

## **ADMINISTRATIVE PANEL DECISION**

Sony Group Corporation (also known as Sony Group Kabushiki Kaisha and formerly known as Sony Corporation and Sony Kabushiki Kaisha) / Sony Pictures Entertainment Inc. / Sony Corporation of America / Culver Max Entertainment Private Limited (formerly known as Sony Pictures Networks India Private Limited) v. Manish Soni  
Case No. D2023-1438

### **1. The Parties**

The Complainants are Sony Group Corporation (also known as Sony Group Kabushiki Kaisha and formerly known as Sony Corporation and Sony Kabushiki Kaisha), Japan / Sony Pictures Entertainment Inc., United States of America (“U.S.”) / Sony Corporation of America, U.S. / Culver Max Entertainment Private Limited (formerly known as Sony Pictures Networks India Private Limited), U.S., represented by the GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, U.S.

The Respondent is Manish Soni, India, represented by Preetika Chawla & Associates, India.

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

The disputed domain name <sonyzee.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 5, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on April 5, 2023 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 amendment to the Complaint on April 6, 2023.

The Center verified that the Complaint together with the amendment to the 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 April 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 5, 2023. The Response was filed with the Center on May 2, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 4, 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.

On May 4, 2023 the Complainant filed a Supplementary Filing (the "Complainant's First Supplementary Filing") together with further evidence. For reasons discussed below the Panel will admit this material.

On May 9, 2023 the Panel issued a Procedural Order (the "Procedural Order") in the following terms:

"The Panel grants the Respondent until Wednesday May 17, 2023 to file a supplemental statement in response to the Complainants' Supplemental Statement. The Panel requests that the contents of that supplemental statement are where appropriate supported by corroborating evidence. The Panel also requests that the Respondent explain in his supplementary statement why it was that he adopted the spelling "sony" within the disputed domain name as opposed to "soni", given that the latter spelling corresponds to his name. The Panel also requests that the Complainant files a further supplemental statement by Wednesday May 17, 2023 directed at the correspondence between GoDaddy and the Respondent set out at Annex 6 to the Response and in particular as to whether it was (either directly or indirectly) the person making the offers contained in emails from GoDaddy to the Respondent dated November 30, 2022, December 7, 2022, January 25, 2023 and January 28, 2023. If the answer is in the negative the Complainant is asked to say whether it knows who was responsible for those offers and if so identify the person concerned. The Panel's decision due date is extended until Friday, May 26, 2023."

The Respondent filed a supplementary statement on Tuesday May 16, 2023 (the "Respondent's First Supplementary Filing") and the Complainant filed a second supplementary filing on Wednesday May 17, 2023 (the "Complainant's Second Supplementary Filing").

The Respondent filed an unsolicited supplementary filing on May 27, 2023 (the "Respondent's Second Supplementary Filing"). The Panel declines to admit it because it does not contain anything of relevance to matters in issue.

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

The First Complainant Sony Corporation is the well-known Japanese public company. It has approximately 108,900 employees (as of March 31, 2022) and consolidated sales and operating revenue (fiscal year ended March 31, 2022) of 9,921,500 million yen. It carries out business in the fields of consumer and professional electronics, gaming, entertainment and financial services. The other complainants are affiliated companies. For present purposes it is convenient to treat the Complainants as a single entity and they are referred to as "the Complainant" in this decision. The Complainant owns many trademark registrations in multiple jurisdictions for the trademark SONY, including for example U.S. trademark registration No. 0770275, granted on May 26, 1964. The Complainant also owns numerous domain names consisting of the mark SONY, including the domain name <sony.com>, registered in 1989.

On August 31, 2016, the Complainant issued a press release announcing that it had entered into definitive agreements to acquire a sports network from Zee Entertainment Enterprises Limited ("Zee") of India, a transaction that was completed in 2017. During 2019 the Complainant announced plans to take over Zee.

On December 21, 2021, the Complainant and Zee announced “definitive agreements” for a merger of their companies.

The date the Disputed Domain Name was registered is discussed below. Whether it has been used, and if so how, is also discussed below.

Correspondence has taken place about a possible purchase of the Disputed Domain Name. On December 1, 2022, the Respondent received an unsolicited offer from GoDaddy, on behalf of an unidentified client,<sup>1</sup> offering to purchase the Disputed Domain Name for USD 400. On December 7, 2022, GoDaddy sent a chasing email. The same day the Respondent replied “I am not interested. Don't want to sale [sic] my domain Thank you”. GoDaddy replied the same day stating “The interested party is advising they can go as high as \$2,400 USD net to you after commissions”. The Respondent replied on December 10, 2022 stating “Thank you sir But I don't want to sale [sic] my domain. Who want to buying this domain can you please provide me details”. On December 13, 2022 GoDaddy responded: “Thank you for letting us know. I have let the interested party know that you are not interested in selling the domain. We do not disclose any information about our buyers or sellers”. On December 20, 2022 GoDaddy sent the Respondent a further email: “I understand if you still prefer to hold on to the domain, but the buyer circled back and asked that we please extend an increased offer of \$8,250 USD net to you after commissions for sonyzee.com in case it changed your position. If this ends up being of any interest, please let us know”. The Respondent does not appear to have replied to this email. GoDaddy sent a further email on January 25, 2003, which said “The buyer interested in sonyzee.com has come back with an increased offer of \$18,750 USD net after commissions to you through our Afternic Network. Please let us know if you would like to accept, or how you would like to proceed at your earliest convenience”. Again the Respondent does not appear to have replied and on January 28, 2023 GoDaddy sent yet another email which stated “Great news! We encouraged the buyer to move forward with purchase of sonyzee.com at \$30k net after commissions emphasizing this would be the best price and they've agreed”. Once again the Respondent does not appear to have replied to this email.

