

INDRP ARBITRATION CASE No.1589
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

HATCO CORPORATION

Vs.

B.SATHISH, BLUE WHALE COMPUTERS & SERVICES

DISPUTED DOMAIN NAME: "HATCO.IN"

Ajay

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THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

HATCO Corporation
635 S. 28th Street,
Milwaukee, WI 53215 (USA)

...Complainant

VERSUS

B. SATHISH
Blue Whale Computers & Services
No.333, Geetha Building, 1st Floor
Near Mangala International Hotel
Nehru Street, Ram Nagar
Coimbatore-641009 [TAMIL NADU].

...Respondent

Disputed Domain Name: "HATCO.IN"



1. The Parties

- 1.1 The **Complainant**, HATCO CORPORATION, in this arbitration proceeding, is USA based Food Service Equipment industry and its contact address is Hatco Corporation 635 S. 28th Street, Milwaukee, WI 53215, USA.
- 1.2 The Complainant's Authorized Representative in this administrative proceeding is Amit Mehta & Jayant Kumar b. Address: G-23/186, Sector-7, Rohini, Delhi-110085 [INDIA].
- 1.3 In this arbitration proceeding, the Respondent is B. Sathish, Blue Whale Computers & Services, No.333, Geetha Building, 1st Floor, Near Mangala International Hotel, Nehru Street, Ram Nagar, Coimbatore-641009 [TAMIL NADU] as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. The Domain Name and Registrar

- 2.1 The disputed domain name is "HATCO.IN" and the Registrar with which the disputed domain name is registered is Endurance Digital Domain Technology LLP.

3. Procedural History [Arbitration Proceedings]

- 3.1 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 [the Rules] were approved by NIXI on 28th June 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 under the .IN Dispute Resolution Policy and Rules framed thereunder.



3.2 The history of this proceeding is as follows:

3.2.1 By Rules 2(a) and 4(a), NIXI on 05.08.2022 formally notified the Respondent of the complaint along with a copy of the complaint & annexures/documents, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there-under, IN Domain Resolution Policy and the Rules framed thereunder. That the Arbitrator submitted the Statement of Acceptance & Declaration of Impartiality and Independence dated 06.08.2022 to NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 06.08.2022 was emailed to the Respondent on 06.08.2022 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days.

3.2.3 This panel vide its Arbitration Notice dated 06.08.2022 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice and therefore Respondent was supposed to file the reply of the complaint by 15.08.2022.

3.2.4 This panel vide its mail dated 06.08.2022 had directed the Complainant to update the domain complaint with the registrant's missing details and send the same to all including the Respondent. The Complainant in compliance with this panel's directions vide its mail dated 08.08.2022 filed the amended complaint before this panel and also emailed the same to the Respondent. The Complainant also submitted the proof of service of the physical copy of



the complaint to the Respondent through courier, which shows delivery of the same to the Respondent on 16.08.2022.

3.2.5 However, since the Respondent failed to file the reply of Complaint, if any, within time, i.e., by 15.08.2022 as directed by this panel, this panel again in the interest of justice vide its mail dated 16.08.2022 granted a further period of 04 days i.e. by 19.08.2022 to the Respondent to file the reply of the complaint. The Respondent, despite the receipt of Notice Dated 06.08.2022 and reminder dated 16.08.2022 of this panel neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 20.08.2022 the Respondent proceeded ex-parte.

4. The Respondent's Default

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima-facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "hatco.in".

4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

4.3 The Respondent was notified of this administrative proceeding per the Rules. The IN Registry discharged its

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responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply to the complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 states, "In the event, any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. Background of the Complainant & its Submissions about the trademark "HATCO", its statutory and common law rights Adoption :

5.1 The Complainant, in the present arbitration proceedings to support their case, has relied and placed on records documents as Exhibits and made the following submissions:

5.1.1 The Complainant submits that Hatco Corporation has been a world leader since 1950 in creating innovative ideas for the food service industry: bold innovations in equipment that improves efficiency, reliability, and profits, and is dedicated to exceptional customer service and quality engineered equipment offering maximum performance.

5.1.2 The Complainant submits that Complainant offers booster water heaters, food warmers, heated shelves, and wells,



holding cabinets, carving stations, commercial toasters, hot water dispensers, and other various products. It sells its products internationally through its distributors and there are 7 companies in the Hatco Corporation corporate family.

