

IN THE MATTER OF DISPUTED DOMAIN NAME: - `HIKEAPP.CO.IN'

**ARBITRATION PANEL: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR**

**DELIVERED ON THIS 26th DAY OF MARCH TWO THOUSAND NINETEEN
AT PUNE, INDIA.**

I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

SR. NO.	PARTY TO THE DISPUTE	NAME	ADDRESS
01	COMPLAINANT	Hike Private Limited	World Mark 1, 4th Floor, Tower-A, Asset Area No.11, Hospitality District, Indira Gandhi International Airport, New Delhi. 110 037. India
02	AUTHORISED REPRESENTA TIVE OF THE COMPLAINANT	Rodney D. Ryder / Ravi Goyal	Scriboard, Level 2, Elegance, Mathura Road, Jasola, New Delhi. 110025. INDIA
03	RESPONDENT / RESPONDENT	Aditya J	Kochi, Cochin AS 628001
04	DOMAIN NAME REGISTRAR	1API GmbH	Talstraße 27 66424 Homburg

II] CALENDER OF MAJOR EVENTS:-

Sr. No.	Particulars	Date (All communications in electronic mode)
01	Arbitration case referred to me by NIXI	25.02.2019
02	Acceptance given by me	25.02.2019
03	Hard copy of complaint received	02.03.2019
04	Notice of Arbitration issued, with the period to file reply, if any, latest by 12.03.2019	02.03.2019
05	Period to file say by Respondent extended with instruction to file his say if any, latest by 16.03.2019	13.03.2019
06	Notice of closure of arbitration issued	25.03.2019
07	Award passed	26.03.2019

III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is `HIKEAPP.CO.IN'.
2. Date of registration of disputed domain name by Respondent is 08.11.2018
3. Registrar is 1API GmbH

IV] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

- 1) Arbitration proceedings were carried out as per .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
- 2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the prescribed time frame of 60 days.
- 3) Copies of all communications were marked to both the parties and NIXI.
- 4) No personal hearing was requested / granted / held.

VI] BRIEF INFORMATION OF THE COMPLAINANT: -

The Complainant in these arbitration proceedings is Hike Private Limited. According to the Complainant it owns one of the most popular instant messaging apps known as 'Hike Messenger' or 'Hike'. This app was launched on 12.12.2012. The Complainant keeps on adding new features to the said app. This app is one of the free apps on the Android playstore, iOS app store and windows store, across India.

The Complainant states that it has spent huge amount of money on the promotion and advertisement of its services and products under the trade / service mark Hike in all medium including print and electronic, which is estimated at Rs.371 crores. The estimated present worth of the Complainant is USD 1.4 Billion.

The Complainant is the registered owner of about 44 trademarks in India containing the word HIKE as tabulated in Annexure D of the Complaint. These include word Hike, hike, hike messenger and other formations of hike etc. Similarly it has registered trademarks in European Union, Bhutan, Sri Lanka and has pending trademarks in USA. For the sake of brevity, the repetition has been avoided here.

Apart from the registered trademarks, it has 160 different domain names, a Youtube channel, and wide presence on Facebook and Twitter.

Aggrieved by the registration of the disputed domain name - www.hikeapp.co.in, the Complainant has filed the present complaint.

VII] SUMMARY OF THE COMPLAINT: -

The Complaint is, inter-alia, based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(i) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) : -

- i. The Complainant has furnished a list of registered marks in India comprising the word and formative marks 'HIKE'. There are about 44 Indian and 10 foreign marks listed in Annexure D of the Complaint.

