

தமிழ்நாடு TAMILNADU

19 FEB 2019

DR. SUDHIR RAJA RAVINDRAN

BT 063574

V.BEDHARAJAN  
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: 8<sup>th</sup> April, 2019

Hike Private Limited  
World Mark 1, 4th Floor, Tower-A,  
Asset Area No. 11,  
Hospitality District,  
Indira Gandhi International Airport,  
New Delhi – 110037, India

COMPLAINANT

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VERSUS

Syed Hussain  
Domain Management  
15 5th Street  
Closter NJ 07624  
United States of America

RESPONDENT(s)/REGISTRANT(s)

DISPUTED DOMAIN NAME: "WWW.GETHIKE.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Mr. Rodney D. Ryder / Mr. Ravi Goyal, Scriboard Advocates & Legal Consultants, Level 2, Elegance, Mathura Road, Jasola, New Delhi, 110025, India.

2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Syed Hussain.

3. **The Dispute:** The domain name in dispute is "WWW.GETHIKE.IN". According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Name.com, Inc.

4. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	11.03.2019
2.	Date on which consent was given to act as an Arbitrator	11.03.2019
3.	Date of appointment of Arbitrator	11.03.2019
4.	Date on which the Hard copy of the complaint was received	14.03.2019
5.	Date on which notice was issued to the Respondent	15.03.2019
6.	Due date for filing of Counter Statement by the Respondent	22.03.2019

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## 5. Procedural History

- 5.1. 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.
- 5.2. 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.
- 5.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 5.4. On March 15<sup>th</sup>, 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 March 22<sup>nd</sup>, 2019.

## 6. Factual Background:

- 6.1. The Complainant owns one of the most popular instant messaging apps known as 'Hike Messenger' or 'Hike'. The incorporation certificate for the Complainant – Hike Private Limited [formerly known as Hike Limited]. The Complainant's messenger app was launched on December 12, 2012. The app is a cross-platform instant messaging service for smartphones that uses the internet for communication. In addition to text messaging, users can send each other graphical stickers, emoticons, images, videos, audios, files, voice

messages, contacts and user location. Over the past years, features such as voice calls, news, etc. have been added to the app.

6.2. The Respondent registered the disputed name "WWW.GETHIKE.IN" on September 18<sup>th</sup>, 2013.

## 7. Parties Contentions

### 7.1. Complainant's Submission:

7.1.1. The Complainant claims that it raised its first round of funding of USD 7 million from Bharti SoftBank in April 2013. Subsequently, the Complainant raised USD 175 million in a new round of funding led by Tencent & Foxconn in the year 2016. After this round of funding, the Complainant reached a valuation of USD 1.4 Billion and the 'Hike' app is as of now one of the top free apps on the Android Playstore, iOS App Store and Windows Store, across India. Further the Complainant claims that the Complainant's messaging app 'Hike' crossed the 100 million users mark in January 2016. In the same month, the app started logging a monthly messaging volume of around 40 billion messages.

7.1.2. The Complainant claims that the Hike app is accessible worldwide on all popular mobile application platforms such as Android, iOS, and Windows. The Complainant offers the app through Google Play, Windows Store, iTunes Store, etc. And the app has been installed more than 50 million times through the Google Play Store [<https://play.google.com>] alone.

7.1.3. The Complainant claims that the Complainant has spent a huge amount of money on the promotion and advertisement of its services and products under the trade/service name/mark 'Hike' since its adoption and use in all mediums including print and electronic. Further, the Complainant claims that the amount spent on promoting services and products under the mark 'Hike' from 2013-14 through 2017-18 has been approximately 371 crore Indian Rupees [around 57 million USD].

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7.1.4. The Complainant claims that its trade/service name/mark an important and an extremely valuable asset and thus in order to protect the same, has secured several trademark registrations for the mark 'Hike' and related variations such as 'Hike Messenger' in India as well as in several other jurisdictions including the United States of America and European Union. Around 106 applications/registrations for the mark 'Hike' and related variations have been filed/ obtained in India and elsewhere by the Complainant. The first trademark application filed by the Complainant for the mark 'Hike' dates back to November 2011. A list of global trademark registrations/applications as well as copies of the trademark registrations obtained by the Complainant in India are enclosed as Annexure D of the complaint. The Complainant submits that it is the exclusive owner and proprietor of the registrations[s] listed above and said registrations are duly valid and subsisting as of this date.

7.1.5. The Complainant claims that it owns more than 160 different domain names out of which each and every one comprises of the mark 'Hike'. A list of such domain names registered by the Complainant is enclosed as Annexure E of the Complaint.

7.1.6. The Complainant claims that Google Search of the term 'Hike' throws up a huge number of results of which, almost all pertains to the Complainant. A copy of the first page of the Google Search for the search term is enclosed as Annexure F of the Complaint.

7.1.7. The Complainant claims that the Complainant also has a YouTube channel, which can be accessed at the following url: <<https://www.youtube.com/user/HikeApp>>. The channel has a subscriber base of around One Hundred Twenty Three Thousand [One Lakh Twenty Three Thousand] users and the videos published on the channel has more than One Hundred Million views. In addition to this, the Complainant has a wide presence on Facebook [<https://www.facebook.com/hikeapp>] and Twitter [<https://twitter.com/hikeapp>] as well. It is to be noted that the Complainant's user-



name/dedicated URL on all these social media websites consists of the well-known mark 'Hike'.

