



ఆంధ్ర ప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl. No. 7777 Dt. 21/11/14

Sold to Harini Narayan Swamy

Sto, Dto, W/O R. Narayan Swamy Plot No. 167/C Behind E-Seva

To Whom. Keerthi

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

K. Geetha Rani  
BH 322729

KODALI GEETHA RANI  
Licenced Stamp Vendor  
Licence No 16-04-1/2013  
167/C Behind E-Seva  
Kangal Rao Nagar, Hyderabad (South)  
Cell: 94920 25252

### ARBITRATION AWARD

In The Matter Between

Hexaware Technologies Limited  
152, Millennium Business Park,  
Sector - III 'A' Block, TTC Industrial Area  
Mahape, Navi Mumbai - 400710  
India

Complainant

Versus.

Chandan Chandan  
82, II Main  
Bangalore, Karnataka - 560001  
India

Respondent

Harini Narayan Swamy

### **1. The Parties**

The Complainant is Hexaware Technologies Limited of Mumbai India, represented in these proceedings by Gunjan Paharia of Zeus IP Advocates. The Respondent is Chandan Chandan of Bangalore Karnataka India.

### **2. The Domain name, Registrar and Policy**

The present Arbitration proceeding pertains to a dispute regarding the domain name <hexaware.co.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Go Daddy.com LLC. The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

### **3. Procedural History**

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on January 13, 2015 and on January 15, 2015 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of

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the notification to file a response. The Respondent sent an email reply dated February 3, 2015 to the Tribunal and a copy was marked to the Complainant.

### **Factual Background**

The Complainant is in the business of Information Technology (IT), more particularly in the area of Business Process Outsourcing (BPO). The Complainant uses the trademarks HEXAWARE and HEXAWARE TECHNOLOGIES in connection with its business and is the registered proprietor for the said trademarks. The Complainant has provided details of its registered marks along with copies of the registration certificates. Details of some of the registered trademarks are:

Sr. No	Trademark	Trademark No and Date	Class	Status
1.	HEXAWARE TECHNOLOGIES	1453100 23 MAY 2006	16	Registered
2.	HEXAWARE TECHNOLOGIES	1453101 23 MAY 2006	42	Registered
3.	HEXAWARE TECHNOLOGIES	1453102 23 MAY 2006	09	Registered

The Respondent registered the disputed domain name <hexaware.co.in> on December 14, 2010.

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## **The Parties Contentions**

### **A. Complainant's Submissions**

The Complainant asserts it is a globally renowned company and has over 8850 employees across the globe. The Complainant states its operations are spread across offices in seventeen countries and its revenues cross USD 387.8 million. It contends the trademarks HEXAWARE and HEXAWARE TECHNOLOGIES are exclusively associated with the Complainant.

The Complainant contends it is the registered owner of the domain name <hexaware.com>, which it has used in connection with its business since 1996. The Complainant states it has marketed products and services under the HEXAWARE mark, in India and in several other countries for an extensive period, due to which its trademark is a "well known mark" as per the Trade Mark Act 1999 and under Article 6 *biz* of the Paris Convention. As evidence of the well-known character of its mark, the Complainant has filed copies of published articles that makes reference to its mark and has filed trademark registrations certificates in various jurisdictions including U.K, USA, China, and Germany and India.

The Complainant asserts that the disputed domain name is confusingly similar to its trademark HEXAWARE. The Complainant further argues that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent does not have any trademark rights or a company name resembling the domain name. The Complainant further asserts that it has not authorized or licensed the use of its mark to the Respondent and the

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Respondent is not commonly known by the disputed domain name and does not use it in connection with a *bona fide* offering of goods or services.

The Complainant states that the disputed domain name has been registered and is being used in bad faith as the Respondent's motive for using the mark is for creating a likelihood of confusion and gaining from the goodwill associated with the mark. The registration and the use of the disputed domain name in this manner amounts to misrepresentation and false association to deceive the public. Further, the Complainant argues that the Respondent failed to comply with the Policy, as the Respondent did not verify whether the disputed domain name violates any third party rights and violated the service agreement with the Registrar. The Complainant states the Respondent has prevented the Complainant, the rightful owner of the mark, from reflecting its mark in a corresponding domain name. Further, there is a likelihood of Complainant's reputation being tarnished as the disputed domain name resolves to a webpage that appears to be registered or endorsed by the Complainant. The Complainant therefore requests for the transfer of the disputed domain name.

### **B. Respondent's Submissions**

The Respondent did not file a formal response in these proceeding but sent an email dated February 3, 2015. In that email, the Respondent essentially states:

The disputed domain name <hexaware.co.in> was registered for the Respondent's client who had wanted to use it in connection with "sanitary

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ware shop marketing”. He further states that the disputed domain name registered because it was available. He goes on to state that presently the domain name is not “functioning”, but is only used as an email holding space and that his client does not want to pursue the matter further after discussions with the Respondent.

