



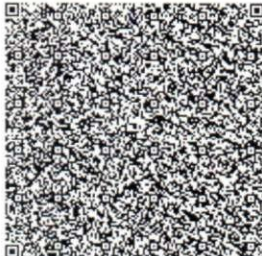
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL595877155259590
Certificate Issued Date	: 14-Jun-2016 01:40 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL921303185355422352950
Purchased by	: ASHOK KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOK KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: ASHOK KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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### BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

#### IN THE MATTER OF:

Quixey, Inc. 303,  
Bryant Street,  
Mountain View California, U.S.A – 94041

Vs.

Alex Wang  
995,Shangchuan Road, Pudong  
Shanghai – 210016, China  
E-mail: [foodgaga@gmail.com](mailto:foodgaga@gmail.com)  
Phone: +8602186868888

.....Complainant

..... Respondent

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

#### **A. THE PARTIES**

The Complainant in this administrative proceeding is Quixey, Inc. 303, Bryant Street, Mountain View California – 94041, U.S.A.

The respondent in this proceeding is Alex Wang 995, Shangchuan Road, Pudong, Shanghai – 210016, China.

#### **B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT**

The disputed domain name is **WWW.QUIXEY.CO.IN** and it is registered with Webiq Domains Solutions Pvt. Ltd. (R131-AFIN) First Floor, Directi Plex, ACME I- Tech Park, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai – 400069.

#### **C. PROCEDURAL HISTORY:**

I was appointed as the Arbitrator by .IN registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <**WWW.QUIXEY.CO.IN**>.

.In Registry has supplied the copy of the Complaint and annexures to me.

On 27.04.2016, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the above mentioned email itself, the Tribunal directed the complainant to supply the copy of the complaint with annexures to the Respondent and to provide the tribunal with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 27.04.2016 with the instructions to file his reply within 15 days from the receipt of the above stated email or the receipt of the copy of the Complaint, whichever is later.

On 28.04.2016, Counsels/Representative of the Complainant sent the soft copy of the Complaint and the annexures to the Tribunal.



On 03.05.2016, NIXI sent the soft copy of the complaint along with the annexures to the respondent.

The efforts made to serve the respondent on his postal address remained unsuccessful due to the postal address and telephone number being incorrect as is evident from emails dated 03.05.2016, 05.05.2016, 09.05.2016 and 17.05.2016 of NIXI and the courier agency and as such the Tribunal considered the service of the complaint and annexures on the respondent by NIXI vide email dated 03.05.2016 and by the Complainant vide email dated 28.04.2016 as valid service under rule 2(a) of INDRP rules of procedure.

Vide email dated 02.06.2016, the tribunal granted a last opportunity to the respondent to file its reply within 3 days from the receipt of the said email.

On 13.06.2016, the Tribunal informed the parties that no response/reply is received from the respondent and as such the Tribunal will proceed with the matter on the basis of the pleadings and the documents already on record and will pass its award.

The Respondent has failed to file his say/ reply to the Complaint of the Complainant. The Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of this proceeding. Since he has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and .IN Registry.

On perusal of the entire pleadings and the documents placed on record, the Arbitrator's finding is as under:-

**D. FACTUAL BACKGROUND:**

The following information is derived from the complaint and supporting evidence submitted by the Complainant.

**E. COMPLAINANT:**

The case of the Complainant is that:

1. The Complainant submits that 'Quixey, Inc' is a global company established in the year 2009 in Mountain View, California, USA. It was incorporated at Delaware,





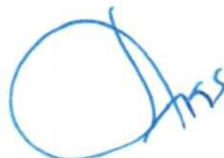
U.S.A, the complainant is organized and existing under the laws of the United States of America.

2. The Complainant submits that it was founded in 2009 by Mr. Tomer Kagan and Mr. Liron Shapira, as a mobile technology company providing the world's leading mobile brands with its product "Deep View Cards" connecting users to the functionality of applications and dramatically shortening user's time-to-action with easy access and engagement with the content. The Complainant also submits that the complainant through its applications helps user's to search through the clutter of mobile, desktop, web and browser applications without actually requiring users to know an application's name or description. The Complainant also submits that they have partnerships with search engines, manufactures, web browsers and web platforms in an endeavor to provide global search. The complainant also submits that it currently employs around 300 people with offices in India, the United State of America, Israel and China.
3. The Complainant submits that today it is one of the leading companies in the web/mobile applications sector providing search engine services via its search application viz. "QUIXEY". The complainant also submits that 'QUIXEY' service is available through the complainant's website [www.quixey.com](http://www.quixey.com) since May, 2011 and which was subsequently released as a mobile application on October 23<sup>rd</sup>, 2013. The Complainant is also engaged in providing search solutions for third parties such as YunOS through a partnership with the famous online B2B portal [www.alibaba.com](http://www.alibaba.com) allowing YunOS users to find applications based on what they want to do rather than through keywords. Further, the Complainant has worked with business customers such as Sprint, Ask.com as well as with browser makers and Original Equipment Manufacturers (OEMs) by licensing its technology to power their applications/search engines.
4. The Complainant submits that, during the year 2014, with a view to extend its presence in India, acquired a Bengaluru based start-up i.e. Dextra. The complainant also submits that it has around 15 developers in Bengaluru. The Complainant is also the creator of "Launch by Quixey", an application for the android operating system being developed and marketed in India which provides for management of contacts and applications on mobile devices, search capabilities and offering easy access to content within mobile applications. It further submits that the application was publicly



