



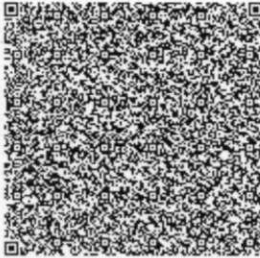
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BEFORE RAJEEV SINGH CHAUHAN, THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Puneet Vatsayan
710 Sector 6
Panchkula, Haryana

(Complainant)

vs.

Prajakt Raut
1102 Ivory Towers
South City 1
Gurgaon, Haryana

(Respondent)

THE PARTIES

The Complainant in this proceeding is Mr. Puneet Vatsayan having his office at 710, Sector 6, Panchkula, Haryana.

The Complainant's authorized representative(s) in this administrative proceeding is Mr. Jaydeep Bhambhani, ANM Global, Advocates & Solicitors, A 6/21 Lower Ground Floor, Vasant Vihar, New Delhi.

According to the Whois database the Respondent in this proceeding is Mr. Prajakt Raut whose address is 1102 Ivory Towers, South City 1, Gurgaon, Haryana.

The Respondent is representing himself in this administrative proceeding.

THE DOMAIN NAME & REGISTRANT

The disputed domain name is www.thehatch.co.in and the same is registered with Directi Web Services Pvt. Ltd. (R118-AFIN).

PROCEDURAL HISTORY

The Arbitrator was appointed by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.thehatch.co.in. .IN Registry had supplied the copy of the Complaint and Annexures to the Arbitrator.

The Complainant and the Respondent have completed their pleadings and had filed various documents as Annexures in support of their contentions.

The Arbitrator has perused the record and annexures / document.

FACTUAL BACKGROUND

COMPLAINANT

The Complainant is one of the co-founders and the Director of Hatch Incubators, a Section 25 Company registered with the Registrar of Companies and having its registered office at J-129, Kirti Nagar, New Delhi-1100015 and also Mobera Systems Pvt. Ltd., a private limited company registered under the provisions of Companies Act, 1956 and having its registered office at SCO 170-71-72, Sector 17, Chandigarh, UT, India-160017.

The concept of Hatch was developed by the Complainant in the year 2011. It is a concept of mentoring start-up organizations and the incubation plan provides

them access to capital, mentoring, operational guidance, knowledge, resource and infrastructural support. Its initial plan was to incubate around 1000 entrepreneurs in 5 years.

The Complainant has stated that Hatch Incubators was covered by many media sources like Times of India, Economic Times, Business Standard, Money Control, etc. The Complainant and another co-founder Ms. Anupama Arya took Hatch Incubators (hereinafter "the company") to international scenario, wherein it tied up with Ryerson University, Canada. The Company on 11.07.2012 received a sanction for grant of Rs. 91 Lacs from the Department of Science & Technology, Government of India, for a project under Cognitive Science Research Initiative (CSI) titled "Virtual Incubators of Cognitive Science".

The Complainant applied for registration of the mark "The Hatch: Incubators for startups" (hereinafter "its mark") under Class 35, 36 and 41 of the Trademark Rules in 2011. The Complainant has stated that its mark has acquired unique importance and distinctiveness and is associated with the Complainant and the Company. Further, the Complainant, in order to expand and consolidate the presence of his Company and Mobera Systems Pvt. Ltd., applied for the registration of the domain name www.thehatch.co.in on 04.05.2011

The Complainant hired the Respondent as a consultant in September, 2011 who was later promoted as Executive Director. Since, the Hatch concept was in its early stages all its expenses were born by Mobera Systems Pvt. Ltd. To assist in his office work of hosting and email servers, the Respondent was provided with the username and the password of the domain www.thehatch.co.in (hereinafter "the disputed domain name"). The email addresses of the people associated with the Company, including the Respondent, were created on the disputed domain name. The email address of the Respondent was given as an address for communication in regard to the domain name in dispute and it was done to assist the Respondent to perform his fiduciary duties for the Company.