- ii. The Complainant is proprietor of HIKE trademark as also HIKE formative marks having exclusive rights in the same and is entitled to take action against any unauthorised use of the same by third parties.
- iii. The Complainant has more than 160 different domain names, each one of which comprises the mark Hike. The list of such domain names has been provided in the Annexure E to the Complaint.
- iv. The Complainant has a YouTube Channel which has a subscriber base of around One lakh twenty three thousand.
- v. Due to huge expenses incurred for all above, the people across the globe, associate the Complainant with the mark HIKE.
- vi. The domain name registered by the Respondent includes the word HIKE which is a registered mark legitimately being used by the Complainant for several years. The registered domain name thus is not only similar but includes entire mark as part of disputed domain name, in contravention of the interests and rights of the Complainant.
- vii. In this specific case the term 'app' is an indicator of the Complainant's business under the mark Hike. It is thus apparent that the addition of the term 'app' after the Complainant's well-known mark Hike in the disputed domain name increases the likelihood of confusion among the users of the same as also internet and mobile users, in respect of the disputed domain name being associated with the Complainant. The Complainant further states that there are numerous UDRP cases in which it has been held that a domain name which wholly incorporates a Complainant's registered mark, may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such mark. (Farouk Systems Inc. V/s Yishi Case No. D 2010-0006, Havells India Ltd. QRG Enterprises Limited Vs Whois Foundation - D2016-1775)
- viii. The Complainant's rights in the well-known mark Hike have been duly recognised by WIPO Panels in Hike Limited v/s Jamsheer Abdullah - case No.D2016-0459 and Hike Private Limited V/s Jared Hanstra - Case No. D2018-1588.
- ix. It is well established that specific top level domain such as '.com', '.in', '.co.in', '.net', etc. does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.
- x. The term 'hike' is the Complainant's corporate and brand name and has been used extensively over the years for their business as well as corporate identity. It is thus exclusively associated with the Complainant.

**(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME
(PARA 4(ii) OF INDRP): -**

i. The Respondent has no proprietary or contractual rights in any registered or common law trademark corresponding in whole or in part to the disputed domain name.

ii. The Respondent registered the domain name containing the phrase Hike app in November 2018 that is after almost six years from when the Complainant first launched the Hike app and almost two years after the Hike app crossed the 100 million mark.

iii. Addition of the descriptive term 'App' after the Complainant's mark in the disputed domain name clearly indicates that the Respondent knew of the Complainant's well known mark and its business activities as the mark Hike has been in use by the Complainant since the year 2012.

iv. The Respondent has no connection with the Complainant or any company licensed by Complainant. The Respondent is not commonly known by the disputed domain name or the trademark. The Respondent was not and is not authorised by Complainant to register, hold or use the disputed domain name. Registering this domain name gives rise to the impression of an association with the Complainant, which is not based on fact.

(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -

i. It is not conceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainant and its well known trademark.

ii. A basic internet search of the term 'hike app' or even 'hike' at the time of registering the domain name would have alerted the Respondent of the Complainant's extensive ownership and rights over the well known mark hike.

iii. Several articles, news stories and TVCs about the Hike brand have been published on the internet and elsewhere prior to the date of registration of the impugned domain name. There can be no doubt that the Respondent had actual knowledge of the Complainant's well known mark at the time of registration of the domain name.

iv. The Respondent has not provided his complete address in the WHOIS contact information. This clearly indicates the mala fide of the Respondent.

v. An attempt to use the term 'app' alongwith registered trademark of the Complainant, shows clear attempt of the Respondent to take disadvantage of the goodwill and reputation of the Complainant, since people associate 'hike' with the term 'app'. Such association would mislead the internet users and mobile users.

vi. There is no functional website at the disputed domain name. Such passive holding of the domain name by the Respondent also amounts to bad faith under the present circumstances.

vii. Registration of a well known trademark by a party with no connection to the owner of the trademark and no authorisation and no legitimate purpose to utilise the mark reveals bad faith. (America Online INC. V/s Chinese ICQ Network - WIPO D/2000-0808, thecaravanclub.com - NAF / FA95314).

viii. The Complainant has contended that: -

- a. The Respondent could use the impugned domain name for fraudulent activities, since the Complainant's app offers several payment related features, there is strong possibility that the Respondent may misuse the domain name to defraud users of the Complainant's app.
- b. The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name.
- c. The Respondent desires to cash-in on the reputation of the Complainant's well known mark by selling the domain name or using the domain name for advertisements.
- d. The Respondent can transfer or sell the domain name to some competing interest of the Complainant, who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant's business.