The record shows that there was no further correspondence from GoDaddy, but the Respondent contacted the Complainant directly via email on February 22, 2023, stating as follows: “I am reaching out to you because I have a domain name that I believe would be a valuable asset for your company. The domain is [SONYZEE.COM], and it is currently available for purchase. I believe that this domain would be a great fit for your company, I would be happy to discuss the possibility of selling this domain to your company. If you are interested, please let me know your offer for the domain. Thank you for your time and consideration. I look forward to hearing from you soon.”

On March 17, 2023, the Complainant replied “Further to the email below in regards to the domain sonyzee.com - while we are interested in this domain, it would depend a lot on the selling price”. The Respondent replied on March 19, 2023 “Thank you for your email regarding the domain (sonyzee.com). I'm glad to hear that you're interested in the domain, and I understand that the selling price is an important factor in your decision to purchase it. To provide you with the relevant information, could you please let me know what the buying price is you think for the domain? Knowing this information will help me better understand your needs and provide you with a suitable offer”.

On March 21, 2023, the Complainant replied “As per the internal policy & being on the buying side, we would not be in a position to share any offer. To take it forward, we would need the selling price from your end and then its open for discussion”. On March 22, 2023 the Respondent replied “Thank you for your response, I would be delighted to discuss the sale further. I completely understand your position regarding not being able to share an offer. we can certainly provide you with the selling price of our Domain. After careful consideration and consultation with my team, I have determined that the asking price for the domain name is INR 12 crore (1.5 million \$). This price reflects the domain name's value and potential, I would like to inform you that we have received an offer of INR 5.6 crore (700k \$) for the domain name, however, we believe that the true value of the domain name is much higher. As such, we are seeking offers at or above the asking

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<sup>1</sup> It has emerged that this unidentified client was an agent acting on behalf of the Complainant – see further below.

price of INR 12 crore. Should you be interested in pursuing this transaction, I would be happy to discuss the next steps with you. Please note that the sale will be conducted through a secure and reputable escrow service to ensure a seamless and secure transaction for both parties”.

The Complainant did not reply, and on March 30, 2023 the Respondent wrote again: “I hope this email finds you well. I am writing to follow up on the quotation that we provided to you 22nd March. We would like to know if you are interested in proceeding with the purchase as per the quotation we provided. If you have any questions or concerns regarding the quotation or the permissions, please do not hesitate to contact us. We would be more than happy to address any queries you may have. We look forward to hearing from you”. The Complainant did not reply but on April 4, 2023 filed the present Complaint.

On June 22, 2020 the Respondent incorporated a company called Sonyzee Solutions Private Limited (see further below). On March 28, 2023, that company applied for an Indian registered trademark for the term “sonyzee” in class 14 for imitation jewellery and related goods.

## **5. Parties’ Contentions**

The Panel considers it is convenient to set out the parties contentions by reference to the chronological order of the various submissions.

### **A. Complainant – in the Complaint**

The Complainant has set out in considerable detail its case and cited a very large number of previous UDRP decisions. The Panel does not think it necessary to repeat everything the Complainant has said. Its main contentions as set out in the Complaint can be summarized as follows.

The Disputed Domain Name is similar to the SONY Trademark as it combines that trademark with the third party, well-known trademark ZEE.

The Respondent has no rights or legitimate interests in the term “sony” or “sonyzee”.

In consequence the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says that the Disputed Domain name was registered on January 2, 2019 – shortly after news articles in India published reports that the Complainant might acquire a significant equity stake in Zee. The Complainant says it was clearly registered opportunistically because of the Complainant’s commercial dealings with Zee and with a view to selling it to the Complainant at an inflated price. It says the Respondent approached it and offered to sell the Disputed Domain Name for USD 1.5 million, and at the same time Respondent also untruthfully said he had another potential purchaser prepared to pay USD 700,000. The Complaint says this clearly shows the registration and use was in bad faith. It says that the Respondent is not using the Disputed Domain Name and bad faith is also shown under the well-known doctrine of “passive holding” given the fame of the SONY trademark and that it is impossible to identify any good faith use to which the Disputed Domain Name could be put.

### **B. Respondent – in the Response**

The Respondent denies acting in bad faith. His Response is repetitive and difficult to follow but the essential points he makes are as follows.

The Respondent says he is a director of an Indian company called Sonyzee Solutions Private Limited, which is engaged in the business of jewellery designing, selling, and manufacturing.

He says he has owned the Disputed Domain Name since registering it on July 7, 2015. The date of January 2, 2019, relied on by the Complainant is not when he created the Disputed Domain Name but when he

renewed it. He says his registration predates the announcement of any relationship between the Complainant and Zee.

He denies offering to sell the Disputed Domain Name to the Complainant. He says he received a series of offers to purchase the Disputed Domain Name via GoDaddy.com in late 2022 and early 2023 which culminated in an offer of USD30,000 on January 28, 2022.

He accepts that the Complainant has registered trademarks for the term SONY but says that “sonyzee” is a completely different term.