The domain name was renewed in May 2012 by VirtualCiti. The invoice was generated in the name of Mobera Systems Pvt. Ltd. (hereinafter "Mobera"). The charges were paid by the Respondent and the same was reimbursed to him by Mobera. The Respondent on 05.03.2013 registered a temporary password for the disputed domain name from Mr. Vineet Raj Kapoor and on 09.03.2013

transferred the disputed domain name's record and details to i2k2 Networks Pvt. Ltd., (hereinafter i2k2), a company operated by an old acquaintance of the Respondent Mr. Rahul Aggarwal. The Respondent left the services of the Complainant on 30.03.2013.

While renewing the disputed domain name the Complainant came to know that the same had been transferred to the Respondent. The Whois record also showed that the registered email address had changed from prajaktraut@thehatch.co.in to prajaktraut@orangecross.com. The Complainant says that it never transferred or authorized such transfer of its domain name to the Respondent. On 19.04.2013 the webpage and email servers of the Company had been made offline which as per the averments of the Complainant was not due to any technical problem or error.

The Complainant intimated Mr. Rahul Aggarwal of i2k2 about the problem but he was told that the services of the email and the website were suspended due to non-payment. The Complainant says that it was inaccurately informed that it was the true owner of the disputed domain name, while the Whois record shows that the Respondent is the owner of the disputed domain name.

The Complainant says that despite several requests neither Mr. Rahul Aggarwal nor the Respondent provided the necessary information. Aggrieved by the same the Complainant approached this forum with his grievance.

RESPONDENT

The Respondent in the present proceeding is Prajakt Raut of 1102 Ivory Towers, South City 1, Gurgaon, Haryana.

The Respondent had transferred the disputed domain name www.thehatch.co.in to his name, according to the Complainant, on 12.04.2013.

PARTIES CONTENTIONS

(a) The Complainant has submitted the following in its Complaint:

- Domain names being an integral part of the corporate identity of companies and the web address of a company acts as its web-mark acts as its trade mark/service mark. The Respondent no longer being associated with the Hatch project has no right to hold the disputed domain name.

- The Complainant has neither, licensed or otherwise permitted the Respondent to use the mark "the Hatch", nor to apply for any domain name incorporating this mark.
 - The unauthorized registration of the disputed domain name by the Respondent violates clauses (i) and (ii) of Rule 6 of the .IN Domain Name Dispute Resolution Policy. The disputed domain name has been registered with the sole motive of extracting huge sums of money from the Complainant, which is evident from the fact that the disputed domain name does not have any website content and the same has been blocked from anyone wishing to access it.
 - The act of transferring the disputed domain name in his name, without any authorization or permission of the Complainant, by the Respondent amounts to hijacking the disputed domain name. By doing so, the Respondent has prevented the Complainant from accessing the domain name in dispute and misappropriated the same.
 - The Respondent hijacked the disputed domain name through manipulation of password access and there has been a change in registrant. Any transfer of domain name amounts to a new registration.
 - There has been a change in the registrars and the registrants of the disputed domain name without the knowledge of the Complainant. It is an established principle that hijacking a domain name i.e. wrongfully taking control of the disputed domain name from the rightful owner is the evidence of bad faith use of the disputed domain name.
- (b) The Respondent has made the following contentions in its reply to the Complaint:
- The Respondent never had any desire or intention to hold the disputed domain name and hence it had never made any claim regarding the same. The Respondent has time and again requested the Complainant to change the ownership details of the disputed domain name.
 - The Complainant was forwarded the username and password details for the disputed domain name on 18th March by the IT vendor much before the present complaint was filed, and if it had the right intentions, the Complainant would have changed the ownership details of the disputed domain name. In fact, the Complainant was overdue in past payments of the IT vendor and hence instead of resolving the issue with it, the Complainant chose to take legal recourse for the same.

