



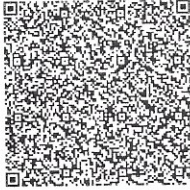
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL18028216438004R
Certificate Issued Date	: 10-Jul-2019 12:27 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1743103436489579R
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

**VISHESHWAR SHRIVASTAV**

SOLE ARBITRATOR  
IN

www.apptio.in  
between

APPTIO, INC

...COMPLAINANT

KENNETH PALO

AND

...RESPONDENT

AWARD

1

*[Handwritten signature]*

#### 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.
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1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 05/06/2019. This Tribunal was in receipt of an email from the Complainant dated 06/06/2019 showing the dispatch of the complaint vide FedEx Courier. On tracking the said courier this Tribunal found that that since 10<sup>th</sup> July, 2019 it is "*Ready for Pickup. Sikeston MO*". This Tribunal found that the complainant had tried their best to effect service of the complaint on the Respondent's last known address but without any success. Since, the Respondent was already in receipt of the soft copy of the complaint by email sent by NIXI as well as complainant hence, vide the aforesaid communication dated 17/06/2019 this Tribunal directed the Complainants to send their Evidence by way of Affidavit by 27/06/2019.
2. Pursuant to the order dated 17/06/2019 the Complainants vide email dated 24/06/19 filed the soft copy of their Evidence by



way of Affidavit, and mentioned that the hard copy had been dispatched via courier.

3. This Tribunal noted that even after a lapse of a week the courier sent by the Complainants had not reached the office of the Tribunal. Hence, on 01/07/2019 this Tribunal gave 3 days time to get their Evidence delivered to his office. The Complainant had by mistake couriered the hard copy to NIXI instead of Tribunal which they rectified by asking back the courier and resending it to this Tribunal. The award was reserved vide order dated 08/07/ 2019.

#### **CLAIM**

4. The claim as put forward by the complainant is briefly as under:
  - A. It is claimed that Apptio, Inc. (the "Complainant"), founded in the year 2007 is a company incorporated in the United States of America (U.S.A.), having its office at 11100 Northeast (NE) 8th Street, Suite 600, Bellevue, Washington 98004, U.S.A. and claiming that it is a global pioneer in Technology Business Management ("TBM") software, and a leading provider of cloud-

based TBM tools and solutions in the information technology ("IT") industry and has worldwide business operations through 16 offices located in 11 countries.

- B. It is claimed that the Complainant provides strategic business management services to customers in a wide variety of industries throughout the world, through a cloud-based platform containing a suite of powerful software as a service ("SaaS") applications, which enable chief information officers and IT professionals to analyze, optimize and plan technology their company's investments as well as benchmark financial and operational performance against their peers. According to complainants its products are used worldwide as the Complainants have a customer base which spans a broad spectrum of industries, including financial services, professional services, technology, energy, consumer goods, manufacturing, healthcare, media, retail, transportation and various state and federal government agencies. It has been stated that in 2012,

Seattle Business Magazine has ranked Apptio 1<sup>st</sup> among the *100 Best Companies to Work For 2012: Large Companies*.

- C. It is claimed that the Complainant has extensively advertised and promoted its services under the APPTIO brand through electronic and print media, which has resulted in wide awareness of the Complainant's brand globally as well as in India and has made steady growth since its inception in 2007, and has earned total annual revenue of over USD129 million in 2015, USD160 million in 2016, and USD188 million in 2017, which demonstrates the Complainant's brand's success, international presence, recognition, and wide public awareness.
- D. It is claimed that the Complainant is the registered proprietor of the trade mark "APPTIO" in several jurisdictions, including the USA, European Union, United Kingdom, Australia, Singapore, etc., and is the registered owner of the domain name www.apptio.com.
- E. It is alleged that the Complainant came to know that the Respondent has registered a domain name www.apptio.in, the



second level domain name of which is identical to the Complainant's (i) domain name under .com Top Level Domain Name (TLD) www.apptio.com; and (ii) the trade mark and corporate name "APPTIO" and this has led the Complainant to file the present complaint based on the following grounds.

- F. The domain name is identical or confusingly similar to a name or trade mark in which the Complainant has rights.
- G. It is claimed that since 2007 Complainant has been extensively, continuously and uninterruptedly using the trade mark "APPTIO" and as a result of the widespread use and publicity, both the public and the traders use the trade mark "APPTIO" exclusively to identify and refer to the Complainant's services.
- H. By relying on **Annexure – III**, the Complainant claims that it is the registered proprietor of the trade mark "APPTIO" in many countries including, United States of America, European Union, Australia, Singapore etc.