His explanation for how he came to choose the Disputed Domain Name is as follows: “sonyzee” here being identified with the name of his deceased father Mr. Ramamavtar Soni and people used to identify him as “सोनीज़ी” according to numerology in English is classified as “sonyzee” and that “Respondent Mr. Manish Kumar Soni is a simple hardworking businessman who is working on completing his dream project since 2015 carrying his father legacy with him in the name of “sonyzee” and that co-incidentally becomes a Disputed Domain Name with well known brand SONY”.

The Respondent denies that the Disputed Domain Name is not been actively used and says as follows: “Respondent at present do not have any Active website in the name of Registered Domain name <sonyzee.com> as it is currently under progress, however he was running website in registered Domain Name in the year 2015-2016” and “[the Respondent] was using an active website from July 2, 2015 to July 2, 2016 for business engaged in jewellery designing, selling, manufacturing both in offline and online market and thereafter the website is not active as it is currently under maintenance”.

He says that Sonyzee Solutions Private Limited has applied for a registered trademark for the term “sonyzee”.

He also says he has been working through Sonyzee Solutions Private Limited on the development of an app called YOYOSM.

He also says that “there are lakhs [hundreds of thousands] of people with First or Last name Sony”

The Respondent says he is commonly known by the term “sonyzee” because of his website and his association with Sonyzee Solutions Private Limited. He also says he is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain.

So far as his correspondence with the Complainant is concerned he does not deny sending the emails the Complainant has relied upon but says this “On continuously receiving emails for selling of his Registered Domain Name, Respondent out of curiosity who is the Buyer? he firstly asked the quotation for selling the Disputed Domain Name but Sony Group Corporation denied for any quotation therefore Respondent quoted a price for his Registered Domain Name which is his father’s legacy for years, hence the allegations raised are false wherein Respondent completely deny the fact “evidence of bad faith” under paragraph 4(b)(i) of the Policy as Respondent never tried to sell his Domain name or in any way mislead the customers of Complainant”.

The Panel considers in more detail below the evidence that the Respondent has produced in support of his arguments.

### **C. Complainant’s First Supplementary Filing**

For reasons discussed below the Panel will allow the Complainant’s First Supplementary Filing. The further points made in that filing are as follows.

The records provided by the Respondent in Annex 4 of the Response appear to show that the Respondent received an invoice for the original registration of the Disputed Domain Name on “2/7/2015” (July 7, 2015);

that the Respondent received another invoice for registration – not renewal – of the Disputed Domain Name on “3/1/2019” (January 3, 2019); and that the Respondent received invoices for renewal of the Disputed Domain Name on “11/12/2020” (December 11, 2020), “5/1/2022” (January 5, 2022), and “20/12/2022” (December 20, 2022). Together, these documents indicate that the Respondent apparently allowed the Disputed Domain Name to lapse after the original registration in 2015 and decided to register it again as a new registration – not as the renewal of an existing registration – in 2019.

The Complainant says that this conclusion is consistent with historical Whois reports which show a conspicuous absence of Whois records for the Disputed Domain Name from July 3, 2016 (two days after the original expiration date for the Disputed Domain Name) until January 2, 2019 (within one day of the new registration date for the Disputed Domain Name).

This conclusion also explains why the current “Creation Date” for the Disputed Domain Name is January 2, 2019. Therefore, the Complainant’s arguments in the Complaint that the Disputed Domain Name was created “shortly after news articles in India published reports that Complainant might acquire a significant equity stake in Zee”, which “timing is an indication of bad faith”, are highly relevant and not undermined by any prior registration of the Disputed Domain Name by the Respondent.

If anything, it appears that the Respondent chose to register the Disputed Domain Name for a second time, after it lapsed, only once the Respondent realized the potential newfound value of the Disputed Domain Name.

The Complainant says that the registration of Sonyzee Solutions Private Limited does not on its own confer any rights or legitimate interest and cites various UDRP decisions in that regard. It also says the registration was made on June 22, 2020 after the business relationship between the Complainant and Zee had been announced and was clearly opportunistic and intended to provide a pretext for registration of the Disputed Domain Name.

The Complainant says that the Respondent’s application for a trademark for SONYZEE is irrelevant and provides the Respondent with no rights or legitimate interests, nor does it do anything to contradict the Complainant’s arguments with respect to bad faith. The Respondent’s Annex 8 makes clear that its application was filed only a few days before (and, therefore, probably in anticipation of) the Complaint, on March 28, 2023.

The Complainant says that the supposed reasons for registering the Disputed Domain Name because of its alleged connection with the Respondent’s late father are incredible and unsupported by any evidence at all. It also says that the supposed website the Respondent refers to is not supported by any evidence that the Respondent actually published any such website. In this regard, the Internet Archive’s Wayback Machine shows only one record of a website associated with the Disputed Domain Name, on December 25, 2021, and that record contains no visible content.

The Complainant say that the Respondent’s assertion that he “never tried to sell his Registered Domain Name”, is obviously false given the cited correspondence. It says this claim shows the Respondent lacks credibility – the Panel discusses this correspondence below.

#### **D. Respondent’s Supplementary Filing**

In this filing the Respondent largely repeats matters that appear in the Response. The Panel does not think it necessary to repeat those here.

He says that he filed an application for the trademark “Sonyzee” on March 28, 2023 under class 14 “as to secure his mark from some unidentified buyer, since he was not aware about SONY and ZEE merger, and he was receiving mails from GoDaddy without disclosing name of buyer for buying his Registered Domain name as enclosed in Annex 6 of Respondent’s reply”.