- That the Respondent received a legal notice from the Complainant on 09.06.2013 and when the Respondent contacted the IT Vendor he was given to understand that the staff of the IT Vendor innocently changed the ownership details of the disputed domain names in favour of the Respondent. This was done as the Respondent was the primary point of contact between the Complainant and the IT Vendors for it.
- The Respondent transferred the disputed domain name from the previous IT Vendor (hereinafter VirtualCiti) to the new IT Vendor (hereinafter i2k2) as they were various instances of the disputed domain name being down on various occasions and other significant issues. The transfer to the new IT Vendor was done to increase reliability of services. The new IT Vendor was also known to the Complainant and the Complainant itself had approved the cost for transfer of the disputed domain name to the new IT Vendor.

(c) The Complainant has submitted the following in its Rejoinder:

- The Complainant has reiterated in its rejoinder that the Respondent transferred the disputed domain name with malicious intent and bad faith thereby hijacking the disputed domain names.
- The Respondent transferred two domain names, www.thehatch.in and the disputed domain name, which were both owned by the Complainant to his name without the consent of the Complainant. Proceedings for the domain name www.thehatch.in are also pending before National Internet Exchange of India (NIXI). The domain history of the disputed domain name has been erased from the domain report for unknown reasons.
- The Respondent in collusion with i2k2 transferred the disputed domain name to his name; neither of the aforementioned was authorized to transfer the ownership of the disputed domain name by the Complainant, the registrant of the disputed domain name.
- The Respondent in its reply has stated numerous unnecessary facts in order to mislead the Hon'ble Arbitrator.
- Respondent manipulated the password of the disputed domain name in connivance with i2k2 in order to extort money from the Complainant.
- The Complainant is still not able to access the disputed domain name through the user name and password.
- The Complainant has denied that it refrained from contacting i2k2 and chose to initiate legal proceedings against the Respondent. The

Complainant had asked i2k2 to send a detailed log for all requests/changes received by him to establish the exact amount due.

- The Complainant has denied that i2k2 innocently changed the disputed domain's ownership details or that it was done to protect the rights of the Complainant. The Complainant has submitted the disputed domain name has been created and maintained in the name of the Complainant and the transfer to the Respondent was done with the sole purpose of extorting money from the Complainant.
- The Complainant has denied that it did not take any steps. It has from informing the Respondent and i2k2 to sending them legal notices, taken all steps to gain control of the disputed domain name but the Respondent has manipulated the access of the disputed domain name and the Complainant cannot access it.
- The Complainant has submitted that this not the right forum for bringing up the issue of overdue salary. The salary of the Respondent was held back due to the doubtful conduct of the Respondent, which was confirmed when the Complainant obtained necessary documents regarding that disputed domain name. The Respondent is merely trying to extort money from the Complainant.
- The Complainant has denied that the Respondent is legally entitled to be a co-founder. The Respondent has unnecessarily put on record privileged and confidential documents of the Complainant's company, including e-mails, which shows that the Respondent still has control over the e-mail servers of the disputed domain name.
- The Complainant has denied that the success of The Hatch was acknowledged by the entire eco system due to the efforts, knowledge and initiatives of the Respondent. It has also been denied that the Respondent was the face of The Hatch to the industry.
- The Respondent was neither the holder of any equity nor was subscribed to the Memorandum or Articles. The Complainant has denied that any documentation was pending regarding any promise made to the Respondent during his term of employment.
- The fact that the Respondent has defended i2k2 in his reply even though the latter is not a party to the present proceeding proves the connivance between both the parties.
- The Complainant has denied that it is the standard industry practice that i2k2 would change the ownership details while taking over the disputed

domain name from VirtualCiti to that of the primary contact, in the present case the Respondent. Keeping the registrant's details regarding the disputed domain name would have taken care of the business interests of the Complainant, and thus the defense that i2k2 had the business interests of the Complainant in mind given by the Respondent does not hold ground.

