clearly demonstrated when the Complainant contacted the Registrant in May 2015 with intent to ascertain their true intentions *vis-à-vis* the disputed domain 'udacity.in'. During the said correspondence, when the Complainant attempted to purchase the passively held and unutilized domain name at issue from the Registrant for the fair price of USD 1,000, the Registrant (through a purported representative) attempted to ransom the Disputed Domain Name for \$35,000 USD.

The Complainant relies on *Wal-Mart Stores, Inc. v. Machang*, wherein it was held that "a demand exponentially larger than the ransom amount found to constitute bad faith."

The Complainant states that the timing of the Registrant's January 29, 2012 registration of the Disputed Domain was not a result of independent creation of the coined term "Udacity" but rather an intentional effort by the Registrant to block the Complainant's rights in its trade mark and domain name or profit therefrom. The Complainant further states that the uniqueness of the mark UDACITY and the publicity surrounding the launch of the Complainant's website, to offer the Complainant's education services throughout the world, support the presumption that the Registrant should have been aware of the Complainant's rights in the mark UDACITY at the time the Registrant registered the Disputed Domain Name.

The Complainant relied on *Digi Int'l v. DDI Sys.*, Case No. FA124506 (Nat. Arb. Forum Oct. 24, 2002); *see also Samsonite Corp. v. Colony Holding*, Case No. FA94313 (Nat. Arb. Forum Apr. 17, 2000); *Mattel, Inc. v. Jennifer Post*, Case No. FA655013 (Nat. Arb. Forum Apr. 26, 2006) where in the Arbitral Tribunal held that "There is a legal presumption of bad faith, when Registrant reasonably should have been aware of the Complainant's trade marks actually or constructively."

The Complainant submits that a reverse WHOIS lookup identifies 950 domain names currently registered in connection with the Registrant's email address *viz.* 'himeme@foxmail.com' and out of the said 950 domains, 925 are .IN domain names. The

Complainant further submits that under paragraph 6(ii) of the Policy, the Registrant's extensive pattern of domain registration and cybersquatting to prevent trade mark owners from reflecting their marks in a corresponding domain names further demonstrates the Registrant's bad faith registration and use of the Disputed Domain Name.

The Respondent submits that he did not know anything about the Complainant before registering the disputed domain name as the complainant registered the domain name only thirteen days before the disputed domain name registration and that he had registered the said domain name for their project and has been using the disputed domain name effectively.

The Respondent further submits that he does not have any intent to sell the disputed domain name to anyone and that the Respondent never contacted the complainant to sell the domain name via email or any other method. The Respondent further states that complainant has claimed the contacted email address to be codoservices@gmail.com and that the said email address does not belong to the respondent and he is unaware as to whom the same belongs to.

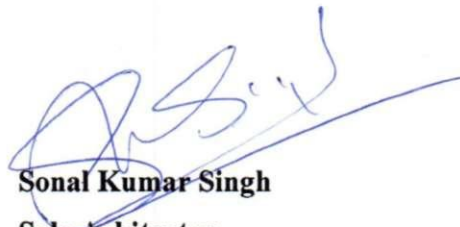
The Complainant in its complaint had annexed at Annexure P, the summary of correspondences where the complainant had attempted to purchase the said domain name from the respondent. As the same was a summary, the Tribunal vide email dated 19.11.2015 directed the complainant to file the said correspondences as originally downloaded from the server to help the Tribunal determine its authenticity. After going through the emails as filed by the complainant, the tribunal is unable to repose confidence on the same as the first email sent by the complainant does not show the recipient, the date and time of the email and even in the other emails filed by the complainant the BCC has been blackened. Therefore, the Tribunal is not taking these emails into consideration. However, there are other sufficient materials on record to show the bad faith on part of the respondent such as the 925 .IN domain names registered by the respondent demonstrate that the registrant has registered the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name and has been engaged in the pattern of such conduct. Further, it has been held in *Telstra Corp Limited –v- Nuclear Marshmallows* WIPO D2000-0003, that passive holding of a domain name registration can in certain circumstances constitute bad faith. Thus, this Tribunal is of the view that the respondent did not conduct any legitimate non commercial or fair use of the domain name and thus, the passive holding of the domain name by the respondent for approximately three years amounts to bad faith on his part.



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has registered and used the disputed domain name in bad faith. NIXI is hereby directed to transfer the domain name of the Respondent i.e. <UDACITY.IN> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 30th November 2015.



Sonal Kumar Singh

Sole Arbitrator

Date: 30th November, 2015