There were no other communications or representations made by the Respondent in these Arbitration proceedings, except for the said email.

### **Discussion and Findings**

Under the INDRP Policy the Complainant has to establish the following three elements to succeed in the proceedings:

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

### **Identical or Confusingly Similar**

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.

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The Complainant has submitted evidence that demonstrates it has statutory rights in the HEXAWARE and HEXAWARE TECHNOLOGIES trademarks. The evidence filed by the Complainant includes its trademark registrations in India and other countries such as United States Trademark registration number 3,574,540, registered on February 17, 2009 and United States Trademark registration number 3,582,133 registered on March 3, 2009, showing use in commerce from 1994, Trademark registration in Great Britain and Northern Ireland bearing registration number 2444344 with registration date January 22, 2007, German trademark registration number 307 02 257 dated 10.01.2007 and China trademark registration number 10082248 valid from January 7, 2013 to January 6, 2023. The Complainant has also filed published media reports and articles to demonstrate the well know character of its trademarks. The Arbitrator finds, based on the evidence on record, that the Complainant has clearly established its rights in the trademarks HEXAWARE and HEXAWARE TECHNOLOGIES.

The disputed domain name incorporates the Complainant's mark HEXAWARE in its entirety and it is identical to the mark except for the country code Top Level Domain (ccTLD) extension ".co.in". It is well established that TLD extensions are generally not relevant in determining confusing similarity of the domain name with the trademark, See *AB Electrolux v. GaoGou*, INDRP 630 (Zanussi.in) October 19, 2014.

Accordingly, the disputed domain name in the present case is found to be confusingly similar to a mark in which the Complainant has established

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rights. The Complainant has satisfied the first element under paragraph 4 of the Policy.

### **Rights and Legitimate Interests**

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The onus of proving rights and legitimate rests with the Respondent, the registrant of the disputed domain name.

The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Arbitrator finds there is no evidence on record that shows the Respondent has made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name.

From the contents of the Respondent's email February 3, 2015, the Respondent has stated that the disputed domain name was registered for

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intended use by his client for marketing certain products. There is however no evidence placed before this tribunal to show demonstrable use or preparation to use the name in commerce to substantiate the statements made by the Respondent. Neither has the name of any business entity been provided by the Respondent. The Respondent has made bald statements, but has not provided any evidence to establish any rights or legitimate interests in the disputed domain name in these proceedings. Under such circumstances, the un-refuted allegations of the Complainant prevail.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

### **Bad Faith**

The third element of paragraph 4 of the INDRP Policy requires the Complainant to establish the domain name was registered in bad faith or is being used in bad faith. The Complainant has urged that the Respondent has intentionally registered the disputed domain name <hexaware.co.in> to exploit its trademark HEXAWARE.

Under Paragraph 6 (iii) of the Policy, if the registrant of a domain name has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that the

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Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 of the Policy, namely to attract Internet traffic to the Respondent's website, by misleading Internet users.

The Complainant has filed the screen shot of the website linked to the disputed domain name as evidence of bad faith use of the disputed domain name. Facts in the present case that show: (i) The Complainant's mark HEXAWARE is known and associated with the Complainant and its business (ii) There is lack of evidence of any actual good faith use by the Respondent (iii) Circumstances of the case indicate there is no possible good faith reason to register to disputed domain name except to gain from the goodwill associated with the Complainant's mark. Non-use or passive holding of the disputed domain name is also considered bad faith registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows*. These are the typical circumstances of abusive registration as envisaged under the Policy.

Based on all the facts and circumstances of the case the Arbitrator finds that the disputed domain name was registered in bad faith and has been used in bad faith. The Respondent has alleged that his client has used the disputed domain name as a holding space for email. This does not detract from the fact the domain name is primarily comprised of the Complainant's mark and the Respondent has not rebutted or denied any allegations that have been made by the Complainant.

The undisputed evidence shows the Complainant is the owner of the trademark HEXAWARE and the Respondent has registered a domain name

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that is identical to the mark. The Respondent has not established any rights or legitimate interests in the disputed domain name and the Complainant has demonstrated that the disputed domain name has been registered and is being used in bad faith. On balance, the Arbitrator finds the Complainant has satisfied all three elements under paragraph 4 of the Policy.

### **Decision**

In light of all that has been discussed, it is ordered that the disputed domain name <hexaware.co.in> be transferred to the Complainant.



**Harini Narayanswamy**

**(Arbitrator)**

**Date: March 5, 2015**