

## **ADMINISTRATIVE PANEL DECISION**

Trent Limited v. Mozeeto Media Ltd, Zudio Fitness  
Case No. D2022-4435

### **1. The Parties**

The Complainant is Trent Limited, India, represented by Khaitan & Co., India.

The Respondent is Mozeeto Media Ltd, Zudio Fitness, India, represented by Malik and Ramaan Law Offices, India.

### **2. The Domain Name and Registrar**

The disputed domain name <zudiofitness.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Zudio Fit Women) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 24, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. A late Response was filed with the Center on January 13, 2023.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on January 17, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Complainant by email dated January 16, 2023 made a request to file additional submissions regarding the contents and timing of the Response. The Panel issued a Procedural Order dated January 25, 2023 inviting the parties to file their additional submissions. The Complainant sent its submission by January 30, 2023, and the Respondent sent an email reply on February 4, 2023.

#### **4. Factual Background**

The Complainant runs a retail chain and sells apparel under the ZUDIO trademark. Its website at "www.zudio.com" contains information about its products. The Complainant owns trademark registrations for the mark in India that include:

ZUDIO (word mark) registration number 3078069 in class14 valid from October 13, 2015;  
ZUDIO (word mark) registration number 3078070 in class18 valid from October 13, 2015;  
ZUDIO (word mark) registration number 3078071 in class 21 valid from October 13, 2015;  
ZUDIO (device mark) registration number 3091975 in class14 valid from November 2, 2015;  
ZUDIO (device mark) registration number 3091976 in class18 valid from November 2, 2015;  
ZUDIO (device mark) registration number 3091977 in class 21 valid from November 2, 2015.

The First Respondent Mozeeto Media Ltd. is in the business of information technology and maintains the website for the Second Respondent, its client. The Second Respondent, runs a fitness studio under the trade name "Zudio Fit Women" in Srinagar, in the union territory of Jammu and Kashmir, India.

The disputed domain name was created on July 30, 2021, and is held in the name of the First Respondent. The disputed domain name resolves to a website that provides information about the Second Respondent's fitness studio and the Second Respondent is the user of the disputed domain name.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states it is part of the Tata group, which is one of the oldest and most reputed industrial conglomerates in India that has over 100 companies in seven business sectors and has operations spread across 100 countries. The Complainant states that it is the retail arm of the group and started its operations in 1998. Presently, the Complainant claims that it has about 247 stores in several cities across India.

The Complainant states that its trademark ZUDIO for apparel was originally conceived in 2015, and is a unique and invented mark that is not a dictionary word. The Complainant states that the mark is widely used in India and has provided figures of its sales and promotion for the mark and alleges that the mark has acquired goodwill and reputation in India.

In July 2022, the Complainant states that it came across an Instagram handle for "Zudio Fit Women" and found the disputed domain name from said Instagram account. The Complainant states that apart from filing the present Complaint, it is in discussions with Instagram for removing the said handle.

The Complainant requests for the transfer of the disputed domain name on the grounds that it is confusingly similar to a trademark in which it has rights, the Respondent lacks rights or legitimate interests in the disputed domain name, and the disputed domain name has been registered and is being used in bad faith by the Respondent.

## B. Respondent

The First Respondent sent emails on November 25 and 26, 2022, and stated that the disputed domain name is registered on behalf of its client Zudio Fitness and it maintains the website. Reproduced below is an extract from the First Respondent's email of November 26, 2022:

"Mozeeto, aka Digital Titans, maintains, the client's (Zudio Fitness) website hosting and domain name only. Mozeeto is not affiliated with Zudio Fitness in anyway, whether directly or indirectly, and lacks the authority to decide anything in this case. Any discussions regarding the present complaint must take place between the complainant and Zudio Fitness."

The Second Respondent sent a delayed Response on January 13, 2023, and in an email sent on December 21, 2022, mentioned that the delay was due to inability to open the Complaint. The Second Respondent states that it runs a boutique fitness studio called "Zudio Fit Women" at Srinagar in Jammu and Kashmir, India, and had commenced its operation in March 2021. The studio has about 100 members and provides training exclusively for women in Zumba, dancing, Pilates, pre and post pregnancy programs, weight loss, and yoga. The Second Respondent states that it purchased the disputed domain name for business purposes in July 2021, through Mozeeto Media Ltd. and its website contains information about its fitness studio and the scope of its work. The Second Respondent states that the disputed domain name was acquired only after satisfying itself that it would not violate interests of any similarly situated business.

