

1. Zoozle GmbH is a German multinational company headquartered at Berlin. It operates an internet search engine in the url <http://www.zoozle.com> (hereinafter called 'The Website'). When a user enters a query into the search toolbox, the website generates an 'organic search list' of hyperlinks that it deems most relevant to the query. These hyperlinks are of various 3<sup>rd</sup> party websites that contain the query or words similar to the query. The hyperlinks are highlighted in blue and are arranged in order of relevance. The order of relevance is determined by algorithms written into Zoozle's source code and has no human interface in its determination. The website is considered one of the most effective and efficient internet search engine websites and is hugely popular, with almost sixty percent of the internet users around the world preferring to use [www.zoozle.com](http://www.zoozle.com) for their internet queries. In India, the website is even more popular, with more than eighty percent of Indian internet users accessing the website on a daily basis.
2. When Zoozle GmbH first began operating the search engine in the year 2003, it was a non-profit entity and relied solely on voluntary contributions from its users. However, due to rising costs as well as ambitious plans to expand the scope, utility and outreach of the website, in the year 2011, Zoozle GmbH developed a scheme of advertising through which businesses or persons may advertise on its search engine. This scheme of advertising was called '*AdVerba*'. A person, who wishes to advertise on *AdVerba*, can buy 'keywords' of his/her choice through an online auction amongst prospective buyers. Keywords can be bought for specific regions only. A keyword is a word which when typed into the website's search tool as a query, triggers in addition to the organic search list, results termed as 'suggested posts'. The highest bidder for the keyword decides what web links to place in the suggested posts. The bidder usually places his own website's link as the suggested post. The purchaser of the keyword can also place a small description below the actual link. The suggested posts appear above the 'organic search list' and are distinguishable from the search list as they are shaded in a light yellow color and the words "Sponsored Ads" appear alongside them.

3. Mr. Arvind Kejru Murgwala established a fast food restaurant called 'Murgwala's Best Butter Chicken' (hereinafter MBBC) in Delhi in the year 1959 at Connaught Place. MBBC soon became a very popular restaurant amongst the people of Delhi. Today, the restaurant is a chain with over twenty five outlets within Delhi. In order to maintain quality as well as out of respect for the wishes of Mr. Arvind Murgwala, the chain has never been expanded outside Delhi, though his sons Arnob Murgwala and Arnab Murgwala were always keen to do so. Arvind Murgwala passed away in the year 1988 and a dispute broke out between his sons Arnob Murgwala and his younger brother Arnab Murgwala as to the division of assets. In the end it was agreed between the brothers that Arnob would have full ownership of MBBC and Arnab would have two bungalows which the father had left behind located in Golf Links, Delhi. They accordingly entered into an Agreement dated 01.01.1989 wherein Arnab relinquished all claims over MBBC and Arnob relinquished all rights and claims over the two properties. Accordingly, the business (MBBC) was taken over by Arnob in 1989. The Trade Mark that MBBC uses in the course of trade is reproduced in Annexure– I. Although this is the mark MBBC had been using since its inception in 1959, the mark was only registered by the Registrar of Trade Marks in the year 1993 on Arnob's application.
4. In the year 2008, Arnob created a website for his business with the URL [www.bestbutterchicken.com](http://www.bestbutterchicken.com). This website allows prospective consumers to view the menu online and place orders for home delivery. Arnob also guaranteed that orders placed on his website would be delivered within thirty minutes or less and extensively advertised his business along with the website's URL in the mass media as well as hoardings in several places across the city. The Company's financial statements for the Assessment Year 2012-13 recorded advertisement expenditure as Rs. 1,00,00,000/-
5. Mr. Arnab Murgwala moved to Kolkata in the year 1990. He decided to start a restaurant of his own and founded 'Arnab's Butter Chicken' (ABC) in the year 1990. This restaurant too has a website of its own with the URL [www.arnabbutterchicken.com](http://www.arnabbutterchicken.com) where

customers can place orders for home delivery. ABC has been moderately successful commercially and operates three branches within Kolkata. In the year 2007, Arnab opened an outlet of ABC in Delhi at Karol Bagh and it runs with moderate success. Arnab obtained registration of the Trade Mark used by ABC in the year 2000. The mark is reproduced in Annexure – II.

