



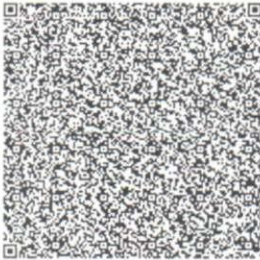
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No. : IN-DL84671776974414L
Certificate Issued Date : 06-Nov-2013 04:57 PM
Account Reference : IMPACC (IV)/ dl700603/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL70060367328008577737L
Purchased by : DEEPA GUPTA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : DEEPA GUPTA
Second Party : Not Applicable
Stamp Duty Paid By : DEEPA GUPTA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: November 5, 2013

In the matter of:

**ARVIXE, LLC
23801 Calabasas Road, Suite 2005*
Calabasas, CA 91302**

(Complainant))

Vs .

**Shaklee Software
Flat B, 15/F., Winsun Building, Sanhplane No.2
New Territories, Hong Kong 999077
China**

(Respondent)

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is: **ARVIXE, LLC , 23801 Calabasas Road, Suite 2005 , Calabasas, CA 91302**
- (b) Respondent firm is: **Shaklee Software, Flat B, 15/F., Winsun Building, Sanhplane No.2 ,New Territories, Hong Kong 999077 China** It has its presence on internet with domain name of www.arvixe.in which is the subject matter of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.arvixe.in registered with the DOT IN Registry through the Direct Internet Solutions Pvt. Ltd.
- ii. The registrar NIXI is at Flat no. 6B, Uppals M6 Plaza, 6 Jasola District Centre, New Delhi-110025.
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

Complainant, Arvixе, LLC, is a website hosting company operating its business since 2003. It registered its primary domain name, <arvixе.com> on June 27, 2003.

Complainant serves as a featured webhosting provider to Microsoft, and has highest number of reviews on Microsoft's web host gallery. Complainant has received several awards from industry authorities such as Host Review and the Inc Magazine and branded as one of the fastest growing, hosting companies.

Complainant incorporated LLC on January 5, 2007, Arvixе, LLC. Complainant has garnered further large number of consumers. ARVIXE is a made up term, created by its founder, Arvand Sabetian & a federally registered trademark.

Complainant possesses common law trademark rights in other countries.

Complainant has over 5,000 customers in India.

Complainant is also the owner at least 25 similar domain names.

Complainant has built valuable goodwill in its distinctive identifier ARVIXE.

Respondent's business is unknown, although its organization name is Shaklee Software The Disputed Domain Name is offered for sale for EUR 9,900. The Disputed Domain was not created until November 22, 2011. The Disputed Domain does not resolve to a website.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

- a) **THAT INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH PVR LIMITED HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS.**

Complainant is the owner of the trademark ARVIXE based upon USPTO federal registration and previous and subsisting use in various countries, including India.

Complainant has continuously and exclusively used the mark for almost 10 years in connection with its webhosting services. It has extensively advertised and marketed its services, won awards, and received consumer recognition. In doing so, it has acquired priority trademark rights, Complainant's first use and federal registrations predate the creation of the <arvixе.in> domain name and its registration by Respondent. The Disputed Domain was not created until November 22, 2011 by the respondent. The Disputed Domain does not resolve to a website. That Respondent had both constructive and actual notice of Complainant's trademark rights in ARVIXE. Respondent's <arvixе.in> domain name is identical to Complainant's ARVIXE mark. Mere replacement of the .com gTLD with the .in ccTLD is insufficient to avoid confusing similarity. Registrant did not find out before registration whether the domain it is about to register violates the rights of Complainant.

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b) THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF DOMAIN NAME

The Respondent is not affiliated with Complainant, and Complainant has not authorized or licensed Respondent to register or use the ARVIXE mark, the Disputed Domain, or otherwise. Respondent has not been known or recognized by the Disputed Domain, and in fact, there is no evidence at the Dispute Domain or otherwise that Respondent has made any trademark or trade name use of "arvixе" or anything similar thereto. Respondent does not have any fair or legitimate non-commercial use, but instead used to list the Disputed Domain for sale for an exorbitant price and trying to extort by threatening to sell the Dispute Domain to a third party.

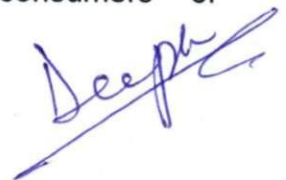
Respondent's registration and use of ARVIXE is a classic case of cyber squatting. Respondent registered Complainant's well known mark in its domain name just to trade off of Complainant's goodwill by siphoning traffic for its own commercial gain, from Complainant itself. The Disputed Domain does not resolve to a website. Respondent did not return the Disputed Domain, even after Complainant provided actual notice on April 11, 2013 of its trademark rights. Instead, Respondent sought an exorbitant sum of money for the Disputed Domain.

c) THE IMPUGNED DOMAIN NAME ARVIXE.IN HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH.

