



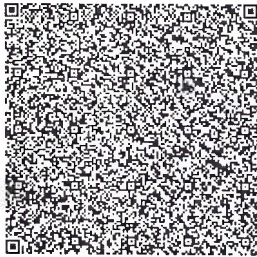
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL94393381531499P  
Certificate Issued Date : 17-Jun-2017 12:29 PM  
Account Reference : IMPACC (IV)/ dl889403/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL88940389695306101790P  
Purchased by : V K AGARWAL  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : V K AGARWAL  
Second Party : Not Applicable  
Stamp Duty Paid By : V K AGARWAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



.....Please write or type below this line.....

NATIONAL INTERNET EXCHANGE OF INDIA  
Flat No. 6C, 6D, 6E, Hansalaya Building,  
Barakhamba Road,  
NEW DELHI – 110 001

UPWORK, INC., v. Abwebtech c/o Satish Kumar

*Kagame*

#### 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.

## AWARD

### 1. The Parties

The Complainant is UPWORK, Inc., 441 Logue Avenue, 94043 Mountain View, California, United States of America.

The Respondent is Abwebtech c/o Satish Kumar, Chandigarh - 160023

### 2. The Domain Name and Registrar

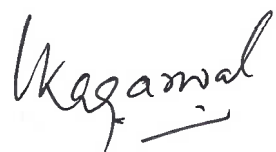
The disputed domain name is <www.upwprktest.in>. The said domain name is registered with the Registrar Godaddy.com

The registration details of the disputed domain name as contained in whois are as follows:

- (a) Domain ID : D10235532-AFIN
- (b) Domain Name : UPWORKTEST.IN
- (c) Sponsoring Registrar : Godaddy.com. LLC (R146-AFIN)
- (d) Date of creation : 28<sup>th</sup> December 2015
- (e) Expiry date : 28<sup>th</sup> December 2017

### 3. Procedural History

- (a) A Complaint dated April 30, 2017 has been filed with the National Internet Exchange of India. The Complainant has made registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 3. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal



requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In whois data, the Respondent has given the postal address as Chandigarh – 160023. The National Internet Exchange of India sent a copy of the Complaint to the Respondent through courier for his response. However, it was returned by the courier with the remarks that the postal address is incorrect and incomplete. Thus, no response could be received from the Respondent. Therefore, the case has to proceed ex-parte.

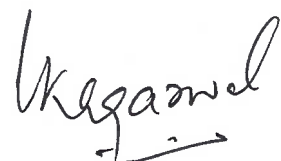
#### **4. Factual Background**

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

##### **Complainant’s activities**

The Complainant is a company existing under the corporate laws of the State of Delaware, United States of America. According to the Complaint, the Complainant provides freelance talent platform called Upwork. The Complainant also has a site called Upwork.com.

The Complainant has stated that he is providing such services in many countries of the world including the United States of America and India.



## **Respondent's Identity and Activities**

The Respondent has not submitted any response to the Complaint. Hence, the Respondent's activities are not known.

## **5. Parties Contentions**

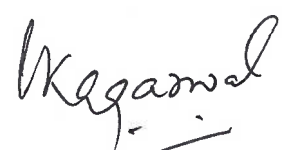
### **A. Complainant**

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that for a long time the Complainant has adopted UPWORK as trade name as well as trademark. Further that, the Complainant has been continuously using the "UPWORK" as trade name, trademark, corporate name, business name, trading style, etc.

The trademark "UPWORK" of the Complainant is registered in certain countries, such as, Japan, Mexico, New Zealand, Russian Federation, Switzerland, etc. According to the Complaint, applications for the registration of the said mark are also pending in many countries including the United States of America and India.

Further that, Annex 6 to the Complaint indicates that the Benelux Office of Intellectual Property and Icelandic Patent Office had originally issued the registration certificates of the mark UPWORK in the Complainant's prior name and the update in the Complainant's present name is pending. The Benelux registration was issued on May 18, 2015 in classes 9, 35, 38, 41 and 42. Icelandic registration was issued on May 29, 2015 in Classes 9, 35, 36, 38 41 and 42. Therefore, the Complainant is





well known to its customers as well as in business circles as UPWORK all around the world.

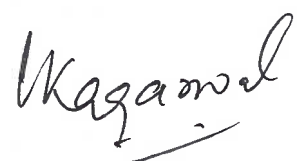
It is further contended that in recent times, the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for UPWORK products in India or elsewhere would mistake the disputed domain name as that of the Complainant.