The Second Respondent states that the inception of its business name "Zudio Fit Women" is *bona fide* and the name was derived by merging the first part of the word "Zumba" and last part of the word "studio" as Zumba is the primary activity of the studio. The Second Respondent goes on to state that the letter "z" in the word Zudio also stands for the name of its director Zenobia, an internationally certified Zumba licensed trainer who is the wife of the Managing director of "Zudio Fit Women".

The Second Respondent asserts that both parties use their respective websites for merely providing information and that no e-commerce business transactions are done through the websites. The Second Respondent further argues that because the websites provide only supplemental information to customers who already know about the brand or the business name, customers would refer to the websites only for further information such as addresses, prices, and facilities, and thereby customers are not being misled.

The Second Respondent asserts that the disputed domain name and its corresponding website are not being used unfairly to create an illusion of association of "Zudio Fitness" with "Zudio". Customers who visit the websites would know that the Respondent offers fitness services, whereas the Complainant offers apparel. The Second Respondent argues that it is not likely to gain or acquire new customers from the website due to the Complainant's mark, because customers after verifying the product and service at the website would need to visit the physical address of the respective businesses to purchase the products or services.

The Second Respondent further states that its fitness services are availed by people residing within the vicinity of the studio, which is within about a 15 kilometers radius of the studio. The Second Respondent adds that the Complainant has no stores or presence in and around Srinagar, and therefore it was unaware of the Complainant's trademark. Furthermore, as there are no promotions of the Complainant's mark where its studio is located, the Second Respondent argues that even the public would not make an association between the Complainant's mark ZUDIO and "Zudio Fitness".

The Second Respondent contends that the Complainant has registered trademarks in classes other than class 41 and whereas it has unregistered rights for offering services under this class. The Second Respondent states that before finalizing its business name it had searched for any similar names under class 41 and claims to be an honest concurrent user and has cited Indian court decisions in support of its case.

The Second Respondent states that the Complainant has not provided any evidence that Zudio Fitness has intentionally diverted customers. Furthermore, it has not engaged in a pattern of registering and selling domain names without actual intent to use. The Second Respondent says that the disputed domain name

has been acquired legitimately to reflect its *bona fide* fitness studio business and is being used legitimately and denies that it was registered in bad faith.

The Second Respondent argues that the Complainant did not use the “Google Alert” feature to get notifications when its mark is used in a domain name or a similar domain name by another person. The Second Respondent concludes by stating that it has not adopted or used its trade name/mark/disputed domain name to gain unfair advantage from the Complainant’s mark and cites Sections 29 and 30 of the Indian Trademark Act 1999,<sup>1</sup> in defense of its case.

## **Parties’ Supplemental Submissions**

### **Complainant’s Supplemental Submission / Rejoinder**

The Complainant in its rejoinder filed on January 30, 2023, contests the reason for the delay in filing the Response. The Complainant refers to a statement in the Second Respondent’s email:

“Soon after, I contacted my lawyers who informed me that they are facing trouble while opening the complaint [a PDF file]. Thereafter, we tried to open the file on multiple computers but without success.”

The Complainant argues that the reason given by the Second Respondent, of inability to open the Complaint is an afterthought. In several emails sent by the Respondents after the Complaint was filed, the Complainant argues that in none of those emails, the Respondents made any mention of difficulty in opening or accessing the Complaint. The Complainant further alleges that the contents and tone of the Respondent’s emails show awareness of the content of the Complaint, as an offer to sell the disputed domain name was made by the Second Respondent. The Complainant requests that the Response should not be taken on record as no formal application or request was made for the delay, and it is time barred under paragraph 5(a) of the Rules.