The Respondent says that for him to show (as an individual, business, or other organization) he has been commonly known by the Disputed Domain Name it is not necessary for him to have acquired corresponding trademark or service mark rights.

He says that he is a small business man who lacks funds and exhibits an email he apparently sent to Goldman Sachs in India dated September 22, 2015 which appears to attach a business plan (“Sonyzee BPlan”) although the business plan itself has not been provided to the Panel.

The Respondent appears to challenge the Complainant’s reliance on evidence of the contents of the “Wayback” archive, saying: “As far as Internet Archive Wayback Machine is concerned it’s also in the same way do not show the previous data once it is overwritten likewise”.

#### **E. Complainant’s Second Supplementary Filing**

The Respondent filed his Supplementary Filing a day before the date provided in the Procedural Order. This allowed the Complainant time to include in its Second Supplementary Filing material commenting on the Respondent’s Supplementary Filing as well as providing the substantive content that the Panel had requested. The Panel does not propose to admit that additional material which in any event appears to be matters of commentary or argument. So far as substantive content is concerned the Complainant did provide evidence about the correspondence that the Respondent had received from GoDaddy. It stated “Prior to filing the Complaint in this proceeding, the Complainant contracted with a third-party vendor to secure various domain names containing the trademarks SONY and ZEE. Upon learning that the Disputed Domain Name was registered by Respondent, Complainant explored whether a purchase of the Disputed Domain Name would be practical, for example, by being less expensive or quicker than filing a complaint under the Policy. Complainant has now learned that the vendor in turn contracted with GoDaddy to contact Respondent and inquire about such a purchase”. The Complainant went on to submit, by reference to a number of previous UDRP decisions that the fact of these offers was in any event irrelevant to the analysis of the Respondent’s bad faith. Where relevant these cases are discussed below.

#### **F. Respondent’s Second Supplementary Filing**

In this unsolicited supplemental filing, the Respondent sent an email that stated “Dear sir/ma'am We had read in Economics Times this today on dated 27th May, 2023 about merger of two entities, and enclosing the same for your acknowledgement. Please consider the same”. The email included as an annex an image of a journal publication that reported the merger of Zee with Sony Pictures Networks India.

As mentioned before, The Panel does not find it necessary to admit the Respondent’s Second Supplementary Filing because it does not contain anything of relevance to matters in issue.

### **6. Discussion and Findings**

#### **Procedural Matters – Supplemental Filings**

As a general rule Supplemental Filings are discouraged. However UDRP panels will accept supplemental filings when they provide material new evidence or a fair opportunity to respond to arguments that could not reasonably have been anticipated. See, for example, *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#). See also *LinkedIn Corporation v. Linda Audsley, The Training Company (Glos) / Domain Manager, The Training Company (Glos)*, WIPO Case No. [D2016-1757](#), and *Cheryl Sousan d/b/a Tidy Mom v. Davonne Parks, Nathan Parks, High Performance Computer Services*, WIPO Case No. [D2017-0216](#)

In the present case the Panel considers the Response raised a number of matters the Complainant could not have reasonably anticipated including for example a challenge as to when the Disputed Domain Name was first registered, details of the company Sonyzee Solutions Private Limited, and the supposed connection

between the Disputed Domain Name and the Respondent's late father. The Complainant's First Supplemental filing addresses these areas and provides material that is directly relevant. The Panel will in its discretion admit the Complainant's First Supplemental Filing. The Panel does so on the basis that it was also appropriate to allow the Respondent to reply to this filing.

The Respondent's First Supplemental Filing and the Complainant's Second Supplemental Filing were provided pursuant to the Procedural Order and are admitted – in the case of the Complainant's Second Supplemental filing on the basis described above.

### **Substantive Points**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

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

The Complainant has rights in the SONY trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is well established that, where a mark is the distinctive part of a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark (*DHL Operations B.V. v. DHL Packers*, WIPO Case No. [D2008-1694](#)).

The Disputed Domain Name combines the SONY trademark with what can be regarded as either (i) another trademark (“zee”) or (ii) a term which corresponds phonetically to how the letter “z” is commonly pronounced in American English. In either case the Disputed Domain Name manifestly continues to include the Complainant's trademark as an obvious reference within the Disputed Domain Name. As stated in section 1.12 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), it is a well-established principle that a domain name that wholly incorporates a trademark is found to be confusingly similar for purposes of the Policy, despite the fact that the disputed domain name may also contain another third-party's distinctive mark: “Where the complainant's trademark is recognizable within the disputed domain name, the addition of other third-party marks (i.e., <mark1+mark2.tld>), is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element”. See also for example *Hoffmann-La Roche Inc. v. Charlie Kalopungi*, WIPO Case No. [D2010-1826](#), where the panel found that “the inclusion of the trademarks of other parties in the disputed domain name does not detract from the confusing similarity”. The same principles would apply if the term “zee” is read as a reference to the letter “z” – the Complainant's trademark remains the dominant part of the conjoined term and is clearly recognisable.

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.



## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the SONY trademark. The Complainant has prior rights in the SONY trademark and which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Respondent seeks to discharge this burden by saying that all of (i) to (iii) apply to his registration and use of the Disputed Domain Name. As a preliminary matter the Respondent cannot be correct that the circumstance set out in (iii) applies, as this requires the use in question to be noncommercial and the Respondent's own case is that his claimed use was commercial. The question therefore is whether circumstance(s) (i) and/or (ii) applies. The difficulty here for the Respondent is that his case comprises little more than bare assertions and some inconclusive evidence.