- The Complainant avers that the Respondent has admitted that the Complainant is the owner of the disputed domain name. But keeping in mind the malicious intentions of the Respondent in mind the cost of the present proceeding be imposed upon him.

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"*.

As mentioned above fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.

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 thereunder and any law that the Arbitrator deems to be applicable"*

In the present circumstances, the decision of the Tribunal is based upon the contentions and evidence filed by both the parties respectively and conclusion drawn from the same.

There are certain unnecessary pleadings by both the parties, which do not come under the purview of this arbitration award and therefore they are not discussed in the present Award and the Arbitrator choose to ignore these pleadings completely.

Having perused the submissions and documentary evidence placed on record by both the parties, both the Complainant and the Respondent agree that the former has statutory and common law rights in the mark "The Hatch".

Further, as regards the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith;

the Tribunals views and findings are discussed herein below.

(i) The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant has not made any submissions in support of this condition, and accordingly the Respondent has not said anything regarding it in his response.

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

According to the paragraph 7 of the .IN Dispute Resolution Policy, 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 Complainant has contended that the act of transferring the disputed domain name in his name and change of domain details, without any authorization or permission of the Complainant, by the Respondent amounts to hijacking the disputed domain name. The Respondent has contended that it was the IT vendor

that had changed the domain details in favour of the Respondent as he was the primary point of contact with the IT vendors and not because the Respondent had instructed them to do so. It is further pointed out by the Respondents that all information required for changing domain control and ownership had been provided to the Complainant by the IT vendor. Consequently, the Respondent in his response has nowhere made any ownership claim towards the domain name in dispute, and has submitted that neither does he have any intention to hold the same nor has he wrongfully misused the same.

In view of the above submissions of the parties, it is thus concluded that the Respondent has no legitimate rights and interests in the domain name in dispute, and the same has been accepted and un-disputed by the Respondent.

(iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant has contended that the Respondent has registered/transferred the ownership of the disputed domain name in bad faith as he has blocked the access of the disputed domain name from the Complainant, with the clear motive of extracting huge sums of money from the Complainant. It has further contended that the Respondent has not posted any content on the disputed domain name and the access of the same has been blocked to anyone who wishes to access it.

The Respondent has submitted that it was the IT vendor that had innocently changed the domain details in favour of the Respondent as he was the primary point of contact with the IT vendors and all the information required for changing domain control and ownership had been provided to the Complainant by the IT vendor. Moreover, the Respondents contends that the IT vendor stopped hosting services for the domain name in dispute due to non-payment of his dues for the period of January 2013 to March 2013. The Respondent has relied upon the various emails exchanged between the Complainant and the IT vendor.

Further, the Respondent in his reply as prayed before this Hon'ble Tribunal that the name of the Respondent as the owner of the domain name in dispute be changed/removed by using the domain details provided to the Complainant by the IT vendor. He has also not claimed any kind of control or ownership as regards the domain name in dispute.

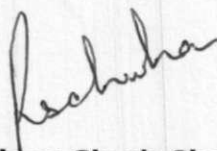
The above mentioned contention of Respondent is denied by the complainant. The complainant has further contented that the procedure adopted by i2k2 of transferring domain name is not standard business practice.

From the facts of the case the Tribunal holds that the balance of convenience lies in the favour of the complainant. Since, the Respondent is ready and willing to remove his name as the owner of the domain name in dispute, the Tribunal is not going further into this issue.

DECISION

In view of the above facts and circumstances, it is clear that both the Complainant and the Respondent agree that the complainant is the rightful owner of the domain name in dispute.

.IN Registry of the NIXI is hereby directed to transfer the domain name i.e. <www.thehatch.co.in> to the Complainant. In the facts of the present case, both the parties are directed to bear their own cost. The Award is accordingly passed on this 19th day of November, 2013. This Award got delayed because of bereavement in the family of Arbitrator and the Arbitrator regrets the inconvenience caused to the parties.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 19th November, 2013