7.1.8. The Complainant claims that the profile and popularity of the Complainant under the trade/service name/mark 'Hike' has been continuously increasing since the date of adoption and use of the mark. The Complainant's mark is well-known. At present, the Complainant's trade name/mark is identified by the public exclusively with the Complainant and has acquired an enormous goodwill not only in India but also in several other countries across the globe.

7.1.9. The Complainant claims that as Internet is an essential medium to conduct business for the Complainant, the Complainant decided to obtain a domain name registration in 2011. The Complainant therefore settled for <www.hike.in> as a natural extension of their corporate name and brand name. The Complainant then spent considerable amount of money and skill to develop a website on the sub-domain <get.hike.in> of the main domain name <www.hike.in>. Copies of the present web-pages as available on <get.hike.in> and <www.hike.in> are enclosed as Annexure G of the complaint. In addition to this, the Complainant also owns several other domain names such as: <www.ghike.in>, <www.hikeapp.in>, <www.hikechat.in>, <www.hikeapp.com>, <www.hikeid.in>, <www.hike.limited>, <www.hike.chat>, <www.hike.download>, etc. A complete list of such domain names registered by the Complainant is enclosed as Annexure E of the complaint.

7.1.10. In support of its contentions, the Complainant has relied on the decisions of the cases listed in the "List of Authorities" of the Complaint.

7.1.11. The Complainant requests for the following relief: "that the disputed domain name [www.gethike.in](http://www.gethike.in) shall be transferred to the Complainant and costs be awarded to the Complainant, if the Arbitration Panel deems fit."



## 7.2. Respondent:

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

## 8. Discussion and Findings

8.1. 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.

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

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

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

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

### 8.3. Identical or Confusingly Similar

8.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark "Hike" and its domain name <get.hike.in > in which the Complainant has rights.

8.3.2. The Complainant has filed documents of its registered trademarks to prove it has rights in over the trademark "HIKE" in India and various other countries. The Complainant has actively promoted and advertised the website <get.hike.in> since the launch of 'Hike' app in the year 2012. It is submitted by the Complainant that <get.hike.in> is a sub-domain of the domain name <www.hike.in>, owned by the Complainant. The documents filed by the Complainant also show that it has used the mark and domain name extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

8.3.3. The disputed domain name is identical and confusingly similar to the trademark "HIKE" and domain name <get.hike.in> and it is apparent that if any internet user, who intends to reach / visit the website or download the 'Hike' App to mistakenly type 'GetHike' instead of 'Get.Hike' which would lead the Internet user to believe that the Complainant is associated with or owns the web site bearing the domain name <www.gethike.in>.

8.3.4. Further, a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark and this decision has been upheld in *Indeed Inc. v. Deepak Singh*, [INDRP/987] and *Akshaya Pvt. Ltd. v. Mr. Prabhakar Jeyapathy* [INDRP/277].

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

#### **8.4. Rights and Legitimate Interests**

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

8.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) 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 (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) 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.

8.4.3. The Complainant has submitted that the Respondent has offered to sell the domain name to any interested party via third-party website where a form is displayed for

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interested parties to make an offer to buy the impugned domain name. This clearly proves that the Respondent has no legitimate interests in the Domain Name. Furthermore the Complainant has submitted that, Respondent whose name is 'Syed Hussain', as per the WHOIS records, is not commonly known by the disputed domain name, nor the Respondent actually engages in any legitimate or bonafide business or commerce under the name 'Hike'. The registration of the disputed domain name by the Respondent is therefore a case of cyber squatting. This decision has been upheld in Etro S.p.A v. M/S Keep Guessing, [INDRP/024].

8.4.4. Further, 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.

8.4.5. The Arbitrator finds the Complainant has 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.

## 8.5. Bad Faith

8.5.1. 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.

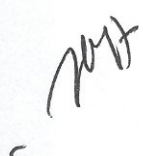
8.5.2. It is stated by the Complainant that the Respondent is not, either as an individual, business or other organization, commonly known by the name 'Hike'. The Complainant has not licensed or otherwise permitted the Respondent to use its well-known

trade/service mark 'Hike' or to apply for any domain name incorporating this mark and further the Complainants prior adoption of the mark and domain name <get.hike.in>.

8.5.3. Further, the Respondent seeks to exploit its famous mark and domain name <get.hike.in> to attract Internet users. Further, the domain name appears to be non functional website and the Respondent offers to sell the domain name to any interested party, wherein passive holding of the domain name and for the purpose of selling the domain name by the Respondent also amounts to bad faith under the present circumstances. This view was upheld in the decision in Lockheed Martin Corporation v. Aslam Nadia, [INDRP/947] and Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003.

8.5.4. Further the Complainant has submitted that there are over 42 Complaints under the Uniform Domain Name Dispute Resolution Policy [UDRP] have been filed against the Respondent and in the case Vodafone Group PLC vs. Syed Hussain [July 24, 2018], wherein the Respondent in the past had targeted two brands in a single domain name based on news reports prevalent in the Indian media at that time and Respondent's bad faith was established and the Panel ordered the transfer the domain names. This clearly shows that the Respondent is a known and habitual cyber squatter.

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



**9. Decision**

- 9.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.
- 9.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name "**www.gethike.in**" to the Complainant without any costs.
- 9.3. The Award is accordingly passed on this the 8<sup>th</sup> day of April, 2019.

Place: Chennai



Dr. Sudhir Raja Ravindran

Sole Arbitrator