The Panel will however examine carefully what the Respondent has said.

So far as circumstance (i) is concerned, the Respondent says he has been operating a *bona fide* jewellery business using the Disputed Domain Name since 2015. He relies upon the fact that he formed a company called Sonyzee Solutions Private Limited. His evidence however shows that this company was only incorporated on June 22, 2020. He has produced what appear to be professionally prepared audited accounts for the company covering the period August 12, 2020 to March 31, 2021. These are presumably denominated in rupees and shows a balance sheet with approximately 600,000 rupees (equal to approximately 7,000 USD) of assets almost all of which are in the form of loans or receivables. The profit and loss account shows no revenue from operations and payment of expenses of approximately 15,000 rupees. These accounts do not show any trading activity of any kind. The notes to the accounts contain a statement that "during the Year the Company has not started its trading activity". A further set of accounts for the year as at March 31, 2022 are provided but they are of broadly similar effect. Overall these accounts do not establish any trading activity that would fall within (i) above – to the contrary they appear to confirm that the company is not trading.

The Respondent says that "Respondent's Company (Sonyzee Solutions Private Limited) is engaged in the business of jewellery designing, selling, manufacturing both in offline and online market". The Panel has not been provided with any evidence at all supporting this statement. The Panel would have expected to see, for example, some form of accounts showing trading activity, copies of invoices, advertising and promotional material, copies of relevant website material, evidence from actual customers and so on. Nothing at all has been provided. This is also true in relation to any activity the Respondent may be claiming he undertook prior to the formation of the company – there is simply no evidence to support such a claim.

The Respondent also says “Respondent at present do not have any Active website in the name of Registered Domain name <sonyzee.com> as it is currently under progress, however he was running website in registered Domain Name in the year 2015-2016. Record of the same is enclosed in Annex 5 for reference”. He later says “he was using an active website from July 2, 2015 to July 2, 2016 for business engaged in jewellery designing, selling, manufacturing both in offline and online market and thereafter the website in not active as it is currently under maintenance”. These statements do not seem to the Panel to be a credible explanation for why no website exists or why no evidence of any website content between 2015 and now has been provided – despite the Respondent claiming to be active “both in offline and online market”. The referenced Annex 5 is an invoice from GoDaddy addressed to “Manish Soni” but it does not contain any evidence of website content – rather it simply shows that at the same time as registering the Disputed Domain Name the Respondent obtained (free of charge) a one year subscription to a “personal Website Builder”. This tells the Panel nothing about how (if at all) the Respondent used that software. It is not evidence that any website of any kind existed. The Complainant’s evidence is that no content can be found on the Internet Archive “wayback machine” – this appears to be correct. Whilst that may not be conclusive (given that the relevant contents may or may not be indexed by the algorithms in question) it is sufficient to raise an inference that the Respondent needs to rebut with substantive evidence. He has not done so but has instead referred to the contents of the Wayback machine as being “overwritten” which does not seem to the Panel to be either correct or to deal with the Complainant’s fundamental point – there is no evidence of any website activity.

The Panel is unable to attribute any significance to the Respondent’s claim that he has been working through Sonyzee Solutions Private Limited on the development of an app called YOYOSM. He has provided a single Google Play screenshot showing an app of this name, apparently last updated on December 29, 2020. It appears to be an online shopping app offered by “Sonyzee Solutions Pvt Ltd” with over a thousand downloads. Beyond this ,the Panel has not been provided with any information about this app and what if any connection it has with the Disputed Domain Name.

So far as the principles to be applied to assessing the Respondent’s claim that he used the Disputed Domain Name for *bona fide* purposes see [WIPO Overview 3.0](#) section 2.2 as follows:

“What qualifies as prior use, or demonstrable preparations to use the domain name, in connection with a bona fide offering of goods or services?”

As expressed in UDRP decisions, non-exhaustive examples of prior use, or demonstrable preparations to use the domain name, in connection with a bona fide offering of goods or services may include: (i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (i.e., not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan, (iv) bona fide registration and use of related domain names, and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent. While such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of bona fide pre-complaint preparations is required.

Acknowledging that business plans and operations can take time to develop, panels have not necessarily required evidence of such use or intended use to be available immediately after registration of a domain name, but the passage of time may be relevant in assessing whether purported demonstrable preparations are bona fide or pretextual.

If not independently verifiable by the panel, claimed examples of use or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence,”

In the present case the Respondent’s case is entirely based upon conclusory statements unsupported by any real evidence, and such evidence as does exist (for example the company accounts and the absence of content on the “wayback machine”) all suggest that there has been no trading activity.

The Respondent then goes on to say “Respondent’s is commonly known by the registered domain name as he is using it since 2015 and trademark application in name of Sonyzee Solutions Private Limited is already applied. Hence Respondent establishes legitimate rights and interest pursuant to paragraph 4 (c)(ii) of Policy.” However there is no evidence of the Respondent using the term “Sonyzee” at any time apart from (a) the actual registration of the Disputed Domain Name with effect from 2015 and (b) the incorporation of Sonyzee Solutions Private Limited in 2021 and (c) the application for a trademark. There is no evidence of that company actually trading or of the trademark being used (see above). It appears to be undisputed that the Respondent’s name is Manish Soni. That does not however establish that he is commonly known as “Sonyzee” – and no evidence at all from any third party has been produced to support this claim.