The Complainant further argues that the Second Respondent, namely Zudio Fitness / Fit Women is not a party to this dispute. The Complainant states that “a respondent”, is defined under the Rules as the holder of the domain name registration, which is the First Respondent, Morzeeto Media Ltd. and argues that the Second Respondent is not entitled to file a response in these proceedings.

The Complainant refutes the Second Respondent’s contention that its business name Zudio Fit or Fitness is a *bona fide* adoption or inception of its name and argues that explanation given of merging two words “Zumba” and “studio” is just an afterthought. The Complainant also argues that the Second Respondent’s statement that the letter “z” stands for the managing director’s wife Zenobia, is a contradictory statement.

The Complainant also rebuts the Second Respondent’s claims that due to the goods and services and customer base being different, under different trademark classes, and use in distinct geographic jurisdictions is not likely to misled consumers or the public. The Complainant denies that its website is merely informative and disputes the Second Respondent’s contention that the Zudio Fitness website does not cause confusion to users. The Complainant also refutes the Second Respondent’s contention that Section 30(1)(a) or 30(1)(b) of the (Indian) Trademark Act 1999, are applicable to the present dispute, and contends that the adoption of the disputed domain name is dishonest.

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<sup>1</sup> Section 30 of the Trademark Act:

Limits on effect of registered trademark

(1) Nothing in section 29 shall be construed as preventing the use of a registered trademark by any person for the purposes of identifying goods or services as those of the proprietor provided the use:

(a) Is in accordance with honest practices in industrial or commercial matters

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

## **Respondent's Supplemental Submission**

The First Respondent's director Mr. Sansare sent an email on February 4, 2023, to the Center stating that he would like to transfer the disputed domain name to the party selected by the Panel, and that he and his company no longer wish to be involved in this matter.

He also requested for permission to transfer the disputed domain name to Mr. Shah, the director at Zudio Fitness, on whose behalf the disputed domain name was registered, so that the issues regarding the disputed domain name can be handled directly between Mr. Shah and the Complainant. The Second Respondent did not file a reply to the Complainant's rejoinder.

## **Preliminary Issues**

### **Respondent's Identity**

The Panel addresses the issue raised by the Complainant that the Second Respondent ought not be a party to the dispute on grounds that the Rules define "a respondent" as the registrant and the holder of the disputed domain name. The Complainant alleges that the First Respondent, who is the registrant and holder of the disputed domain name ought to be the sole respondent in this dispute.

The word "holder" of the domain name, under the Rules, may in the case circumstance be understood as being a more inclusive term with a broader import, and does not necessarily imply only the technical registrant of the domain name. Prior panels have interpreted the word "holder" under paragraph 1 of the Rules to have a wider connotation. The word "holder" may include a beneficial owner of a disputed domain name or an underlying owner of a disputed domain name (whether due to a privacy shield or a more technical-related arrangement such as in the present case). See *Avon Products Inc. v. Jonsoo Lee*, WIPO Case No. [D2001-0272](#).

The First Respondent has disclosed that the beneficial owner of the disputed domain name on whose behalf the disputed domain name is registered is the Second Respondent. The Panel also notes that the original Complaint listed "Zudio Fit Women" as the named Respondent, and moreover lists a Respondent email address using the disputed domain name; the Complainant's objections as regards the Respondent identity are therefore misplaced. The underlying registrant information when disclosed, can replace and overtake any originally named respondent, or can be added as a co-respondent in the dispute. See Section 4.4.2 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, the Panel also notes that a registered holder of the disputed domain name, as named in the Whois records, shall be deemed to be liable for the use of the disputed domain name if it fails to disclose the name of the underlying real user of the domain name. See Section 4.4.6 of [WIPO Overview 3.0](#).

The Second Respondent has confirmed it is the beneficial or underlying owner of the disputed domain name and is the actual user of the disputed domain name. Under these circumstances, the Panel determines that the Second Respondent is an appropriate party to the present dispute and is correctly added as a respondent in these proceedings. As the Second Respondent is found to be a proper party to this dispute, and is the beneficial underlying owner of the disputed domain name, the Panel accepts the submissions made by the Second Respondent in these proceedings. The term "the Respondent", when used in this decision, for the sake of convenience, shall refer to both the respondents jointly.

