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TREASURY, AGRA

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

Microsoft Corporation. V Zoai Founder (ZOAI.in)

SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

In the matter of:

Microsoft Corporation

... Complainant

versus

Zoai Founder

... Respondent

Ankur Raheja

ARBITRATION AWARD

Dispute Domain Name: www.zoai.in

1. The Parties:

a. **Complainant:** The Complainant in this arbitration proceedings is: **Microsoft Corporation**, One Microsoft Way, Redmond, Washington 98052-6399, United States of America. represented by Dodd & Co. 113, Uday Park, New Delhi - 110049.

b. **Respondent:** The Respondent in this arbitration proceedings is **Zoai Founder, Zoai** having WHOIS address as ABC, New Delhi - 110017, India.

2. The Domain Name and the Registrar:

a. The Disputed Domain Name is www.zoai.in.

b. Disputed Domain Name is registered with Godaddy.com, LLC.

3. Procedural History [Arbitration Proceedings]

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Ankur Raheja, CyLaw as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceedings commenced on 01 January 2019 in terms of INDRP Rules. Relevant Dates are as follows:

Sr No	Particulars	Date
1.	Date of Handover of Complaint by NIXI	31 December 2018
2.	Hard Copy of Complaint received by Arbitrator and Notice of Arbitration issued to the Respondent, also referred as date of commencement of Proceedings	01 January 2019
3.	Soft Copy of Complaint served upon Respondent by Nixi	01 January 2019
4.	Second Notice to the Respondent	16 January 2019

5.	Ex-parte Order	24 January 2019
6.	Award Passed	18 February 2019

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 01st January 2019, with the instructions to file his reply / response by 15th January 2019.
- Nixi did service of electronic copy of the Complaint upon the Complainant on 01st January 2019 to expedite the proceedings. And later Nixi informed that the hard copy of the Complaint could not be delivered to the Respondent, due to the incomplete address.
- The Respondent was asked to provide correct postal address, so that hard copy of the Complaint could be delivered to him. But no response was received either to the demand as to correct address or to the INDRP Complaint served electronically by NIXI.
- That on failure of the Respondent to file any response to the complaint, another opportunity was provided to the Respondent on 16 January 2019 but no

response was received to the second notice as well, which had a timeline of 22 January 2019.

- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain had successful delivery notifications. Therefore, service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- Therefore, an order for ex-parte proceedings was issued on 24th January 2019, as no response was received from the Respondent.
- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. Microsoft was incorporated in 1975 with business interests in a diversified product and service range including inter alia computer software, computer services, devices and other technological solutions. Microsoft develops, manufactures, licenses, supports and sells technological solutions. Microsoft

develops, manufactures, licenses, supports and sells computer software, consumer electronics, hand held devices, personal computers, and related services. Microsoft has been consistently featured amongst the most valuable companies in the world for over four decades.

B. Microsoft is a global leader in respect of a wide product offering including: operating systems and software products (WINDOWS), productivity software (OFFICE, EXCEL, WORD, POWERPOINT, OUTLOOK, etc.), search engine products and services (BING), browsers (INTERNET EXPLORER and MICROSOFT EDGE), computer games and gaming consoles (XBOX, MINECRAFT, and HALO), computer devices (SURFACE), cloud computing platform and services (AZURE), intelligent personal assistant software (CORTANA), and communications software and services (SKYPE and MICROSOFT TEAMS). The products and services of the Opponent are available and used by a large number of people worldwide and Microsoft operates out of 211 locations worldwide. Microsoft earned over \$90.0 billion in revenue and \$22.3 billion in operating income in the 2017 Fiscal Year. Details about the business and activities of Microsoft can be found online on its website at <https://www.microsoft.com/en-in/>. Copies of the Microsoft Investor Report for 2017 and web pages evidencing Microsoft's global presence are attached as intelligently, providing a unique viewpoint, along with manners and emotional



expressions. To ensure Zo is socially responsible, she also has strong checks and balances in place to protect her from exploitation. Zo has already held conversations with over 100,000 people in the U.S.

C. Microsoft is the owner and proprietor of several well-known trademarks worldwide such as its house mark MICROSOFT and others including but not limited to WINDOWS, MICROSOFT OFFICE, SKYPE and ZO, to name a few. Microsoft's brands are protected by means of trade mark registrations in several countries throughout the world, including India.

D. Since its inception Microsoft has always been at the forefront of technological innovations and has been investing in the promise of artificial intelligence for over 25 years. As a result, Microsoft launched "Zo" an artificial intelligence (AI) English-language chatbot in December 2016. The AI learns from human interactions to respond emotionally and intelligently, providing a unique viewpoint, along with manners and emotional expressions. To ensure Zo is socially responsible, she also has strong checks and balances in place to protect her from exploitation. Zo has already held conversations with over 100,000 people in the U.S.



E. To ensure ZO is connected across numerous social media applications, Microsoft has ensured that users can “talk” to ZO on Facebook Messenger at “zo”, on Instagram at “zochats”, on Kik messenger at “zo.ai” and on Twitter at “zochats”.

F. In order to protect its rights in and to ZO, Microsoft owns the domain name <https://www.zo.ai> and worldwide trademark applications and registrations for ZO. In India, Microsoft is the owner of International Registration No. 1339706 (IRDI-3539162) for ZO.