In this regard see [WIPO Overview 3.0](#) section 2.3 as follows;

“How would a respondent show that it is commonly known by the domain name or a name corresponding to the domain name?

Panels have addressed a range of cases involving claims that the domain name corresponds to the respondent’s actual given name (including in combination with initials), stage name, nickname, or other observed moniker.

For a respondent to demonstrate that it (as an individual, business, or other organization) has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights.

The respondent must however be “commonly known” (as opposed to merely incidentally being known) by the relevant moniker (e.g., a personal name, nickname, corporate identifier), apart from the domain name. Such rights, where legitimately held/obtained, would prima facie support a finding of rights or legitimate interests under the UDRP.

Insofar as a respondent’s being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent’s claim to be commonly known by the domain name – independent of the domain name – is legitimate. Mere assertions that a respondent is commonly known by the domain name will not suffice; respondents are expected to produce concrete credible evidence.

Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver’s license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation. Panels will additionally typically assess whether there is a general lack of other indicia of cybersquatting. In appropriate cases panels may refer to the respondent’s domain name-related track record more generally.”

In the present case the Respondent has simply asserted that he is commonly known as “sonyzee” and no concrete evidence supporting this claim has been provided. The Respondent’s surname is “soni” but he must have appreciated that a claim to be commonly known as “sonyzee” where the “sony” element is spelt with a “y” would inevitably require some kind of evidence. Apart from the incorporation of a company using the term “sonyzee” in 2021, and an application for a trademark in 2023, no such evidence has been provided. The Panel would also note that the terms of the Procedural Order expressly requested the Respondent to explain “why it was that he adopted the spelling “sony” within the Disputed Domain Name as opposed to “soni”, given that the latter spelling corresponds to his name” and to provide “appropriate corroborating evidence”. He has failed to do so in a credible and satisfactory manner, and the Panel infers that no such evidence exists. The Panel accordingly does not accept the Respondent’s claim that he is commonly known as “sonyzee”.

The Panel does not consider the Respondent’s pending trademark application assists his case – it was filed

only after the Disputed Domain Name was registered, and after he had offered to sell the Disputed Domain Name to the Complainant (see below). See *IDT Corporation v. Park Youngmi*, WIPO Case No. [D2016-1591](#) where the panel stated: “Although the existence of the Respondent's pending trademark application is notable, the Panel finds that pursuant to paragraph 4(a)(ii) of the Policy, the Complainant has established that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not demonstrated otherwise. This conclusion is based on the totality of the circumstances, including, among other things, the suspect timing between the Respondent's claim that the negotiations for the purchase of the disputed domain name occurred with the previous owner prior to April 30, 2016, and the Respondent's application filing date occurring at the time of the said negotiations.”

Taking the evidence as a whole the Panel finds that the Respondent has failed to rebut the presumption that he has no rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the second condition of paragraph 4(a) of the Policy has been fulfilled.

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

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel would observe that it is not unusual for UDRP cases to arise where (i) above is established in circumstances where there has been the announcement of some form of commercial venture between two parties which immediately leads to a third party effecting an opportunistic registration of a domain name reflecting some form of conjoining of the names in question. See for example *Quilter Cheviot Holdings Limited v. PJS*, WIPO Case No. [D2012-2288](#) concerning the domain name <quiltercheviot.com> and where the complainant was a company formed by the merger of Quilter & Co and Cheviot Asset Management Limited. See also *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#) concerning the domain name <gehoneywell.org> where the Complainant which traded as “GE” had announced the intended acquisition of Honeywell Corporation.

The Complainant says the present case is such a case.

The Panel does not think that analysis is straightforward in the present case given that the relevant facts are more complex than the typical such case. That is for three reasons.

First, it does not seem to be in dispute that the Respondent's surname is “soni”. Clearly this is spelt with an “i” not a “y” but this may nevertheless be a relevant factor, depending on the evidence.

Second, the evidence establishes that the Respondent originally chose and registered the Disputed Domain Name in 2015, before any public announcement of a commercial venture between Sony and Zee. It appears to be correct, as the Complainant says, that the Respondent allowed the Disputed Domain Name to lapse and then reregistered it after the proposed venture was in the public domain. That does not however detract from the fact that the earlier registration by the Respondent may support a claim to independent derivation, for some other purpose – but this then depends on the evidence.

The third factor that the Panel considers takes this case out of the ordinary is that it has emerged that the Complainant's representatives made a series of unsolicited offers to purchase the Disputed Domain Name which were (at least initially – see below) quickly rebuffed by the Respondent. These resulted in an unsolicited offer (presumably made with the Complainant's knowledge and consent) to pay USD 30,000 for the Disputed Domain Name. This issue is considered further below.

Given these factors the Panel does not consider this to be a straightforward case of opportunistic registration (as the Complainant would suggest) and thinks that careful consideration of the Respondent's case is required.

So far as the date of registration of the Disputed Domain Name is concerned it would appear to be the case that the Respondent registered it first on July 7, 2015 but that it at some stage thereafter lapsed and then the Respondent re-registered it on January 3, 2019. The Panel considers that if the Respondent has a case as to good faith registration that the date when he first registered the Disputed Domain Name would be relevant in that respect. If he would establish that was in good faith it may then be necessary to consider whether the re-registration in 2019 alters the analysis.