released on October 27, 2015 targeting the Indian market and has already been downloaded by over 100,000 users.

5. The Complainant submits that it uses its well-known trade/service mark/name QUIXEY upon and in relation to its business which is its extremely valued intellectual property. The trade/service mark/name QUIXEY also forms an integral part of the corporate name of the Complainant and serves as its principal trade/service mark and domain name. The complainant submits that the trade/service mark/name QUIXEY being the most valued intellectual property, the Complainant has taken utmost care to secure statutory rights therein through trade/service mark registrations in numerous jurisdictions of the world including in India. The complainant also submits that the trade/service mark/name QUIXEY is subject of around 62 trade/service mark registrations/applications in about 30 countries worldwide.
6. The complainant submits that in India the earliest registration for the trade/service mark QUIXEY dates back to the year 2012.
7. The Complainant submits that owing to the excellent quality of the Complainant's services under the trade/service mark/name QUIXEY, the same commands tremendous popularity and has been used extensively the world over. And the Complainant's also submits that the current venture capital funding is approximately USD \$130M which clearly establishes the reputation and goodwill of its trade/service mark/name QUIXEY.
8. The Complainant submits that it has invested years of time, capital, efforts and resources in advertising and promoting its products under the trade/service mark/name QUIXEY across the globe through all forms of media in various countries of the world. The complainant also submits that it has also featured in a wide variety of press releases and coverage by the press. The aforesaid press releases and coverage have left an indelible impression in the minds of the public that the mark/name QUIXEY is exclusively associated with the Complainant and none other.
9. The Complainant submits that it has registered numerous top level domain names (TLDs) such as 'Quixey.com', 'Quixey.net' and 'Quixey.org' etc. in addition to country level domain names (ccTLDs) such as 'Quixey.ag', 'Quixey.us' etc.
10. The Complainant submits that their websites are extremely popular and are a valuable source of knowledge with respect to the Complainant and its products/services under the trade/service mark/name QUIXEY. The website '[www.Quixey.com](http://www.Quixey.com)' of the Complainant records a significant number of hits every month and, therefore, it is





apparent that the goodwill and reputation of the Complainant as regards the trade/service mark/name QUIXEY pervades both the real world as well as cyber space.

11. The complainant submits that it recently became aware of a domain name viz. Quixey.co.in registered in the name of the Registrant. The Complainant submits that it was shocked and dismayed to learn that the said domain was also parked for sale by the Registrant without using or making any *bona fide* use of the same. The complainant further submits that the Registrant of the domain name Quixey.co.in has no affiliation with the Complainant. The said domain name Quixey.co.in was registered on October 3, 2013.
12. The complainant submits that in view of the complainant's rights in its trade/service mark/name QUIXEY and with a view to ascertain *mala fide* of the Registrant and gather evidence of dishonest registration of another domain name i.e. Quixey.in, which has also been registered by the same Registrant, the Complainant through its representative Mr. Andrew Naylor addressed an email dated March 11, 2015 to the Registrant requesting him to intimate the expected price for the sale of the said domain. In response thereto, the Registrant offered to sell the said domain for USD 99,000 vide email dated 12.03.2015. The email exchanged to that extent between the complainant and the registrant are on record.
13. The complainant submits that the impugned domain name Quixey.co.in was registered a day after the public announcement of Complainant's Series C financing. It further submits that this clearly establishes the fact that the said domain name was registered by the Registrant solely for the purpose of making monetary gains.
14. The complainant submits that the Registrant is a habitual cybersquatter and has been the subject of other INDRP decisions including proceedings pertaining to the domains 'Udacity.in' as well as 'Udacity.co.in' (Case Nos. 717 and 718). The complainant further submits that the Registrant had registered the domain names 'Udacity.in' and 'Udacity.co.in' and complaints were instituted by 'Udacity, Inc', owner of the trade mark 'UDACITY' wherein Awards were passed directing the aforesaid domains to be transferred to the Complainant.
15. The complainant submits that the reverse WHOIS lookup identifies 562 domain names currently registered in connection with the Registrant's email address viz. 'foodgaga@gmail.com'. Out of the said 562 domains, 560 are .IN domain names.