### **Late filing of the Response**

The Panel now considers the issue of delay of filing the Response, which was filed on January 13, 2023, when it was due on December 18, 2022. Under paragraph 14(a) of the Rules, if a party in the absence of exceptional circumstances, fails to comply with any of the time lines established under the Rules, the panel shall proceed to give the decision. The Panel nevertheless has the discretion to allow or disallow any submissions sent by the parties and to determine its admissibility in these proceedings.

Under paragraph 10(b) of the Rules, it is incumbent for the Panel to ensure that in all cases the parties are treated with equality and the parties are given a fair opportunity to present its case. The Panel has noted the reason given by the Second Respondent for the delay is a technical difficulty faced in opening the file and that the Complainant has vehemently rebutted the reason for the delay in filing the Response.

The Panel notes that the Second Respondent appointed a counsel to represent its case sometime around December 22, 2022. This can be inferred from the email communications from “Team Zudio Fitness” that the Second Respondent sent to the Center on December 22, 2022. The Panel adopts the views expressed in *Uber Technologies, Inc. v. Paul Svensen*, WIPO Case No. [D2020-3210](#), referring to the delayed filing of the response, the Panel in that case stated, “It is worth noting that the Respondent took the matter seriously enough to hire sophisticated counsel to draft and file a Response, even a late one.....In any event, the late filing did not put unmanageable time pressure on anyone”, and observed that declining to allow a late filed response would be “harsh”, as the Rules expressly requires the panel to give the parties a fair opportunity to present its case.

The Panel agrees with the line of thinking expressed by previous panels that it is necessary to be fair to the parties as laid down under paragraph 10(b) of the Rules. Late-filed responses have been accepted in the proceedings, even without any reason or explanation given for the delay, such as in *Voigtander GmbH v. John Voigtander*, WIPO Case No. [D2003-0095](#). Given that the short time lines under the UDRP’s expeditious proceedings, while it is important to adhere to the timelines, it is equally important to give both parties a fair opportunity to present their case before this forum in the proceedings.

The delayed response was filed before the panel was appointed. The Panel in exercise of its discretion allows the delayed Response filed by the Second Respondent and in fairness allowed the Complainant to make its additional supplemental submissions in reply to the Response.

## **6. Discussion and Findings**

The Complainant in these proceedings has to successfully establish three elements under paragraph 4 (a) of the Policy to obtain transfer of the disputed domain name, these are:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent lacks rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith by the Respondent.

### **A. Identical or Confusingly Similar**

The first element under paragraph 4(a) of the Policy requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has demonstrated its rights in the mark by providing evidence of its trademark registrations for the ZUDIO mark. It has thereby *prima facie* satisfied this requirement under the first element of the Policy and established that it has rights in the trademark.

The mark is fully incorporated in the disputed domain name. Under the first element, the comparison of the mark and the disputed domain name is done without looking at the manner of actual use. Differences in goods and services is typically not considered under this element, as such factors could be relevant when considering other elements. The disputed domain name contains the mark in its entirety, and this is sufficient to find confusing similarity with the mark.

For the reasons discussed, the Panel finds there is confusing similarity between the disputed domain name and the Complainant’s trademark.

## B. Rights or Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to demonstrate that the Respondent lacks rights or legitimate interests in the disputed domain name. If the Complainant makes a *prima facie* case that the Respondent lacks rights or legitimate interests, the Respondent can rebut the Complainant's allegations with relevant submissions and supporting evidence to establish rights or legitimate interest in the disputed domain name. See Section 2.1 [WIPO Overview 3.0](#).

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and uses it with an intention to divert customers by exploiting its mark for commercial gain. The Respondent has denied these allegations and stated that its business name and the disputed domain name was derived independently. The Respondent draws attention to the different goods and services, the different business areas and the different consumer base that the parties serve. The Respondent also draws attention to the manner of use of the websites, which merely provides information and customers would need to go to the physical store or the fitness studio to avail products or services and therefore customers are not being diverted, misled or confused as alleged by the Complainant. The Respondent also states that its fitness studio serves a very limited geographic territory.