G. Some of the worldwide applications and registrations owned by Microsoft for ZO, have been registered in the countries such as Australia, Canada, China, European Union, Indonesia, Russian Federation, South Africa and United States of America, under class 41, 42, 45.

H. Microsoft has spent enormous sums of money and time in developing, promoting and advertising its well-known ZO word mark. By virtue of extensive and continuous use since it was first adopted, the ZO word mark has acquired distinctiveness and is associated inextricably and exclusively with Microsoft. A copy of the webpage operated by Microsoft resolving at <https://www.zo.ai/> and the corresponding Whois details are attached and copies of some Registration

Certificates issued for the ZO trade mark, including the Statement of Grant issued by the Indian Registry in the name of Microsoft Corporation are attached.

I. In November 2018, Microsoft learned that somebody had obtained a domain name registration for <https://zoai.in/>. Since the Respondent opted for domain privacy in violation of the Registrar's agreement with NIXI and "Registry Advisory LA 02: Accurate WHOIS Information in Domain", Microsoft was unable to gauge any information on the owner of the Disputed Domain Name from the WHOIS Registry maintained by NIXI. Upon investigating into the infringing activities of the Respondent, Microsoft came across the social media handles operated by the Respondent that resolve at <https://www.facebook.com/zoainow/> and <https://www.instagram.com/zoainow/?hl=en>. The Respondent has chosen a deceptively similar domain name and social media handles to ride on the goodwill accrued by Microsoft in its ZO trade marks.

J. On December 3, 2018, a Cease and Desist Letter was sent on behalf of Microsoft to the Respondent, demanding the Respondent refrain from infringing Microsoft's intellectual property rights. The Cease and Desist was sent to the email address available on the social media handle i.e. admin@zoai.in and a copy was also sent via Facebook messenger. Despite multiple attempts at following up with the Respondent, no response has been received, till date. As a

result of the lack of response from the Respondent, Microsoft initiated takedown actions against the Respondent's infringing social media pages, and has been successful in the takedown of the Facebook page. The Instagram handle should be removed, shortly.

5. The Dispute

- a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant contends as follows:

1. Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(i) of the INDRP)

A. It is prima facie evident that the Disputed Domain Name is deceptively similar to Microsoft's ZO trade mark as well as Microsoft's domain name <https://www.zo.ai>. The Disputed Domain Name consists of the Complainant's ZO trade mark followed by the descriptive term AI, which is also the technology that Microsoft associates its ZO trade mark with. Such deceptive similarity will give rise to enormous confusion as to its origin. The Respondent has used the registered and well-known trademark of Microsoft followed by a term that is descriptive of the technology employed in association with said trade mark and thus, such use of the Disputed Domain Name qualifies as trade mark infringement. Such use by any unauthorized person of a deceptively similar domain name to that of Microsoft's ZO trade mark is bound to lead to confusion and deception and amounts to passing off as well as trade mark infringement. In fact, Microsoft has already come across an instance of actual confusion and it is apprehensive that many more users are already/ likely to be confused, if the Disputed Domain Name continues to remain registered. Legal precedents state that a domain name which wholly incorporates a Complainant's registered mark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks. [Living Media, Limited v. India Services, Case No. D2000-0973]



B. Similarly, the Disputed Domain Name contains Microsoft's <https://www.zo.ai> with the only difference being that the top-level domain name is different. It is well established that a different top-level domain does not affect the domain name for the purpose of determining whether it is identical or confusingly similar. [Google LLC vs. Sameer Mukherjee, INDRP/965, Lockheed Martin Corporation vs. Aslam Nadia, INDRP/947].

C. Thus, Microsoft submits that the Disputed Domain Name is deceptively similar to the Complainant's well-known ZO mark and the domain name operated by Microsoft <https://www.zo.ai>.

2. No Rights or Legitimate Interests (paragraph 4(ii) of the INDRP)

D. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trade marks or register the Disputed Domain Name. The Complainant has no relationship with the Respondent.

E. In addition, considering that the Disputed Domain Name consists entirely of Microsoft's trade mark ZO and the technology associated with the trademark i.e. AI it is evident that the Respondent has no legitimate interests in the Disputed

Domain Name but has adopted it to gain undue advantage from the goodwill associated with the Complainant's ZO trade mark. [Houlala Global Investment Limited vs. Alex Wang, INDRP/1030].

F. In addition, the website that resolves at the Disputed Domain Name offers services related to automated analytics and marketing services for small to medium businesses. It is claimed that the Respondent provides unique insights and suggests marketing ideas based on the data provided. Thus, the Respondent is into data analytics and there is no possible honest reason for the Respondent to have adopted a domain that is nearly identical to Microsoft's ZO trade mark and a deceptively similar domain name.

3. Registered or used in bad faith (paragraph 4(iii) of the INDRP)

G. Paragraph 6 of the Policy determines what constitutes bad faith domain name registrations and Paragraph 6(iii) clearly states that if "by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product

or service on the Registrant's website or location”, such use and registration constitutes bad faith.

H. ZO qualifies as an arbitrary mark for technology solutions and services, and there is no conceivable explanation that the Respondent could have for the honest adoption of a nearly identical mark. The Respondent's adoption of the ZO trade mark is prima facie malafide and the bad faith adoption is further evident considering that the Disputed Domain Name bears reference to the technology associated with Microsoft's ZO trade mark. [Indeed Inc vs. Deepak Singh, INDRP/987].