6. In the year 2012, Arnab decided to use Zoozle's *AdVerba* to advertise his website. He bid for and successfully purchased around fifty keywords including the words 'Best', 'Tasty', 'Butter', 'Chicken', 'Murgwala' and 'Arnab' for use within Delhi and Kolkata. He also bought mis-spelt versions of these keywords such as 'Cchicken', 'Buter' and 'Arnob' because internet users often tend to misspell search terms. As a result, when a user types these three words in combination into the Zoozle search bar, the search result page would contain a suggested post with the link to Arnab's website ([www.arnabutterchicken.com](http://www.arnabutterchicken.com)) placed above the organic search results. Arnab also added the description 'Better than the Best Butter Chicken' under the link.
7. Arnob soon noticed this and felt that there was a chance that consumers who were searching for his website could be misled into the website of Arnab which was placed in the 'Suggested Posts' area of the search results page. He feared that once they enter the website of Arnab, they would just place an order there, thereby causing him a loss of customers. On 06.06.2012, he wrote to the head office of Zoozle GmbH at Berlin and asked them to remove the keywords 'Best', 'Butter' and 'Chicken' claiming that these were his registered trademarks and it was an infringement of the marks to sell them to Arnab as keywords. He attached a copy of his trademark registration. In reply, Zoozle GmbH stated that one of the terms of their *AdVerba* Agreement was that trademarks cannot be used as keywords and whenever a trade mark proprietor makes a complaint that a Keyword being sold is a registered trademark in a jurisdiction, Zoozle GmbH, pursuant to their own investigation, suspends the use of the keyword.
8. Subsequently though, on 01.07.2012, Zoozle GmbH wrote to Arnob stating that in the opinion of their legal advisors, the keywords sold to Arnab were not the trademarks of

Arnob as on their own these words are part of the commons of the English language and in any case Arnob's mark has to be viewed as a whole and trademark law offers no protection to parts of a mark.

9. Arnob subsequently approached the Delhi High Court in C.S.(O.S.) No. 343/2012 seeking permanent injunction restraining Zoozle GmbH from using the words contained in his trade mark as keywords and C.S.(O.S.) No. 344/2012 against Arnab Murgwala (1<sup>st</sup> Defendant) and Zoozle GmbH (2<sup>nd</sup> Defendant) claiming infringement of his trademark and action for passing off. He also claimed that as per the terms of the
10. Agreement of 01.01.1989, the mark 'Murgwala' and the goodwill associated with it belonged exclusively to him and the actions of the 1<sup>st</sup> Defendant in using that of keywords to advertise is an infringement of the trade mark of the Plaintiff.
11. At the same time, Arnob also decided to file an Information listed as Case No. 88/2012 in November, 2012 before the Competition Commission of India (C.C.I.) under Section 19 of the Competition Act, 2002, alleging that the *Adverba* Advertisements Scheme is an abuse of dominant position by Zoozle GmbH and that it enters into anti-competitive agreements with the users of the programme due to the discriminatory practices which are adopted by the Company in the running of the *Adverba* Advertisement scheme resulting in denial of market access and restriction of provision of services as well as the violation of the intellectual property rights which had taken place in the particular case of the Informer, i.e., Arnob Murgwala.
12. In reply to the Suit, the 1<sup>st</sup> Defendant took the stand that the impugned keywords are only descriptive, generic or laudatory and that they ought not to have been registered as trade marks in the first place and counter sued for revocation of the mark's registration. The 2<sup>nd</sup> Defendant also stated that he had a right to trade in his own name and therefore the use of the keyword 'Murgwala' does not infringe the trademark of the Plaintiff.

13. The 2<sup>nd</sup> Defendant adopted the above arguments and also took the stand that it is merely a search engine and performs the function of a directory. They claimed that such use of the words was not 'use in the course of trade' and therefore no action for infringement arose.
14. Meanwhile on 18.01.2013, the C.C.I. found that there was no contravention of the provisions of section 3 or Section 4 of the Competition Act, 2002 and accordingly, the matter was directed to be closed under the provisions of Section 26(6) of the Act. Arnob Murgwala immediately appealed against the decision of the C.C.I. in the Competition Appellate Tribunal (COMPAT).
15. On 15.01.2014, Delhi High Court heard both matters together and found in favour of the Defendants through common judgment dated 15.01.2014. The Plaintiff's appealed before the Division Bench of the Delhi High Court and the Appeal was dismissed at the admission stage itself. At the same time, the Competition Appellate Tribunal, vide its Order dated 16.01.2014, affirmed the Order of the C.C.I. dated 18.01.2013.
16. The Plaintiff-Appellant then appealed before the Supreme Court of India. Zoozle GmbH also preferred to file a Statutory Appeal against the Order of the COMPAT dated 16.01.2014. On the Statutory Appeal coming up before the Hon'ble Supreme Court, It was prayed by the Counsel for Zoozle GmbH that the Appeal may be tagged along with the Petitions/Appeals filed by the Plaintiff/Appellant/Petitioners against the Judgement of the Hon'ble Delhi High Court as they relate to the same issue in substance. The Petitions/Appeals as well as the Statutory Appeal have been admitted and are listed for final hearing.

ANNEXURE – I



ANNEXURE – II

*Arnab's Butter Chicken*