The Respondent has registered the disputed domain name <upworktest.in> purposely with the motive or intention of obstructing the business of the Complainant, to obfuscate clients, prospective clients and other internet users and to cause negative impact on the reputation of the Complainant.

The domain name incorporates in entirety the Complainant's trademark UPWORK, with the addition of the descriptive term 'test' and the country-code Top Level Domain 'in'. As per the Policy, the addition of these words is insignificant and irrelevant and it cannot avoid the finding of confusing similarity under the Policy.

Therefore, the disputed domain name <upworktest.in> is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the name or mark "UPWORK" nor has applied for the registration of the mark "UPWORK" anywhere in the world. The



name of the Registrant/Respondent is Abwebtech c/o Satish Kumar. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.upworktest.in> by the Respondent/Registrant is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

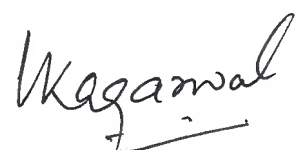
In the cases of *Alibaba Group Holding Limited v. Rickson Rodricks and Domaen com* [INDRP/073] it has been held that the domain name wholly incorporating a Complainant’s trademark may be sufficient to establish identity or confusing similarity; See also *Puneet Vatsayan v. Prajakt Raut* [INDRP/512]; *Amazon Technologies v. Mr. Harikishore* [INDRP/349] and *Pfzier v. NA* [WIPO D2005-0072].

## **B. Respondent**

The Respondent has not submitted any response. Hence, the Respondent’s contentions are not known.

## **6. Discussion and Findings**

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.



According to the Policy, the Complainant must prove that:

- (i) The domain name is identical 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 domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

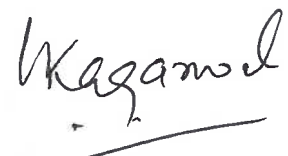
**A. Identical or Confusingly Similar**

As per the whois information, the Respondent has created the disputed domain name <UPWORKTEST.IN> on December 28, 2015. It will expire on December 28, 2017 unless permitted to extend it further.

According to the information submitted by the Complainant, the Complainant is the owner of trademark UPWORK. As has been stated above, the trademark UPWORK of the Complainant is registered in certain countries.

The present dispute pertains to the domain name <upworktest.in>. The Complainant possesses a number of other domain names with the word "UPWORK". The Complainant is also the owner of trademark "UPWORK". Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant/Respondent. The disputed domain name includes the entire trademark "upwork" of the Complainant and is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <UPWORKTEST.IN> is confusingly similar or identical to the Complainant's trademarks.



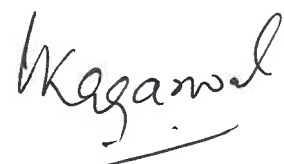
## B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent'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; or
- (ii) the Respondent (as an individual, business or other organization) 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 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's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

The name of the Complainant is UPWORK, Inc. The Respondent is known by the name of Adwebtech c/o Satish Kumar. It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.





I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain names.

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

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent has 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website 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 the Respondent's website or location or of a product or service on its website or location.

*Kagawal*

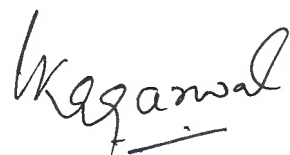
The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website by creating a likelihood of confusion with the Complainant's mark. The Respondent was aware of the Complainant's registration of the trademark "UPWORK".

Further that on December 2016 the Complainant's representative had sent a letter of protest to the Respondent on his e mail address. The Respondent did not respond to the said letter of protest. Again on December 2016 the representative of the Complainant sent another notice and letter of protest. The same also remained unanswered.

The Complainant has further stated that the Respondent is engaged in the acts of cheating by posting the answers to the Upwork freelance examinations. In violation of the Upwork terms of service, Respondent copied the questions and answers from the Upwork examinations to derive traffic to the domain name for his own commercial gain and to disrupt Complainant's business.

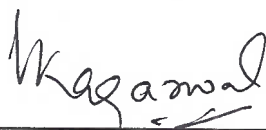
The complete address of the Registrant/Respondent could not be found and there is no response to the e-mail mentioned in the WHOIS record that is "abwebtech@gmail.com. Even the copy of the complaint sent by the National Internet Exchange of India has remained unserved. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

A handwritten signature in black ink, appearing to read "Kaganwal", with a horizontal line underneath the name.

## 7. **Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.upworktest.in> be transferred to the Complainant.



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Vinod K. Agarwal

Sole Arbitrator

Date: 27<sup>th</sup> June 2017