I. The Disputed Domain Name functions as an advertising and marketing arm of the Respondent. By intentionally adopting a domain name that consists of Microsoft's trade mark ZO, followed by the technology associated with said trade mark i.e. “AI” and a top-level domain i.e..” in”, there is no doubt that the Respondent wilfully adopted a deceptively similar domain name to increase web traffic and attract internet users. In addition, by virtue of adoption of a nearly identical domain name, there is a significant likelihood of users associating the services offered by the Respondent with Microsoft. Moreover, since the Respondent functions in the same business space as Microsoft, the Respondent was fully aware of Microsoft's ZO trade mark and the ZO AI technology as well



as the goodwill accrued by Microsoft. The Respondent wilfully adopted a deceptively similar domain name and the use of the Disputed Domain Name was no doubt a calculated effort on part of the Respondent to usurp Microsoft's goodwill. Such unauthorized use dilutes not only Microsoft's proprietary rights in and to the ZO trade mark but also tarnishes Microsoft's goodwill.

J. In addition, in violation of rules and advisories set in place by NIXI, the Respondent has opted for domain name privacy, and the only plausible reason for the Respondent to violate NIXI norms is that the Respondent is trying to remain anonymous in an attempt to misguide users about its identity.

K. Bad faith is further evidenced from the fact that the Respondent has chosen to ignore the Cease and Desist Letter sent to it on behalf of Microsoft and has not replied despite repeated follow up. As a result of the above, Microsoft submits that the Disputed Domain Name was adopted in bad faith.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 01 January 2019 and 16 January 2019 respectively.

B. However, Respondent failed to file any response to the Complaint filed by the Complainant despite being given an adequate notification and the opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

(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.

II. Respondent's Default

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.



The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner.

The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred

to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) Identical or Confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]

A. The Complainant company, was incorporated in 1975 and manly deals with computer software, computer services, devices and other technological solutions. The Complainant company is a global leader in respect of a wide product offering including: operating systems and software products; search engine products and services; browsers; computer games and gaming consoles, computer devices and so on.

B. The Complainant has huge user base and operates out of 211 locations worldwide. It has number of registered Trademarks worldwide including Microsoft, Windows, Microsoft Office, Skype, ZO, to name a few. In India, 'ZO' has been registered since 28 September 2018 as an International Registration, vide IRDI number 3539162, based upon Madrid Protocol, whose application was made in 18 January 2017. But for the purpose of the policy the trademark registration date is more relevant. In the matter of Jireh Industries Ltd. v. DVLPMNT MARKETING, INC. / Domain Administrator



[Claim Number: FA1703001719671], the Complaint for <jireh.com> was denied, as Complainant had pending applications with both Canada and the U.S. for trademarks on their JIREH mark. Pending trademark applications do not confer rights under Policy ¶ 4(a)(i). In ValueVapor LLC v. Vicki Oxman, FA 1542157 (Forum Mar. 20, 2014) denying Complainant’s rights under Policy ¶ 4(a)(i) as “[t]here is no evidence of a registered trademark and it has long been held that a pending application for registration is not sufficient to prove trademark rights”. Moreover, Indian Trademark registry does not allow a word mark search for two characters normally (*screenshot reproduced below*).

Search Type : Wordmark ▾

Key Word	Value	
Wordmark	Start With ▾ zo	<div style="border: 1px solid black; background-color: #fff9c4; padding: 5px; display: inline-block;"> Enter atleast 3 characters </div>
Class	42	
Goods Description		<i>*Will be available soon</i>

Search

C. The Complainant submits that it launched “Zo” an artificial intelligence (AI) English-language chatbot in December 2016. Zo has strong checks and balances in place to protect her from exploitation. Zo has already held conversations with over 1,00,00 people in U.S., as connected to numerous social media applications such as Facebook, Messenger, Instagram and so on.



D. That the Complainant owns domain name www.zo.ai, which has registration date as 15 December 2017, while the disputed domain name has registration date as 19 June 2017. Complainant claims that the Disputed Domain Name is deceptively similar to Microsoft's ZO trade mark as well as Microsoft's domain name www.zo.ai and the Respondent's disputed domain wholly incorporates the Complainant's Trademark Zo.

E. That the Complainant's mark is comprised of short / common random letters that are not exclusively associated with Complainant's services, that is, the widespread third-party and common use of the term "ZO" is wholly unrelated to the Complainant, who never otherwise had any Trademark over the term ZOAI. In the matter of SOCCERPLEX, INC. v. NBA Inc., FA 94361 (Nat. Arb. Forum May 25, 2000) it was held that finding the Complainant failed to show that it should be granted exclusive use of the domain name "SOCCERZONE.COM", as it contains two generic terms and is not exclusively associated with its business. That is, the Complainant's mark is more of an acronym with a effective registration date post the registration of the disputed domain, but such factors can better be analyzed under the other two policy conditions as to legitimate use and bad faith.



F. Hon'ble Supreme Court in Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories [1965 AIR 980]. Their Lordships have set out the distinction between action for passing off and action for infringement of a trade mark. Their Lordships have then stated the law for the Courts faced with an action for infringement of a trade mark and laid down the following principles:

"(1) Where the two marks are identical, no further questions arise for, then the infringement is made out;

(2) When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered;

(3) The onus would be on the plaintiff;

(4) The court has to compare that two marks - the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standard. The persons who would be deceived are of course the purchasers of the goods and it is the likelihood of their being deceived that is the subject for consideration. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found used by the defendant. The ultimate test is whether the mark



used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff;

(5) The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark;

(6) The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on evidence led before it as regards the usage of the trade."