The complainant further submits under paragraph 6 (ii) of the Policy, the Registrant's pattern of extensive domain registrations and cybersquatting to prevent trade mark owners from reflecting their marks in corresponding domain names further demonstrates the Registrant's bad faith registrations including that of the domain in question. The exorbitant number of domain names that the Registrant has registered demonstrates that the Registrant has engaged in a clear pattern of registering domain names in bad faith to block the legitimate and superior rights of trade mark owners in those domain names only to later ransom the domain names to the trade mark owner.

16. The complainant submits that it is clear that the Registrant is a habitual cybersquatter who is set out at making illicit gains by registering domain names identical to well-known trade/service marks, corporate names/trading styles, domain names, etc
17. The complainant submits that, no website is active under the domain name in question and the same reveals a few sponsored listings including advertisement for sale of the said domain.
18. The complainant submits that the Registrant is using the objectionable domain name illegally and dishonestly to derive unjust pecuniary gains.
19. The complainant submits that the impugned domain name is identical to the Complainant's trade/service mark/name/domain name QUIXEY. Further, the Complainant submits that the Registrant's impugned domain name 'Quixey.co.in' should be transferred to the Complainant or the same may be cancelled forthwith.

**F. RESPONDENT:**

1. The respondent in this proceeding is Alex Wang 995, Shangchuan Road, Pudong Shanghai – 210016, China
2. The respondent has failed to file his say/ reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

**G. PARTIES CONTENTIONS:**

1. Complainant

From the factual background given above, it is evident that in nutshell the contentions of the Complainant are as follows:



- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

## 2. Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

## H. DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

A fair opportunity had been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted on the basis of the records made available to the Arbitrator.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable."*

After examining the complaint and the documents placed on record by the complainant and INDRP Rules of Procedure and policy, the Arbitrator's finding on the contentions of the claimant is as follows:

### (i) **The Registrant's Domain Name is identical or confusingly similar to a trademark in which the Complaint has rights:**

**The complainant's submissions as per the complaint in this regard are:**

- a. The Registrant's impugned domain name 'Quixey.co.in' is identical to and comprises in entirety the Complainant's trade/service mark/name QUIXEY which is registered in a number of countries including India. It is submitted



that the Registrant has registered the impugned domain name 'Quixey.co.in' with the *mala fide* intent to trade upon the immense goodwill and reputation enjoyed by the Complainant in its well-known mark/name/domain name QUIXEY and thereby gain undue leverage from it and make illicit pecuniary gains. It is evident that the objectionable domain name has no meaning or significance independent of the Complainant's trade/service mark/name QUIXEY. This is a clear case of infringement and passing off which is violative of the rights enjoyed by the Complainant in its well-known and established trade/service mark/name/domain name QUIXEY. Moreover, the Registrant's use of the Complainant's coined trade/service mark/name QUIXEY clearly establishes that the Registrant registered the impugned domain name with full knowledge of the Complainant, its business activities and intellectual property.

- b. The impugned domain name 'Quixey.co.in' is identical to, the domain names registered in the name of the complainant such as Quixey.com Quixey.ag, Quixey.org, Quixey.info and Quixey.us
- c. The registrant registered/ adopted the impugned domain name 'Quixey.co.in' on October 3, 2013 whereas the complainant's domain name 'Quixey.com' was created on September 16, 2009 further the complainant's earliest trademark registration in respect of the trade/service mark/name QUIXEY dates back to the year 2012 in Switzerland. The trade/service mark/name QUIXEY is also registered in India since May 25, 2012. Thus, the Complainant's adoption of the trade/service mark/name/domain name QUIXEY is much prior to the Registrant's registration of the impugned domain name 'Quixey.co.in'. In view of the same, it is crystal clear that the Complainant has prior rights in the trade/service mark/name/domain QUIXEY *vis-à-vis* the Registrant.

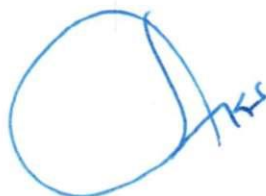
Since the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the complaint establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant and as such this issue is decided in favour of the complainant.