- I. By relying on **Annexure- IV** the Complainant claims to have obtained the domain name registration for www.apptio.com on 25 September 2007, and has been continuously using it since then.
- J. The Complainant alleges that the second level domain name of Respondent's domain name www.apptio.in is identical to the Complainant's second level domain name, including, the Complainant's registered and well-known trade mark "APPTIO", and the Complainant's corporate name as well and thus the Respondent's domain name will create consumer confusion and dilution of the Complainant's well-known trade mark as well as its corporate name, besides there are high chances that the general public and the traders intending to visit the Complainant's website may be misled to the Respondent's conflicting domain name more so as the Complainant has recently commenced operations in India, and the consumers will mistakenly be redirected to the Respondent's website which uses the identical domain name www.apptio.in, believing that it belongs to the Complainant.



K. The Respondent has no rights or legitimate interests in respect of the domain name. In view of the foregoing it is vehemently alleged that the Respondent does not have any right or legitimate interest in respect of the domain name www.apptio.in hence, the disputed domain name www.apptio.in is not associated with the Respondent's trade name/corporate name or any of its legitimate business activities. Neither is the Respondent known by any trade name having the components of the Complainant's well-known trade mark "APPTIO". Thus the Respondent does not have any *bona fide* reasons to adopt the domain name which is identical to that of the Complainant and the Respondent's conduct of registering the infringing domain name in 2014, much later in time than the Complainant's adoption, use and registration of its trade mark internationally and domain name containing the trade mark with ICANN demonstrates that the Respondent is attempting to take undue advantage of the international goodwill and reputation that the Complainant and its trade mark has acquired for more than a decade. Further, the Complainant has neither authorized



the Respondent to register or use the domain name containing its registered trade mark "APPTIO", nor has granted any license to the Respondent to use any of the Complainant's trade marks for any trade purposes. Hence as per Rule 7 of the Policy, the Respondent (i) is not offering any goods or services corresponding to the domain name; (ii) is not known by the domain name; and (iii) is not making any legitimate and fair use of the domain name. In addition the Respondent's website with the conflicting domain name merely includes the disputed domain name www.apptio.in and is not functional. This clearly demonstrates that the Respondent's website is not used for any legitimate purpose. Reliance is placed on **Annexure-V**.

L. The domain name was registered and is used in bad faith. The Respondent has no *bona fides* in using the trade mark "APPTIO" as part of its domain name due to the following:

- a. The Policy specifies certain circumstances which demonstrate bad faith in registering a domain name. One of the circumstances is that if the registrant 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 bears the name or is the owner of the trade mark 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.  
(6 (i) of the Policy.)

- b. In the present case, although the Respondent had registered the domain name [www.apptio.in](http://www.apptio.in) on 21 January 2014, the Respondent has not put the domain name to any use until date.
- c. The Complainant had approached and requested the Respondent to transfer the infringing domain name, the Respondent had asked the Complainant to pay an exorbitant amount to transfer the domain name, which



contains the Complainant's trade mark. Reliance is placed on **Annexure-VI**.

- d. It is alleged that the Respondent has parked another .in domain name www.apptio.co.in, which also contains the Complainant's registered and well-known "APPTIO" trade mark for which the Complainant has initiated a separate complaint under the Policy against the domain name www.apptio.co.in along with this complaint.

### ORDER

5. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been rebutted or challenged by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.apptio.in, and this Tribunal directs the Registry to transfer the domain name www.apptio.in to the complainants.



6. The Complainants too are free to approach the Registry and get the same transferred in their name.
7. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint.
8. The original copy of the Award is being sent along with the records of this proceeding to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 12<sup>th</sup> day of July, 2019.

NEW DELHI  
12/07/2019



V. SHRIVASTAV  
ARBITRATOR

**ARBITRATION PROCEEDINGS OF DOMAIN NAME**

**www.apptio.in**

Between

**APPTIO, INC**

**...COMPLAINANT**

**AND**

**KENNETH PALO**

**...RESPONDENT**

**ORDER DATED 12/07/2019**

This Tribunal is publishing the Award of the above mentioned domain name.

The soft copy of the award is being attached herewith.

Needless to mention that a signed copy of this award which contains 12 pages is also being dispatched to the parties as per the requirements of the Arbitration and Conciliation Act, 1996.

I trust you find the above in order.

V. Shrivastav  
Arbitrator

C.C.:

- 1 Mr. Anoop Narayanan, Counsel for Complainant
2. Mr. Kenneth Palo, Respondent
3. Ms. Richa Bakshi, NIXI

**ARBITRATION PROCEEDINGS OF DOMAIN NAME**

**www.apptio.in**

Between

**APPTIO, INC**

**...COMPLAINANT**

**AND**

**KENNETH PALO**

**...RESPONDENT**

**ORDER DATED 08/07/2019**

This Tribunal is in receipt of both soft as well as hard copy of the Complainant's Affidavit in Evidence.

Hence, this Tribunal reserves its award.

It is clarified that incase the respondent send their response /evidence in support thereof the same will be taken into consideration by this Tribunal at the time of making the award.

V. Shrivastav

Arbitrator

C.C.:

1. Mr. Anoop Narayanan, Counsel for Complainant
2. Mr. Kenneth Palo, Respondent
3. Ms. Richa Bakshi, NIXI