



09 OCT 2019

DR. SUDHIR RAJA RAVINDRAN

RAVINDRAN

Stamp Vendor
L.No: 12144/B1/96
Ekkattuthangal, Ch-32,
Mobile No: 9710019475

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: October 9th, 2019

2nd Quadrant India Private Limited

Plot No. 12, Indradhanu,

Mangaldham Society,

Bohrud, Pune -411038,

India

COMPLAINANT

2019

VERSUS

NIJAMUTHEEN J

97, Pallistreet, Jamilabath,

Pulicat

Chennai 601205

India

RESPONDENT/REGISTRANT

DISPUTED DOMAIN NAME: "WWW.2NDQUADRANT.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Mr. Asheem Bakhtawar, email id asheem.bakhtawar@2ndquadrant.com and phone number +91 9820239075.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website is NIJAMUTHEEN J.

2. **The Dispute:** The domain name in dispute is 2NDQUADRANT.IN. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Endurance Domains Technology LLP.

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	06.09.2019
2.	Date on which consent was given to act as an Arbitrator	06.09.2019
3.	Date of appointment of Arbitrator	12.09.2019

4.	Date on which the Hard copy of the complaint was received	16.09.2019
5.	Date on which notice was issued to the Respondent	12.09.2019
6.	Due date for filing of Counter Statement by the Respondent	19.09.2019

4. Procedural History

4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On September 12, 2019, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before September 19, 2019.

5. Factual Background:

5.1. 2ndQuadrant is a India Private Limited Company providing professional services based on the open source PostgreSQL database software including Consultancy, Production

Support, Developer Support, RemoteDBA, Training and Education. All these services are being provided worldwide, under the 2ndQuadrant banner.

5.2. The Respondent registered the disputed name **2NDQUADRANT.IN** on 7th June, 2018.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1. The Complainant claims that it's an India Private Limited Company providing professional services based on the open source PostgreSQL database software including Consultancy, Production Support, Developer Support, RemoteDBA, Training and Education and all these services are being provided worldwide, under the 2ndQuadrant banner.

6.1.2. The Complainant claims that the Complainant has registered its trademark "2ND QUADRANT" and "2NDQUADRANT" in various countries including India under class 9 and class 42, the Indian trademark Application numbers are 4001552, 4056961, 4001553 and 4056962.

6.1.3. The Complainant claims that 2ndQuadrant India Private Limited is a wholly owned subsidiary of 2ndQuadrant Limited, a UK registered company with company number 4075460. Further the Complainant claims that the 2ndQuadrant domain name has been in use by 2ndQuadrant Limited since its inception in 2001, and by 2ndQuadrant India Private Limited since its incorporation in June 2017.

6.1.4. The Complainant claims that 2ndQuadrant is a major contributor to PostgreSQL and a Platinum sponsor and have core committers, developers and contributors on staff and have contributed significant functionality to Community PostgreSQL for each of the last 13 releases. Further the complainant claims that they have been in business since 2001 and brought this deep core expertise in PostgreSQL development to their commercial offerings - 24x7 Production Support, RemoteDBA services, PostgreSQL Consulting and Education.

6.1.5. The complainant claims that they have organized their business over 18 years to be able to provide support for organizations with over 1,000 PostgreSQL instances, and

they have personnel in over 20 countries around the globe, including 9 based in India itself.

- 6.1.6. The Complainant claims that the name and trademark 2ndQuadrant is well known within the PostgreSQL Community worldwide as one of the foremost developers of the PostgreSQL code, providers of PostgreSQL services and speakers at conferences throughout the globe each year. Further claims that the Domain Name in dispute is bound to cause confusion and deception in the minds of potential customers that the Respondent has some connection, association or affiliation with 2ndQuadrant India Private Limited, but this is not so and there is no 2ndQuadrant entity that has entered into any agreement, contract or affiliation with the Respondent.
- 6.1.7. The Complainant claims that the Respondent has never worked for or been linked in any way with 2ndQuadrant either in India or anywhere else in the world. Further claims that they can find no evidence that Respondent is known by or commonly referred to by the name "2ndQuadrant", indeed his own publically available LinkedIn profile as set out in Annex 9 of the Complaint, makes no reference to 2ndQuadrant other than to list the disputed domain, 2ndQuadrant.in, in a list of URLs.
- 6.1.8. The Complainant claims that the Respondent has no rights or legitimate interests in the domain name 2ndQuadrant.in. 2ndQuadrant has not authorized, licensed or otherwise allowed the Respondent to make any use of its trade marks.
- 6.1.9. The Complainant states that whilst Respondent appears to be making some use of the domain name in order to sell his services, including PostgreSQL services of a similar nature to those of 2ndQuadrant India Private Limited, Complainant suggests that the current use of the domain name in dispute is with the intent of commercial gain by misleadingly diverting consumers from the legitimate 2ndquadrant.com website and to create a false association and affiliation with 2ndQuadrant and its strong reputation for PostgreSQL expertise and knowledge.
- 6.1.10. The Complainant claims that the Respondent is using 2ndQuadrant.in in order to advertise his own PostgreSQL services and training, and is aiming to misleadingly

make use of the recognition and reputation of the 2ndQuadrant family in order to attract business.

6.1.11. The Complainant claims that 2ndQuadrant had registered its interest in its name and marks prior to the registration of the disputed domain as set out in Annex 3, Annex 4, Annex 5 and Annex 6 of the Complaint.