G. The registration date for the Complainant's Trademark in India as an International Trademark, vide IRDI-3539162, has been very recent, 28 September 2018. But the panels have almost unanimously, held in the past, that the incorporation of a trademark in its entirety in the disputed domain name may be sufficient to establish that said domain name is identical or confusingly similar to the Complainant's registered mark, see WIPO cases *Societe des Participations du Commissariat a l'Energie Atomique v. David Morton*, WIPO Case No. D2007 - 0679; and *AT&T Corp. v. William Gormally*, WIPO Case No. D2005-0758; and *AREVA v. MIC / Hussain, Syed*, WIPO Case No. D2010-0098; *ITC Limited V Travel India (INDRP Case No. 065)*; *Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana* (WIPO Case No. D2006-1594); *Allied DOMECCQ Spirits and Wine Limited v Roberto*

Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)].

H. Besides it is also well-established that the extensions such as '.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [INDRP/289 - Hersheys.co.in]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213].

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]



The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

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 the purposes 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; or

(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.

A. The onus of proof is on the Complainant to prove that respondent has no legitimate interests in the Disputed Domain Name. While it is quite evident that the Respondent has an active website over the disputed domain name.

The web page at <zoai.in> reads as follows:

*Your business performs better with **Zo.Ai***

Here's how we help you in three easy steps.

1 - Increase Efficiency at Store

Using Posify at outlet increases operational efficiency and employee accountability.

2 - Detailed analysis

*Detail analysis of every part of your business with **zoai** gives you a health card of your business.*

3 - Customer Targeting

Helps you grow your business by helping you in targeting the right customer with relevant content.

B. The Respondent's website, other than using the words Zo.Ai as text (*which is the name of the website of the Complainant along with the domain extension <zo.ai> but having registration date later than the date of registration of disputed domain name <zoai.in>*), nowhere indicates or directly makes reference to the Complainant company or its chatbot software. Moreover, Complainant's domain name www.zo.ai has registration date as 15 December 2017, while the disputed domain name has registration date as 19 June 2017. Additionally, Respondent uses the word 'zoai' as well on its homepage and provides for data analytics services. In the matter of CEAT Limited, CEAT Mahal, v. Vertical Axis Inc. / Whois Privacy Services Pty Ltd (Case No. D2011-1981), involving CEAT.com, the dissenting panelist said "Moreover, such combinations of letters have become part of the regular use of the English language and its alphabet and are popular and increasingly in demand, as short letter domain names become difficult to obtain and as many companies and businesses adopt acronyms and abbreviations as their names."



- C. Further, the Complainant denies giving any licence or authorization to the Respondent to use his trademark and further states the Domain Name consists entirely of Complainant's mark ZO and the technology associated with the trademark i.e. AI, therefore Respondent doesn't have any legitimate interest in the Domain Name. Complainant also states that Respondent offers services related to automated analytics and marketing services, which uses similar technology as Complainant, therefore has adopted a domain that is nearly identical to Complainant's trademark and a deceptively domain name.
- D. That it seems the services rendered by the Respondent are also by means of 'Artificial Intelligence' (AI) technology, which is generally defined to mean *"the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages"*. The only conclusion it can lead to is that, the choice of words Zo.Ai may be incidental on the disputed domain and mainly to indicate AI technology, rather than Complainant's product. Further, the AI (Artificial Intelligence) technology is not something that has been patented by the Complainant or exclusively belongs to the Complainant Company, therefore no third party is restricted from using AI technology in providing any kind of services, given the weak nature of the mark.



E. Most importantly, mark ZO is not a strong mark and doesn't seem to have gained that much popularity within few months of Trademark registration in India, which is the location of the Respondent, as per WHOIS information for the disputed domain name. Further, 'ZO' can mean numerous things and has numerous end users, that is, there are limitless potential uses of the term "ZO", which is a common acronym. A Google search for the exact term "ZO" yielded some 61,60,00,000 results and it has different meanings elaborated on AcronymFinder.com. In the matter of Electronic Arts Inc. v. Abstract Holdings International LTD / Sherene Blackett, NAF Case, FA1111001415905 (Jan. 4, 2012) it was held that "The domain name, <ssx.com>, is comprised of common or generic letters. Complainant clearly does not have an exclusive monopoly on the term. The number of other persons or entities holding identical if non-competing marks and the number of other users with rights in the name are clear evidence of the limited ownership claims of the Complainant. Respondent has established rights or legitimate interests in the disputed domain name pursuant to Policy para 4(a)(ii)". Further, in Juraj Králik-ZAJO v. Deep Frontier, Jay Dove [Case No. D2015-1377; www.zajo.com], "a four letter .com domain names have inherent value and the disputed domain name was registered for use, development, and investment. Thus, it may reasonably be concluded that the disputed



domain name incorporates a generic or descriptive word. Returning to the question of rights or legitimate interests in the disputed domain name, in the absence of proven bad faith, the Panel finds that the Complainant, which retains the ultimate burden of proof notwithstanding the provisions of paragraph 4(c) of the Policy, has failed to prove that the Respondent does not have rights or legitimate interests in the disputed domain name.”