Respondent registered and is using <arvixе.in> in bad faith for the purpose of disrupting Complainant's business and in hopes of profiting from the sale of the Disputed Domain to Complainant or another third party without rights. Respondent is offering the Disputed Domain for sale for EUR 9,900, which amounts to Rs 707921.57. Respondent attempted to negotiate the sale for \$9,000 USD. The previous registrant, Ding RiGuo, is known cyber squatter who has been ruled against under the INDRP. Current registrant, is listing the Disputed Domain for sale on Sedo, negotiating with Complainant before and after the change in registrant for the Disputed Domain, is maintaining registration with the same Registrar, and providing same website, clearly reflects Respondent is also a cyber squatter or even same. The Domain name not being a dictionary term or otherwise descriptive, still being for sale for such a high price, evidences that Respondent was aware of the Disputed Domain's value based upon Complainant's fame. Respondent registered Disputed Domain to prevent Complainant from reflecting ARVIXE mark in a corresponding domain name, like it has with countless other domain names.

Respondent's registration and use of ARVIXE is a classic case of cyber squatting. Respondent registered Complainant's well known mark in its domain name just to trade off of Complainant's goodwill by siphoning traffic for its own commercial gain, from Complainant itself. Respondent did not return the Disputed Domain, even after Complainant provided actual notice on April 11, 2013 of its trademark rights. Instead, Respondent sought an exorbitant sum of money for the Disputed Domain.

Complainant does business in India, and is being prevented by Respondent from providing access to its website at Disputed Domain. Respondent recognized the revenue potential by preying upon unsuspecting Internet consumers or



Complainant's success. Complainant's well-established and federally registered ARVIXE mark is known throughout the world, Respondent knew of the Complainant's trademark rights when it decided to register Disputed Domain and offer it for sale. Respondent cannot escape the fact that it had constructive notice, namely because of Complainant's prior trademark registration and prior registration and use of <arvixe.com> and the content located on that website before Respondent ever acquired the Disputed Domain. Its continued registration after actual notice only further evidences Respondents bad faith.

B. Respondents Contentions

Not responded at all.

5. OPINION:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

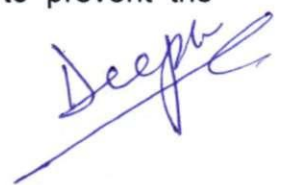
This tribunal is of confirmed opinion that the Complainant has origination since Year 2003 and is using the mark 'ARVIXE' since then, has a huge customer base and has made massive efforts to promote the brand name 'ARVIXE' by consuming various resources available at his end. Complainant has received several awards from industry authorities and fast growing hosting company.

Word 'ARVIXE' has certainly acquired a popular Brand name the length and breadth of USA, California, INDIA and a prominent place in internet electronic media also.

On the basis of the records submitted by the complainant it's proved that the domain name 'arvixe.in' is related to the business of Complainant and is being used for purpose related to his work.

It is confirmed that Complainant is user of name 'ARVIXE'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark 'ARVIXE' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in USA as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'ARVIXE' marks in USA and throughout global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'ARVIXE' mark and design as a domain name.



Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or

unintentional imbrogio or illegality of its operation and to ensure that no illegalities are committed.

Registrant failed to fulfill its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to intentionally trade on Arvix incorporated, its reputation, goodwill and trademarks & was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has not shown any fair or legitimate non-commercial use, but instead has only shown its use to list the Disputed Domain for sale. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with ARVIXE reputation and services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the Respondent registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'ARVIXE' is a registered and protected trademark of the Complainant.

Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademarks ARVIXE, Internet users will apparently and reasonably expect an offer of the Complainant or authorized or affiliated enterprises under 'ARVIX.in'.



The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'ARVIXE' and similar domain names, i.e., 'arvixе.com', 'arvixе.net', 'arvixе.org', 'arvixе.biz', 'arvixе.hu', 'arvixе.hk', 'arvixе.asia', 'arvixе.ca', 'arvixе.tw' etc were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'arvixе.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking for sale through direct or indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name www.arvixе.in be and is hereby transferred to Complainant with immediate effect.



Giving or taking money for purchase or sale of hijacked domain name is illegal and the Complainant has participated in this act even though having with him the recourse of law for justice, opted for quick settlement, having failed came to the doors of law. Such activity should be deterred and a representative fine of Rs 2000/- is levied on the Complainant. Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 25000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 5th day of November 2013.



Deepa Gupta
Arbitrator