The Respondent has filed sales invoices as evidence that it has been running its fitness studio business under the trade name "Zudio Fit Women". The Panel accepts on the basis of evidence filed, that the Respondent offers its services under the name "Zudio Fit Women" and has used it as a business name or trade name in connection with its fitness studio. The Respondent's submissions along with the evidence, supports a finding that the Respondent is commonly known by a name that substantially corresponds to the disputed domain name.

The Panel finds there is merit in the Respondent's arguments that the overall appearance of the Respondent's website does not falsely suggest any connection with the Complainant or display any intention to benefit from the Complainant's goodwill. On the contrary there is sufficient evidence to show that the disputed domain name is used by the Respondent for legitimate purposes arising from a business under its trade name "Zudio Fit Women" in Srinagar. The evidence filed with the amended Complaint (Annexure J, at pages 294 and 295) show copies of the Instagram handle for "Zudio Fit Women". Here again, the Panel finds there is no hint or suggestion that the Respondent has tried to show a connection with the Complainant's mark. Both the website and the Instagram handle display content consistent with the Respondent's services that are related to fitness programs for women.

Although the Complainant emphasizes in its rejoinder that the Respondent's use of the disputed domain name is not *bona fide*, and it is a deliberate infringement of its rights in its mark, no evidence has been submitted by the Complainant to support its assertions and those are questions beyond the remit of the Panel. The Respondent has successfully rebutted the Complainant's allegations and filed evidence that shows it has been running its fitness studio business under the trade name. The website content and the logo, and the entire the look and feel of the website does not indicate that the Respondent has tried to imitate, copy, the Complainant's mark to benefit through a false association with the mark.

The Panel also finds the Respondent has not given false information on its website or about its business and fitness studio activity, its address or location and does not appear to be engaged in any fraudulent activity. The Complainant, on the other hand, has not provided sufficient evidence to support its claims. On balance Panel finds based on the Respondent's submissions and credible evidence, that there is merit in the Respondent's claim that its trade name has been derived independently. Where a respondent is found to have independently derived its trade name, the respondent can claim legitimate interest or rights. See *Ferox Capital Management Limited v. Ferox. Advisors Limited*, WIPO Case No. [D2013-1926](#).

In view of the persuasive evidence of use of the tradename by the Respondent before receipt of notice of this dispute and the fact that little or no evidence has been submitted by the Complainant to demonstrate that there could be possible deception to consuming public, the Panel is inclined to find that the Complainant has not discharged the requirement of showing that the Respondent lacks rights or legitimate interest in the

disputed domain name. See *Millennium & Copthorne International Limited, Millennium & Copthorne Hotels plc v. M/s Hotel Millennium Continental Private Limited / Nikil Gopalan*, WIPO Case No. [D2014-2280](#).

While non-response of a respondent may be a basis to infer lack of rights or legitimate interests as observed in *GA Modefine S.A and Giogio Armani S.p.A v. Yoon-Min Yang*, WIPO Case No. [D2005-0090](#) and *Pomellato S.p.A v. Richard Tonetti*, WIPO Case No. [D2000-0493](#), where it was observed “non-response is indicative of a lack of interests inconsistent with an attitude of ownership and a belief in the lawfulness of one’s own rights”. The converse of this situation is where the respondent responds and demonstrates an attitude of ownership and a belief in the lawfulness of one’s own rights, such as in the present case.

The Respondent has established that it runs by all appearances a *bona fide* business under the business name that is substantially reflected in the disputed domain name. The Respondent has therefore successfully made its case under paragraphs 4(c)(i) and 4(c)(ii) of the Policy showing that: (i) before any notice of the dispute, the respondent has used or demonstrably prepared to use the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services (ii) the respondent has been commonly known by the domain name, even if no trademark or service mark rights have been acquired.

The Panel finds the Complainant has failed to establish the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Respondent having made its case in the previous section, the third element under paragraph 4(a) of the Policy need not be discussed. However, in order to address the submissions and the communications made by the Parties, the Panel considers it necessary to discuss the issues raised by the Parties under this section.