F. A Simple Google search for mark ‘ZO’ throws numerous results from few dictionary websites, Youtube as to ZO!, ZOskinhealth.com (2007), few business locations and then to Complainant's website as on date. In the matter of Canned Foods Inc v. Ult. Search Inc. (FA 96320 National Arb. Forum dated 13 Feb 2001) it was held “a Trademark that equally describes businesses conducted by many other people is not a protectable term”. The same proves that even as on date Complainant mark hasn't gained that much popularity/reputation. Due to the above facts, the Complainant’s mark ‘ZO’ cannot be held as that may exclusively refer to the Complainant or its product or services and therefore, the domain dispute decisions referred by the Complainant are not applicable to the matter. Otherwise also circumstances are quite different in the said matter, as the Disputed Domain name has been put to use and has registration date preceding the trademark registration ‘ZO’ in India and the domain name registration of <zo.ai>. Further it doesn't seem



feasible that Respondent would have searched for a two letter Trademark, also when it registered a four letter domain name.

G. That under this clause, clearly the burden of proof is on the Complainant to prove that the Respondent has no legitimate interests in the Domain Name. It is obvious that the Complainant has not made a prima facie case that the Respondent lacks a right or legitimate interest, while the Complainant was required to provide stronger evidence in support of a short two letter Trademark. In the matter of Real Estate Edge, LLC V. Rodney Campbell, [WIPO Case # D2017-1366; <GreaterAustinReality.com>] ... the weaker the mark the stronger must be the evidence. In this case, the mark is weak and so is the evidence. The Panel holds that the "Complaint does not make out a particularly strong case. The Complainant's service mark does not appear to be especially well-known within Austin, Texas, that both the Complainant and the Respondent inhabit. Moreover, being composed of one geographical and two dictionary terms, the mark is not particularly strong on its own... There is no recital or evidence of revenues, advertising costs and/or promotional material associated with the mark. Such information is critical if the Panel is to assess rights and interests in a domain name relative to such a descriptive service mark."



- H. While searching for 'ZOAI', it doesn't throw any search result as to the Complainant's mark or its website. Obviously, the keyword in the disputed domain name 'ZOAI' is a generic term, as defined in portuguese dictionary, as 'second-person plural' and also ZOAI is a name of many individuals around the world. Further, complainant's mark 'ZO' is also defined in collins dictionary (*as a Tibetan breed of cattle, developed by crossing the yak with common cattle*), also a common acronym and short common words like Zoo, Zone, Zoom, Zodiac and so on. It has been held that where the domain name is a common or generic term, it is difficult to conclude that there is a deliberate attempt to confuse. It is precisely because combination of common or random letters are incapable of distinguishing one provider from another that trademark protection is denied to them. In the matter of Canned Foods Inc v. Ult. Search Inc. (FA 96320 National Arb. Forum dated 13 Feb 2001) it was held "a Trademark that equally describes businesses conducted by many other people is not a protectable term".
- I. That in the matter of HSM Argentina S.A. v. Vertical Axis, Inc. D2007-0017 (WIPO, May 1, 2007) in which the Panel pointed out that evidence of third party use of terms identical to the trademark "mitigates against a finding that Respondent knew specifically of Complainant or its mark when the disputed domain name was registered". This is particularly so where the terms "may

have a number of potential associations, unconnected with the Complainant". Similarly, it was held in BioDelivery Sciences International, Inc. v. HLK Enterprises, Inc. c/o Domain Admin, NAF Claim No. 1175189 that the Respondent had a legitimate interest in the four lettered domain name <bdsi.com>. The Panel held that: "... based on the fact that the disputed domain name and Complainant's mark contain only four letters that could stand for many things unrelated to Complainant's business, the Panel finds that Respondent's use of the disputed domain name as a portal website is a showing of rights or legitimate interests under Policy paragraph 4(a)(ii)."

J. That is, following factors support the case of Respondent:

- a. The registration date of the dispute domain name pre-dates the Complainant's domain name www.ZO.ai.
- b. Indian Trademark Registry does not allow search for a two letter wordmark normally.
- c. Trademark registration date in India, as International Registration, is 28 September 2018, i.e. 15 months after the registration of the disputed domain name.
- d. ZO and ZOAI are combination of random letters / dictionary / generic terms and also ZOAI is a first name of many individuals around the world.



- e. The website content and the WHOIS name indicates that the Respondent is known by the domain name. 'ZOAI'.
 - f. Respondent is officially using email ID as ...@zoai.in.
 - g. Complainant doesn't seem to be owning any other domain name with the keyword ZOAI, but only www.ZO.ai. Rather, the domains like zoai.com and zoai.net are put on sale by third parties.
 - h. Complainant hasn't provided any evidence of popularity of its Trademark in India, where Respondent has the presence as per WHOIS info.
- K. Though the Complainant initially had Trademark registered in South Africa and European Union but it is not relevant in the said matter as the Hon'ble High Court of Delhi while discussing trans border reputation of a mark in the matter of Century 21 Real Estate LLC vs. Century 21 Main Realty Pvt. Ltd. & Ors. CS(OS) No. 1687/2007, held that:

“The plaintiff's name therefore would not be known to the customers in India who had an intention to deal in real estate. The plaintiff has not placed on record any document to show that its reputation has travelled to India in any manner. Merely because a company is having presence in many countries in the business of reality does not mean

that the company's reputation has travelled to every single country on earth. Reputation and goodwill of a company are intangible assets and these intangible assets are to be shown to exist. Intangible assets in India are to be proved by way of evidence. There can be no presumption in favour of a corporation of intangible assets in India merely because the company has a reputation and goodwill somewhere else. I, therefore do not consider that the plaintiff has a prima facie case of having good will in India or reputation in India.”