6.1.12. The Complainant claims that the disputed domain, 2ndquadrant.in, was registered in June 2018 meaning that the Respondent would have had to perform a basic internet search in order to gain actual and constructive knowledge of 2ndQuadrant and its rights at the time of registration of the Domain Name, and therefore registered the domain name knowingly in Bad Faith. Further the Complainant states that the Respondent was intentionally preventing 2ndQuadrant from registering the Domain Name and attempting to attract commercial gain and increased numbers of users to his website by creating confusion with 2ndQuadrant's trademark "2ndQuadrant".

6.1.13. The Complainant claims that In addition to the trademarks that have been in use globally, 2ndQuadrant have had an active presence in the PostgreSQL community in India for many years and have been sponsors at the highest possible level, and have provided multiple talks and training sessions at each of the four PostgreSQL Community conferences, PGConf India, from 2016 onwards. The first Indian staffs of 2ndQuadrant joined the team in 2012 and have been active within the PostgreSQL community since that time. Further the complainant states that it is inconceivable that someone wishing to provide PostgreSQL services in India would not have known of the presence of 2ndQuadrant prior to the registration of the disputed domain.

6.1.14. The Complainant claims that the website is available at the disputed domain and is poorly functioning with the vast majority of pages returning the 404 error or page not found, whilst the Meet Our Team page includes 'John Doe', the term commonly associated with an average or unknown man, as a member of the team, further adding evidence that the domain is registered in Bad Faith.

6.1.15. The Complainant claims that no other companies are listed as incorporated in India with a name similar to 2ndQuadrant when searched via the online Government of India Ministry of Corporate Affairs Company Search. Further Complainant claims that Searching for the term '2nd' only reveals 5 companies and if the search is extended to '2ndq', 2ndQuadrant India Private Limited is the only result, providing further evidence that the Respondent has registered the name in bad faith as it is not connected to an officially registered business as set out in Annex 7 of the Complaint.

6.1.16. The Complainant further states that It has also now come to light that the Respondent is aiming to transfer the domain name registration for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name. An email set out in Annex 8 of the Complaint, was sent by the Respondent to a list of recipients including 2ndQuadrant Limited and 2ndQuadrant India Private Limited and many of their competitors soliciting interest in the sale of the disputed domain, 2ndquadrant.in. A representative of 2ndQuadrant India Private Limited contacted the Respondent by telephone to discuss the email and the respondent stated that he was asking INR100,00,000 for the sale of the domain. Unfortunately as this price was only discussed verbally the Complainant does not have any request in writing.

6.1.17. The Complainant/s requests for the following relief: "that the Domain Name 2ndQuadrant.in to be transferred from the Respondent to 2ndQuadrant India Private Limited."

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks and has established that it has rights in the trademark "2NDQUADRANT" in various Jurisdiction including India.

7.3.3. It is further evident that the domain name wholly incorporates Complainant's registered trademark "2NDQUADRANT", which may be sufficient to establish identity or confusing similarity. It was held that when a disputed domain name contains the trade mark in its entirety, the domain name is identical and confusingly similar, as confirmed in *Aon PLC and ors. v. Guanrui INDRP/633* and *Shenzhen Yi SiLang E-Commerce Co Ltd v. Salim M INDRP/1046*.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if

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- 7.4.2.1. before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or
- 7.4.2.2. the registrant (as an individual, business organization) has been commonly known by the domain name, or
- 7.4.2.3. the registrant is making 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.
- 7.4.3. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name as Respondent has never worked for or been linked in any way with 2ndQuadrant either in India or anywhere else in the world and there is no evidence that the Respondent is known by or commonly referred to by the name "2ndQuadrant". The only reference of "2ndQuadrant" by Respondent is in his own publically available LinkedIn profile as set out in Annex 9 of the Complaint. Further, the disputed domain is poorly functioning with the vast majority of pages returning the 404 error for page not found and the Meet Our Team page includes 'John Doe', the term commonly associated with an average or unknown man, confirms that the domain name is not in use and the Respondent has no legitimate interest in the domain name.
- 7.4.4. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. This view has been upheld in *Wells fargo & Co. and Anr. v. SreeDas Kumar INDRP/666* and *Dell Inc.v. Olagappan S.P INDRP/1093*. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.5. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "2ndQuadrant". This view has been upheld in *The Ritz Carlton Hotel Company LLC v. Nelson Brands Inc, INDRP/250*.

7.5.3. It is evident that the website is incomplete and there are a few of discrepancies, e.g. the "our team" section includes 'John Doe', the term commonly associated with an average or unknown man, as a member of the team. Further in the email dated 30th July 2019 from the Respondent to the Complainant, the respondent has expressed his interest to sell the domain name due to insufficient fund to invest in business, as set out in Annex 8 of the Complaint. Further the Complainant has stated that the Respondent had claimed for INR100,00,000 for the sale of the domain in a telephonic conversation. It can be easily assumed that the Respondent must have been aware of the Complainant's "2ndQuadrant" trademark before the registration of the Disputed Domain Name and the Disputed Domain Name was registered in bad faith. This view has been upheld in *National Securities Corporation v. Registration Private, WIPO Case No. D2018-0290* and *Bitfury Group Limited v. Maxim I Fedoseev, WIPO Case No. D2018-0654*.

7.5.4. Under Paragraph 6 (i) of the Policy, if the registrant of the domain name in dispute, has registered or circumstances indicate that he has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain

name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.

7.5.5. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant/s have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.

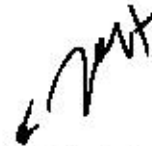
8. Decision

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name www.2ndQuadrant.in to the Complainant without any cost.

8.3. The Award is accordingly passed on this the 9th day of October, 2019.

Place: Chennai



Dr. Sudhir Raja Ravindran
Sole Arbitrator