- (ii) **The Registrant has no rights or legitimate interests in the respect of the domain name:**

**The complainant's submissions as per the complaint in this regard are::**

- a. The Registrant is not offering any goods/services under the domain name 'Quixey.co.in'. A review of the website under the objectionable domain name 'Quixey.co.in' reflects that the said domain is listed for sale by the Registrant. Further, by also posting links to competitor's websites, the Registrant is attempting to divert the Complainant's business. Therefore, by no stretch of imagination, can the Registrant demonstrate any use relating to *bona fide* offering of goods or services before any notice of this dispute or at any point in time whatsoever.
- b. The Registrant is not commonly known by the domain name 'Quixey.co.in' and is not authorized or licensed by the Complainant to use its mark/name QUIXEY. The Complainant provides search services *via* an online search application *viz.* QUIXEY and is inextricably interwoven and identified exclusively with the Complainant by the trade and public at large. Further, the Complainant is not only using the trade/service mark/name/domain QUIXEY since the year 2009 but has also registered the said mark in numerous jurisdictions including India. Due to the extensive and continuous use of the trade/service mark/name QUIXEY for many years, the same has become well-known and come to be exclusively associated with the Complainant and no one else. Hence, the Registrant cannot establish any association with the domain name in question for any reason/s whatsoever.
- c. The Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name. In fact, the conduct of the Registrant as highlighted above cannot come under the definition of *bona fide* use. Registration of the impugned domain is aimed to gain leverage from the immense goodwill and reputation of the Complainant's trade/service mark/name QUIXEY, divert visitors/customers by creating initial Internet confusion and thereby commercially profit from use of the Complainant's trade/service mark/name QUIXEY. Thus, the Registrant is indulging in (i) unfair use of the domain name with an intention to reap profits therefrom, (ii) misleading/diverting customers to competitor websites, and (iii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade/service mark/name QUIXEY. The Registrant, therefore, cannot justify any legitimate interest in the domain name 'Quixey.co.in'.





According to the paragraph 7 of the .INDRP, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i. *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The Respondent has neither responded nor has put forth or provided any evidence to show that the circumstances as required under paragraph 7 of the INDRP exists in his favour. The Respondent is also not engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.

Even otherwise also the above facts establish that the Respondent has no right or legitimate interest in the domain name <quixey.co.in> as the Respondent is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii). Therefore this issue is also decided in favour of the complainant.

**iii. The Respondent has registered and is using his domain name in bad faith:**

**The complainant in support of the above contention has stated as under in the complaint:**

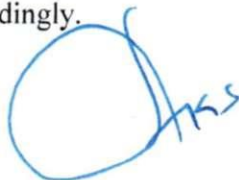
- a. The Registrant has registered the impugned domain name 'Quixey.co.in' with the sole purpose of selling/transferring the same for excessive consideration to make



illicit gains which is evident from the fact that the domain is available for sale. The said fact is also fortified from the correspondence in respect of the domain 'Quixey.in'. Further, registration of the objectionable domain name immediately after the Complainant's public announcement of its Series C financing clearly establishes (mis)use of the Complainant's well-known trade/service mark/name/domain QUIXEY to gain illegal benefits.

- b. The Registrant registered the impugned domain name 'Quixey.co.in' knowing fully well of the Complainant and its business. The registration of the domain name 'Quixey.co.in' by the Registrant has resulted in the Registrant's mis(use) of the Complainant's trade/service mark/name/ domain(s) QUIXEY for undue pecuniary gains. The Complainant has already established that several TLDs/ccTLDs comprising QUIXEY including the domain 'Quixey.com' is owned and managed by the Complainant.
- c. The Registrant's website has been constructed in a manner so as to portray an association/affiliation with the Complainant. The confusion is further enhanced by the presence of links to the websites of the Complainant's competitors. Thus, the conduct of the Registrant amply proves its *mala fide* to attract Internet users to its website by using the mark/name of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Registrant's website and/or of a product on the Registrant's website. Further, Internet users desirous of accessing the Complainant's website may get attracted to the impugned website, thereby creating confusion in their minds. The links of the Complaint's competitors establish the Registrant's *mala fide* to gain illicit benefits and cause harm to the Complainant's business.

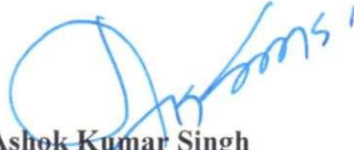
All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. The conduct of the Complainant to ask the respondent to intimate the expected price for sale of the said domain name is not in good faith as it is against the spirit of INDRP Rules & Policies which prohibits the sale of domain name for valuable consideration in excess of the registrant's documented out of pocket costs directly related to the domain name. The perusal of email exchanged between the complainant and the registrant specifically the email dated 12.03.2015 of the registrant would show that he had demanded \$99,000 USD for the sale of the domain name and wanted to earn out of sale of the said domain name. The unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name <quixey.co.in> in bad faith. This issue is decided accordingly.





**I. DECISION:**

In the view of the above facts and circumstances and finding of the Arbitrator, the Complainant has succeeded in his complaint. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <**quixey.co.in**> to the Complainant. The parties are left to bear their own cost. The Award is accordingly passed on this day of 15 June 2016.



**Ashok Kumar Singh**

**Sole Arbitrator**

**Date: 15.06.2016**