L. That the evidence produced by the Complainant talks more about the Microsoft trademark and it's popularity, while in respect of ZO mark, limited information has been made available as to global Social Media accounts only, which cannot lead to the conclusion that mark 'ZO' has been quite popular, mainly in India. Rather in such cases of short mark i.e. use of combination of random letters as a mark, the Complainant should have provided evidence as to popularity of the mark in Indian jurisdiction and further proved it in terms of definition of 'Secondary Meaning'.

M. "Secondary Meaning" has been aptly defined in the case of Charcoal Steak House of Charlotte, Inc. v. Staley, 263 N.C. 199, 139 S.E.2nd 185, 144 USPQ 241 (1964) as "When a particular business has used words public juris for so

long or so exclusively or when it has promoted its product to such an extent that the words do not register their literal meaning on the public mind but are instantly associated with one enterprise, such words have attained a secondary meaning. This is to say, a secondary meaning exists when, in addition to their literal, or dictionary, meaning, words connote to the public a product from a unique source."

N. In the INDRP matter of huntnews.in [INDRP/782], the question was raised that whether Complainant's mark NewsHunt, which is a combination of two generic words and describes the character of a Complainant's services has acquired a secondary meaning, to give them the exclusive right to use the said mark, which they admit is an exception for any descriptive Trademark. It was held in National Shoe Stores Co. V. National Shoes of New York, Inc., 113 USPQ 380 (1957), whether a particular descriptive word/mark has attained secondary significance and consequently be protected is a question of fact to be determined from the peculiar facts of the each case and from the relevant evidence probative of probable customer reaction. The onus and burden of proof being upon the Complainant. But given the generic nature of "ZOAI" and mark "ZO" and the time since it has been put to use, the complainant has failed to provide any such evidence in support as well. The

lack of popularity is further evident from a simple Google search, as provided above.

O. In the matter of PRL USA Holdings, Inc. v. Northbay Real Estate, Inc. and John Laxton [Case No. D2006-1394; www.rl.com], it is held that Complainant has the burden of proving that Respondent lacks rights or legitimate interests in the disputed domain name. The Panel acknowledges that this is a difficult case on the facts. It is not inconceivable that, in registering and using the disputed domain name, Respondent is attempting to take advantage of Complainant's RL mark. However, the Panel is reluctant to conclude, absent more compelling evidence, that Internet users would draw such a strong association between Complainant's two-letter mark and the Internet domain name <rl.com> that a heavy burden should be placed on Respondent to demonstrate fair use of two letters in fairly wide commercial usage, and which Respondent claims and supports to be using in a fair descriptive way. Though, Complainant retains the opportunity to provide more compelling evidence in a court proceeding. Moreover, if Respondent modifies its conduct such that its future use of the disputed domain name ceases to be "fair", Complainant may be able to initiate another complaint under the Policy. See, e.g., Lonely Planet Publications Pty Ltd v. Mike Tyler, WIPO Case No.D2006-0596, for discussion of circumstances in which re-filing of



complaints may be appropriate. On balance, the Panel determines that Respondent is making fair use of the term “ri” in the disputed domain name, and that Complainant has failed to establish that Respondent lacks rights or legitimate interests in the disputed domain name.

In the circumstances, the Arbitrator concludes that the Complainant has not been able to establish the requirement of paragraph 4 (ii) of the INDRP Policy.

(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

A. The registration of domain name in bad faith cannot be proved as registration date of disputed domain name (19 June 2017), pre-dates the Complainant's Domain Name www.zo.ai (15 Dec 2017) or even the International Trademark

registration in India (28 Sep 2018). It has been laid under WIPO Overview 2.0 Para 1.4: Consensus view: Registration of a Domain Name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity. The UDRP makes no specific reference to the date of which the owner of the trade or service mark acquired rights. However, it can be difficult to prove that the Domain Name was registered in bad faith as it is difficult to show that the domain name was registered with a future trademark in mind.

B. That though additional Trademark registrations, Complainant Company owns are in different jurisdiction like European Union (since 19 Sept 2017), whose Trademark registration proof has been annexed. But the European Trademark registration is not relevant in the said matter, as a Domain Registrant cannot be expected to be aware of Complainant's goodwill in another jurisdiction. Reputation and goodwill of a company are intangible assets and these intangible assets are to be shown to exist. Intangible assets in India are to be proved by way of evidence [Century 21 Real Estate LLC vs. Century 21 Main Realty Pvt. Ltd. & Ors. CS(OS) No. 1687/2007]. In the matter of Reckitt Benckiser Plc v. Eunsook Wi [Case No. D2009-0239; Domain: rb.net] "the Respondent was located in the Republic of Korea, while the Complainant had its headquarters in the United Kingdom. The



Complainant has neither demonstrated business activities in the Republic of Korea in the year 2000, when the disputed domain name was registered, nor contended that it was well known in the Republic of Korea then (or even that is well known there now). Further, "RB" has, as most other two-letter-acronyms, various meanings and is not only referring to the Complainant... Therefore, in the Panel's view, the Complainant's submissions are not sufficient to establish that the Respondent knew of any possible rights of the Complainant in its RB Mark on June 6, 2000 and that he registered the disputed domain name in bad faith."