The Panel finds that the Respondent has not disputed the Complainant’s rights in the ZUDIO mark but as discussed in the previous section, the Respondent has established that the use of the disputed domain name does not take unfair advantage of the Complainant’s mark for reasons that: (i) The Respondent is found to have registered/acquired the disputed domain name with *bona fide* intent and has provided credible evidence that it has registered and used the disputed domain name to reflect its trade name in a manner that is not calculated to target the rights of the Complainant; (ii) the evidence does not indicate that the Respondent’s reason for registration of the disputed domain name is for use in a deceptive manner or hosts a fake website or runs a fraudulent business or that the Respondent has engaged in a pattern of speculative domain name registration; (iii) the Parties are offering dissimilar goods and services; (iv) the Parties are not competitors; (v) the Respondent does not appear to have deliberately selected or used the disputed domain name to attract Internet users to its site based on confusion with the Complainant’s mark.

Turning to the question whether the Respondent’s offer to settle the dispute for USD 47,500 demonstrates bad faith, the Panel is of the view that in the face of the evidence and submissions made by the Parties, the offer made by the Respondent in the communications, is not found to be bad faith. As stated earlier, the Respondent’s use of the disputed domain name does not appear to be used in a fraudulent manner or to infringe the Complainant’s mark. Therefore, under the discussed circumstances, the Respondent making a demand based on its investment and expenses to surrender the disputed domain name does not demonstrate bad faith on the part of the Respondent.

Bad faith can be found when the registrant seeks to profit from sale of the disputed domain name under paragraph 4 (b)(i) where it has no legitimate interest or rights, see *eMedicine.com, Inc. v. Sjafty Lim*, WIPO Case No. [DTV2001-0003](#) also see *William Grant & Sons Limited v. Daniel Scotto*, WIPO Case No. [D2000-1656](#). Bad faith finding is applicable in cases when a registrant initiates contact with a trademark owner and seeks to profit from the sale of a domain name in which the registrant has no rights or legitimate interest. Bad faith can also be found when the registrant lacks any legitimate interest and waits to be contacted by the rights holder before demanding a premium for sale of the disputed domain name or when



there are circumstances that indicate the Respondent registered the disputed domain name to target the mark and in the hope of selling it.

The Complainant has not provided evidence to establish that the Respondent has used the disputed domain name in a deceptive or infringing manner as argued by the Complainant. In the face of the evidence and submissions made by the Respondent, the Complainant had another opportunity to improve its case in its rejoinder, but the Complainant falls short to prove its case that the Respondent is a cybersquatter and seeks to take advantage or exploit the Complainant's mark. No case of deception has been made by the Complainant as the Respondent has put forward a plausible case.

The Panel finds that the Complainant's supplemental submissions in large part merely reproduce the emails communication sent by the Respondents. The Complainant has failed to address a number of issues raised by the Respondent in support of its case. The Complainant's failure to address the Respondent's allegations lends weight to the Respondent's submission and together with the Respondent's credible submissions. For instance, the Respondent has mentioned that the Complainant's mark is not widely known particularly in Srinagar and this claim is not addressed by the Complainant. The Panel notes from the evidence filed by the Complainant (Annexes to the amended Complaint on page 280), there is only one ZUDIO store in the entire union territory of Jammu and Kashmir which is located in Jammu at Kunjwani Bypass Road. The store is located in a remote border area that is about 255 kilometers away from Srinagar.

The Panel furthermore notes that the Complainant has not addressed all the Respondent's allegations and has not rebutted statements such as the Respondent does not appear to have used the mark to intentionally attract users to its website by creating a likelihood of confusion with the trademark or provided any evidence or indication that the Respondent is intending to tradeoff the reputation associated with the mark and create a false impression of affiliation with the Complainant's mark. The Complainant has merely made conclusory statements and allegations that the Respondent has targeted the Complainant's ZUDIO mark, the Panel does not consider the Complainant's unsupported statements to undermine the Respondent's case.

The Panel finds that the Complainant has not sufficiently proven that the Respondent has registered the disputed domain name in bad faith or that there is a likelihood of confusion between the Respondent's website and the Complainant's trademark and business.

The Complainant has not satisfied the requirements under paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Harini Narayanswamy/*

**Harini Narayanswamy**

Sole Panelist

Date: February 9, 2023