The Respondent's underlying explanation for his choice of the term "SONYZEE" as set out in the Response is as follows; "'SONYZEE' here being identified with the name of his deceased father Mr. Ramamavator Soni and people used to identify him as 'सोनीज़ी' according to numerology in English is classified as 'SONYZEE'".

The Panel is not able to understand the script "सोनीज़ी" and does not know what is meant by the statement that "according to numerology in English is classified as "SONYZEE". It should be noted that the Language of the Proceedings is English, hence the Respondent should have given a clear explanation on this particular matter. In any event, given this difficulty the Panel in the Procedural Order expressly requested the Respondent to "explain ... why it was that he adopted the spelling "sony" within the Disputed Domain Name as opposed to "soni", given that the latter spelling corresponds to his name". As noted above the Panel also requested the Respondent to provide appropriate corroborating evidence.

In response to these requests the Respondent in effect simply repeated the same explanation: "As already mentioned that Respondent is working hard to complete his dream project and carry his father's legacy in the name of "सोनीज़ी", as his father was commonly identified as "सोनीज़ी" with honour. Reason for choosing SONY and not SONI is simply based on Numerology as suggested by Numerologist best for the business growth at that time, there is no bad faith or intention behind the same. Also Sony and Soni are phonetically same, and Respondent is using all mails and business addresses in this name only since 2008 (Annex 4)."

The panel observes that Annex 4 appears to comprise a number of copies of documents as follows: (1) the Articles of Association of Sonyzee Solutions Private Limited; (2) an undated business card in the name of that company; (3) a screenshot of a gmail page which is headed "Gmail in the name of Sonyzee since 2008" which relates to an email address of sonyzee[]@gmail.com but does not (as far as the Panel can see) contain any information at all as to the date of 2008 or indeed any other date apart from what appears to be the date when the screenshot was taken ("5/10/23"); (4) some 2022 invoices from Amazon – the descriptions of the services provided as described on these invoices are not, so far as the Panel can see, of any real relevance to matters in issue. None of this material corroborate or explains why "sonyzee" was chosen. Accordingly the Panel concludes that no proper corroborating evidence of any kind has been provided.

If the Respondent wished to persuade the Panel that the script term “सोनीज़ी” in some way is rendered into English in the form “Sony” (having regard to whatever is meant by “Numerology” in this regard) it was incumbent upon the Respondent to produce an understandable explanation of why that was and some proper corroborative evidence to support that explanation – and he has singularly failed to do so. The Respondent must have realised that his choice of “sony” (with a “y”) as part of the Disputed Domain Name, as opposed to “soni”, is a critically important issue (and was expressly identified in the Procedural Order) and his failure to produce credible substantive evidence (as opposed to mere assertion) is telling. Taken overall the Panel is not satisfied that the Respondent has provided a credible and plausible explanation for his adoption of the term “sonyzee”.

The Panel would also add that it does not accept the Respondent’s point that there are large numbers of people with the name “sony”. No evidence supporting that claim has been provided. In any event the Panel doubts it is relevant given that there is no dispute that the SONY trademark is extremely well known.

What then is the Panel to conclude as to the Respondent’s motives in 2015? The Complaint as originally filed had identified January 2, 2019 as the date the Disputed Domain Name had been registered. It focused on the fact that in 2018 the Complainant had announced its intention to acquire Zee. However it also provided evidence that on August 31, 2016 the Complainant had announced the acquisition of a number of television stations from Zee.

The Panel does not know what the precise position was one year earlier in July 2015 when the Respondent first registered the Disputed Domain Name, but it seems to the Panel that the most likely explanation is that the conjoining of “sony” and “zee” is not coincidental and it is more likely than not that it was chosen because it corresponded to the combined names of two companies who were both significant entertainment businesses active in the Indian market and that it might be of value for that reason.

If that is the case then it appears an inference can be drawn that the Respondent registered the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the Disputed Domain Name.

The question then arises as to whether subsequent events support such an inference. For reasons discussed above the Panel does not consider the Respondent has established any evidence of *bona fide* use of the Disputed Domain Name for unconnected business activities. He does not therefore rebut the inference on the basis that he can show he chose and used the name for purposes unrelated to the Complainant.

There has however been significant correspondence about the possible sale of the Disputed Domain Name (see above) which needs to be considered. It is convenient at this point to note that the unnamed client that GoDaddy was acting for was an agent acting for the Complainant.

The Panel does not regard it as satisfactory that it had to issue the Procedural Order to find this out. The Complainant filed its first Supplementary Statement which contained detailed evidence directed at a range of matters which were in the Response but it said nothing about this correspondence. It was only after the Procedural Order that the Complainant stated “Prior to filing the Complaint in this proceeding, Complainant contracted with a third-party vendor to secure various domain names containing the trademarks SONY and ZEE. Upon learning that the Disputed Domain Name was registered by Respondent, Complainant explored whether a purchase of the Disputed Domain Name would be practical, for example, by being less expensive or quicker than filing a complaint under the Policy. Complainant has now learned that the vendor in turn contracted with GoDaddy to contact Respondent and inquire about such a purchase”.