C. Moreover, in such a matter which involves a two letter mark in terms of INDRP rules which requires domain registrants to make sure that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. Firstly, Trade Mark registry does not allow search for a two letter wordmark, secondly at the most the user is expected to search for ZOAI either in Trademark registry database or in Google search for any third party rights in the mark 'ZOAI' and while searching for ZOAI, it doesn't throws any search result as to the Complainant's mark in the first few results for its website or brand, even as on date.



D. Further, the Domain Name is being used legitimately and no bad faith in use can be inferred just with reference to the Complainant's website "ZO.AI", which had registration date post the disputed domain name <zoai.in>. Moreover, 'ZO' and 'ZOAI' as generic terms and not inventive. There are limitless potential uses of the Complainant's mark "ZO", which is a common acronym. A Google search for the exact term "ZO" yielded some 61,60,00,000 results. That in Lumena s-ka zo.o. v. Express Ventures LTD, FA 94375 (Nat. Arb. Forum May 11, 2000) "finding no bad faith where the domain name involves a generic term, and there is no direct evidence that Respondent registered the domain name with the intent of capitalizing on Complainant's trademark interest". Similar is the case with combination of random letters 'ZO', which forms name of numerous businesses all around the world, also a generic/dictionary word, an acronym and first name for many individuals. In the matter of Georg Mez AG v. Mez Kalra [Case No. D2016-1932], while dismissing the UDRP Complaint, it was held that the Respondent has established that, as one might expect, the term "MEZ" is in widespread use, particularly as an acronym.

E. That though under INDRP policy under the said clause either Bad Faith registration or Bad Faith use needs to be proved. The Complainant has provided very limited arguments under this clause, while mostly try to prove



Bad Faith registration, which is not true in the said matter as the Domain has been registered before the registration of Complainant's Trademark and Complainant website <zo.ai>. Further, Complainant makes no specific assertions in the Complaint as to the Respondent's use of ZO trade mark in Bad Faith with proper reasoning, except for reproducing clause (iii) of Para 6 - INDRP. The said contention of the Complainant cannot be upheld as legitimate use of the Domain Name is being made, given the facts of the present case, as held under previous clause. Moreover, none of the other circumstances which are, without limitation, set out at paragraph 6 of INDRP Policy as pointing to bad faith use, are either alleged by the Complainant or are of application on these facts.

F. That additionally, Complainant argued that *"Microsoft has spent enormous sums of money and time in developing, promoting and advertising its well-known ZO word mark. By virtue of extensive and continuous use since it was first adopted, the ZO word mark has acquired distinctiveness and is associated inextricably and exclusively with Microsoft."* But there was no proper evidence to support the said contention. Therefore, during the proceedings, the Complainant was again given an opportunity to point out exact evidence that supports said statement. The Complainant provided as follows:

- a. The Microsoft Investor's report, showing expenditure of AI technology on pg 43, without any direct reference to mark ZO. That is, 85 page investor report annexed with the Complaint, nowhere makes any mention of mark ZO or it's chatbot ZO in question.
 - b. Webpages from Microsoft.com, talks about ZO social Bot.
 - c. Social Media Pages, having handles as @ZO, @Zochats and @Zochats on Facebook, Instagram and Twitter respectively.
 - d. Trademark Registration Certificates, which in India has registration date as 28 September 2018, with accompanying WIPO Certificate and Trademark Registration in Europe Union.
- G. That the said information does not proves the popularity of the Complainant's mark, except to a limited extent by the Social Media accounts, none of which has a handle as @ZOAI and has Instagram likes as: 11,000, Facebook: 18,000 and Twitter Followers: 25,000, while popular pages/brands on social media mostly has millions of likes. Further, as Complainant claims that ZO had over 100,000 conversations in US alone, while 5,000 lasted over an hour, therefore most of these likes can be attributed to the country of US only.
- H. That to quote Mr Gerald M. Levine - Domain Name Arbitration: "Reputation counts in resolving UDRP Complaints because it's absence undercuts a



complainant's allegation that respondent acted with knowledge in registering the disputed domain name. Without such evidence it is difficult to persuade the panel to find that Respondent had complainant's Trademark "in mind" in choosing a particular term. 'In mind' proof - either direct or by inference - is a necessary step to finding bad faith".

- I. "UDRP disputes roughly divide into three groups: 1) complainants who own strong trademarks prior to domain name acquisitions; 2) domain name holders who register their choices before a complainant owner's acquisition of a trademark; 3) holders who register domain names contemporaneously with an owner's acquisition of a lesser known or weak trademark. A complainant in the first group has a Trademark with a secured historical reputation and is most likely to succeed in capturing a domain name that infringes its exclusive right; a complainant in group two can have had no reputation if it acquired its trademark after registration of the domain name; and in group three, both parties are put to their proof: complainant has to prove its historical reputation and respondent either has to explain its choice or show that the choice is evident from use".

- J. That otherwise the evidence produced by the Complainant talks more about the Microsoft trademark and its popularity, while as discussed in respect of

ZO mark, limited information has been made available including web pages from own website www.microsoft.com and secondly to the global social media accounts only, which cannot lead to the conclusion that mark 'ZO' has been quite popular, mainly in India. Rather, in such cases of generic mark random letters as a mark, the Complainant should have provided evidence as to popularity of the mark in Indian jurisdiction and further proved it in terms of definition of 'Secondary Meaning'.