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for TRANSFER OF DISPUTED DOMAIN to the Complainant, and imposition of costs.

VII] RESPONDENT'S DEFENSE: -

The Respondent has not cared to file any reply / say in the arbitration proceedings, even during the extended period. None of the emails sent by this panel, to the registered email address of the Respondent, has bounced back, which otherwise confirms receipts of the same at his end. This panel therefore infers that the Respondent does not have to say / does not wish to say anything in response to the Complaint or to the Notice of Arbitration.

VIII] REJOINDERS OF THE PARTIES: -

In view of no response by the Respondent, there was no need to call for any rejoinder from the parties.

IX] EVIDENCE RELIED UPON: -

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the Complainant
2. Copy of printout of the *whois* details

XI FINDINGS: -

Based on the complaint, contentions and annexures attached to it, this panel has drawn following findings: -

1. The Complainant has established that it is an owner of registered trade / service marks incorporating the word HIKE in which it has legitimate interests and rights. The Complainant has also brought out and established that the term 'app' has specific and important reference to his business in which it has goodwill and reputation.
2. The registrations of these marks is much prior to the registration of the disputed domain name by the Respondent.
3. The Complainant has not authorised / licensed to the Respondent to use the said word 'HIKE' and thus such use by the Respondent in his registered / disputed domain name is illegal and unauthorised as also infringement of legal rights and interests of the Complainant in impugned domain name.
4. The Complainant has also successfully established how it has built up goodwill and reputation by using the word Hike and especially by developing the mobile app, which is popularly known as Hike App. This is important due to the disputed domain name registered by the Respondent which is not only similar but exactly the same.
5. When we try to access the website, the only message appears that this domain name is already registered at Hexonet. There is no active content or proper use being made of disputed domain name.
6. The Respondent is not known by the word HIKE or any resembling word to it.
7. The Respondent is not making use of disputed domain name for non-commercial or charitable purposes.
8. The Respondent has totally failed to establish any nexus with the disputed domain name.
9. The Respondent is merely passively holding the disputed domain name without any use of it. This panel appreciates the apprehension of the Complainant about its probable misuse by the Respondent, either by misusing payment related features of the Hikeapp, by selling for consideration to the Complainant itself or by selling it to the Complainant's competitors.
10. The Respondent has not bothered to say anything in support of his registration of disputed domain name. Any prudent man having legitimate interest in any asset, tangible or intangible like domain name, would make all efforts to protect his legitimate interests by adopting all possible legal means. The complete silence on the part of the Respondent in the entire arbitration

proceedings amounts to his acceptance of all contents of the complaint and say of the Complainant.

XII] CONCLUSION: -

On the basis of the averments in the Complaint, citations, documentary evidence and other substantiating points, this Arbitration Panel has come to the following conclusions: -

- a. the disputed domain name contains registered trade / service mark of the Complainant in its entirety and is totally identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.*
- b. Addition of the term 'app' to the registered trademark 'Hike' of the Complainant in the disputed domain name by the Respondent, clearly indicates his mala fide registration and probability of loss of goodwill, reputation or even monetary loss to the Complainant*
- c. the Respondent has no rights or legitimate interests in respect of the domain name, nor he has been authorised, licensed / permitted to use the said domain name.*
- d. the disputed domain name is registered in bad faith by the Respondent / Respondent and allowing him to continue to own the same would make injustice to the Complainant.*


XIII] AWARD: -

On the basis of above findings on issues, foregoing discussion, conclusion and as per the remedies requested by the Complainant, this panel passes the following award: -

- a. The disputed domain name 'HIKEAPP.CO.IN' be transferred to the Complainant.**
- b. The Respondent shall pay cost of Rs.50,000/- to the Complainant.**

Date: - 26.03.2019

Place: - Pune, India


**(S.C. INAMDAR)
SOLE ARBITRATOR
NATIONAL INTERNET
EXCHANGE OF INDIA**