This wording seems to suggest that the Complaint has only now discovered that the purchase offer of USD 30,000 was made. The Panel finds it difficult to believe that the third party in question offered a sum of USD 30,000 without the express knowledge and agreement of the Complainant. It is of course conceivable that a

party may wish to offer a payment to obtain a domain name which could be the subject of a successful UDRP complaint – matters such as certainty and speed may be relevant – but the sum of USD 30,000 is significant and even now, no information has been provided by the Complainant as to how or why that figure had been arrived at or why it was offered.

What however is clear is that the Respondent did not accept this offer and after a delay of a month or so he chose to contact the Complainant direct. The relevant correspondence (see above) appears to contain a clear offer by the Respondent to sell the Disputed Domain Name for USD 1.5 million. The Respondent in the Response explains this correspondence in the following way “On continuously receiving emails for selling of his Registered Domain Name, Respondent out of curiosity who is the Buyer? he firstly asked the quotation for selling the Disputed Dispute Domain but Sony Group Corporation denied for any quotation therefore Respondent quoted a price for his Registered Domain Name which is his father’s legacy for years, hence the allegations raised are false wherein Respondent completely deny the fact “evidence of bad faith” under paragraph 4(b)(i) of the Policy as Respondent never tried to sell his Domain name or in any way mislead the customers of Complainant” and “Respondent claim that he never tried to sell the Domain Name is already proved by the mails he had sent to GoDaddy.com, where he had by and then denied from selling his Domain Name as its evident from the pdf files of emails enclosed in Annex 6 of Reply by Respondent which he was receiving from December 2022 onwards. Hence, Respondent is true in his claim as he only mentioned the price when he was asked by commercial team of Setindia.com [the Complainant]”.

The Panel does not accept what the Respondent says is correct. His email correspondence with the Complainant is clearly an offer to sell the Disputed Domain Name for USD 1.5 million. When no reply is received to that email, he sends a further chasing email. These emails cannot sensibly be read as him being curious as to who GoDaddy’s undisclosed buyer was and simply stating a price because the Complainant had invited him to do so. They were offers to sell.

Taking all of this correspondence as a whole the best explanation the Panel can attribute to it is as follows. The Respondent had registered the Disputed Domain Name because he apprehended it might be of value to the Complainant. He waited until such time as the Complainant chose to approach him. His initial negotiating position was to indicate he had no interest in selling. This led to a series of rapidly increasing offers from the Complainant’s agents, culminating in an offer of USD 30,000. It seems that the Respondent did not respond to that offer but that may well have been because previously his non communication had resulted very quickly in an increased offer being provided. When after approximately one month that had not happened he then decided to contact the Complainant directly (probably suspecting – correctly – that the earlier offers had been made on behalf of the Complainant). He initially tried to persuade the Complainant to indicate a figure it would be prepared to pay. When the Complainant declined to do so he then indicated his proposed figure, namely USD 1.5 million.

It is also significant to note that the Respondent’s statement that he had “received an offer of INR 5.6 crore (700k \$)” for the Disputed Domain Name from an unidentified party was untrue since no evidence on this was provided, and appears to be a negotiation tactic to put pressure on the Complainant.

In the present circumstances, the Panel concludes that the inference that the Respondent originally registered the Disputed Domain Name because he hoped to be able at some stage to sell it to the Complainant is supported by the subsequent correspondence and the absence of any substantive use of the Disputed Domain Name for other purposes. The Panel concludes it is more likely than not that paragraph 4(b)(i) of the Policy applies to the registration of the Disputed Domain Name in 2015, and its subsequent use. The same reasoning would apply if the date of registration is to be taken as January 2 or 3, 2019.

Does the fact that the Complainant through its agent had previously offered to purchase the Disputed Domain Name for USD 30,000 alter this analysis? In this regard see *AIB-Vincotte Belgium ASBL, AIB-Vincotte USA Inc./Corporation Texas v. Guillermo Lozada, Jr.*, WIPO Case No. [D2005-0485](#) where the Panel stated “Finally, the assumption of an intent to sell a domain name in bad faith is not refuted by the fact that it was the Complainant who initially addressed the Respondent and offered to purchase the domain name in order to amicably settle the dispute, if from the subsequent conduct of the Respondent and other

circumstances of the case there are indications of bad faith on the part of the Respondent". The Panel concludes the same is the case here – USD 30,000 is a substantial sum but the subsequent conduct of the Respondent and the other evidence in the case (above) provide indications of bad faith on the part of the Respondent.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **7. Decision**

The Panel is conscious that a decision in the Complainant's favour will result in the Disputed Domain Name being transferred to the Complainant and the Respondent will receive nothing. That may well seem harsh when the Complainant had previously made an unsolicited offer to purchase the Disputed Domain Name for USD 30,000. This result is however a direct consequence of the Respondent choosing not to accept that offer and instead seeking to suggest a figure of USD 1.5 million was appropriate – this latter fact in particular supports the Panel's suspicion that the Disputed Domain Name was chosen, at whatever registration time, because it combined the names of two media conglomerates.

It is also a consequence of the Panel not accepting the Respondent's evidence as to a number of important matters. The Panel is conscious that proceedings under the UDRP are of a limited and restricted nature, do not involve oral hearings, discovery, or cross examination, and hence are only applicable to clear cut cases, and it is often not appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Panel cannot reach a conclusion as to the veracity of a case that is being advanced where the only evidence that is provided is in the form of conclusory statements that are inherently not credible, and which are not supported by relevant corroborative or third party evidence. The Panel considers this to be such a case for reasons discussed above.

Accordingly for the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <sonyzee.com> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: May 29, 2023