K. In the matter of AOL LLC v. DiMarco, FA 1275978 (Forum Sept. 9, 2009) 'Secondary meaning' is acquired when 'in the minds of the public, the primary significance of a product feature... is to identify the source of the product rather than the product itself.' As per UDRP consensus view 2.0, relevant evidence of such "secondary meaning" includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys, media recognition and so on. Whether a particular descriptive word/mark has attained secondary significance and consequently be protected is a question of fact to be determined from the peculiar facts of the each case and from the relevant evidence probative of probable customer reaction. The onus and burden of proof being upon the Complainant [National Shoe Stores Co. V. National Shoes of New York, Inc., 113 USPQ 380 (1957)].



L. Hon'ble Delhi High Court in the matter of S.B.L. Ltd. vs Himalaya Drug Co. on 15 July, 1997 [AIR 1998 Delhi 126], referred to Halsbury's Laws of England (4th Ed. Vol. 48 para 163), wherein the subject has been dealt with as under:

"163. Establishing Likelihood of deception or Confusion. - To establish a likelihood of deception or confusion in 'an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements :

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons.; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as

whether deception or confusion is likely is ultimately a single question of fact.”

M. That is, most importantly, the Complainant must have provided enough evidence as to reputation gained through media recognition, amount of sales, advertising or general reputation prior to the registration date or use of Complainant’s mark on disputed domain, specifically in Indian jurisdiction, given the nature of the Complainant’s mark. In the matter of Information Tools Limited v. Future Media Architects, Inc., [WIPO Case # D2017-2178; <harmoni.com>] Complainant alleged it had a six month lead over Respondent in using HARMONI, but provided “no evidence of sales, advertising or general reputation prior to the registration date, such that the Panel can conclude that the Complainant and its HARMONI Mark was so well known that the Respondent must have had the Complainant in mind at the time it registered the Domain name.” This illustrates that allegations of priority must be supported by proof of reputation.

N. Further, the Complainant submits that the Respondent had social media accounts as well, which Complainant got suspended by reporting to respective websites but no reference as to any social media handles could be found on the disputed domain name. Though if the Complainant still feels that



its Trademark is being violated, he needs to approach appropriate authorities like it reported the social media pages, but in the present matter only Disputed Domain Name and content on it, need to be analyzed, given the facts and circumstances in the matter. Moreover, time and again under many domain dispute decisions it has been reiterated that “UDRP is not a Court”, the same applies to INDRP too (INDRP/957 - Pradeep Misra V Radinatly Life)

- O. To quote Mr Gerald M. Levine from ‘Domain Name Arbitration’ - UDRP is not a Trademark Court: “The UDRP is a special purpose arbitral regime designed for trademark owners to challenge domain name registrants allegedly infringing their rights to exclusive use of their trademarks on the Internet. The Complainant does not have to prove Trademark Infringement, only that the domain name was registered and is being used in bad faith. This gives rise to an anomaly that a Complainant may fail to prove abusive registration of a domain name that would otherwise be condemned under trademark law”.
- P. That in the matter of Ni Insan Kaynaklari Personel ve Danismanlik Limited Sti v. Timothy Michael Bright [Case No. D2009-0315], it was held that an administrative proceeding under the Policy is not a proceeding in “equity” in which a panel seeks to generally determine whether one party or another has acted more or less fairly toward the other, thereafter fashioning a “just”



remedy. A proceeding under the Policy is not an assessment of civil trademark infringement. It is possible for a Respondent to be infringing the trademark rights of a complainant, yet be found not to have acted in bad faith. Similarly, in the matter of Audi AG v. Stratofex [WIPO Case No. D2012-1894] it has been held that if the Complainant considers that the Respondent's present (or future use) of the Domain Name infringes its trademark rights then it is free to commence proceedings against the Respondent in a court of competent jurisdiction. This case illustrates the widely recognised principle that the Policy is designed to deal with clear cases of cybersquatting, Further in Clockwork IP LLC, One Hour Air Conditioning Franchising, LLC v. Elena Wallace, WIPO Case No. D2009-0485, it was laid down that UDRP proceedings are for clear cases of cybersquatting, not for resolving trademark infringement and/or trademark dilution disputes or other matters more appropriately dealt with through the courts.

Q. That Complainant's argument that Respondent tried to remain anonymous by providing incomplete WHOIS, is upheld, as it does violate the .IN Registrant Agreement and in this respect the Complainant can approach the Domain Registrar - Godaddy LLC and get the domain name suspended, till the time WHOIS information is correctly updated by the Respondent.

The Arbitrator therefore concludes the Complainant has failed to establish the third element of paragraph 4(iii) of the INDRP Policy as well and no relief can be granted here in terms of the facts and circumstances, as it is necessary for the Complainant to satisfy each of the three condition provided under Para 4 of the IN Dispute Resolution Policy (INDRP).

8. Decision:

Complainant has failed to establish that the Respondent has no legitimate interest in the disputed domain name and the same was either registered or is being used in bad faith. Accordingly, the Complainant's request that the Domain Name <zoai.in> be transferred is DENIED.

Accordingly, it is Ordered that **the <zoai.in> Domain Name REMAINS WITH Respondent.**



Ankur Raheja, MCA FCS LLB
Sole Arbitrator, NIXI, India
Date: 18th February 2019
Place: Agra, India