5.1.3 That Complainant submits that through the years, the Complainant has introduced many "firsts." The Complainant began by recognizing the need to sanitize dishware and responded by developing an Electric Booster Water Heater generating (82°C) sanitizing rinse water, which soon became the industry standard. In the 1960s, the Complainant added Third Compartment Sink Heaters to the water line and offered the industry the first conveyor toaster, Toast King®, to meet the needs of high-volume bread and bun toasting. It also took food holding to another dimension with Glo-Ray® aluminum housings up to 144" (3568 mm) in length with special reflectors that direct heat to the outer edges of holding areas, extending food holding times.

5.1.4 The Complainant submits that through the 1970s, the food warmer lines grew to include Portable Food warmers and then added humidity to a heated cabinet to produce Flav-R-Savor® Display Cabinets. The last two decades of the twentieth century saw the Complainant introduce many products in the show-and-sell and self-serve areas as convenience stores, delis and kiosks grew quickly. Since 2000, the Complainant has introduced ThermoFinisher® Food Finishers, Decorative Lamps, Heated Wells, Heated Stone Shelves, Pop-Up Toasters, Refrigerated Wells, Decorative Carving Stations, and Frost Tops. Most recently, the Complainant's equipment line has extended with new and innovative solutions, including Flav-R-Savor® Energy



Efficient Holding Cabinets; Drop-In Hot/Cold Wells; Heated Glass Shelf Modular; Intelligent Toast-Qwik® Conveyor Toasters; Multi-Contact Grills; Electric Salamander; Soup Stations; Hot/Cold Built-In Shelves; Rice Drawer Warmers; Mini Vertical Warmer; Chef LED Light Bulbs; and the Rapide Cuisine® Induction Ranges. The Complainant continues to offer cost-effective solutions that meet the industry's needs for versatility, productivity, profitability, and service.

5.1.5 The Complainant further submits that Complainant has been associated with many industry associations that all are known and have a reputation in the trade-related industry.

5.1.6 The Complainant submits that it has received many prestigious awards including: (i) in 2012 awarded the Governor's Export Achievement Award by Governor Scott Walker at the 48th annual Wisconsin International Trade Conference; (ii) in 2013 The Door County Economic Development Corporation announced the Complainant as the winner of the 2013 Door County Industry of the Year Award; (iii) in 2014 awarded with the Manufacturing Award of Distinction in the large company category by Advance, the economic development branch of the Greater Green Bay Area Chamber; (iv) in 2014 awarded with the ESOP Company of the Year; (v) in 2016 awarded with the Door County Wellness Works Award at the Door County Economic Development Corporation's Annual Investors' Meeting; (vi) in 2017 Winner of Convenience Store Petroleum's (CSP's) Retailer Choice Best New Product Contest; (vii) in 2017 chosen as Foodservice Equipment & Supplies (FE&S) magazine's Best In Class by Dealers, Consultants and Operators for the 17th year in a row; (viii) in 2017 awarded Rapide Cuisine® IRNG-PC1-18 Countertop



Induction Range the 2017 Excellence in Design Silver Award in the 30th annual Excellence in Design (EID) competition; (ix) in 2017 awarded the Wellness Council of America's (WELCOA) Well Workplace Gold Award; (x) in 2018 winner of the 2018 Annual Awards for Communications Excellence (AACE). (xi) in 2018 awarded with the Best New Product Award; (xii) in 2021 recognized for the Workplace Health Achievement; (xiii) in 2022 awarded the Top Workplace Award. The Complainant has applied to register or registered the trademark 'HATCO' worldwide in six of the seven continents.

5.1.7 The Complainant submits that it has been globally using the mark HATCO since 1950 and in India since 1998. However, the Complainant had a trans-border reputation in India much before 1998.

5.1.8 The Complainant submits that it is trading and doing its business under the mark 'HATCO' in various countries of the world including India. Thus, by its bona fide and worldwide adoption of the "well-known" 'HATCO' mark, the Complainant is the owner, registered proprietor, and first user of the mark worldwide, including in India. By its priority in adoption; immense goodwill; and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'HATCO' mark in respect of its goods and services.

5.1.9 The Complainant submits that ever since 1950 (when the HATCO mark was invented, created, and adopted), the Complainant has adopted and extensively used the HATCO mark, in respect of various goods and services under class 11 and various other classes in respect of which Complainant owns various applications and registrations



covering many countries of the world, including in India. The Complainant has been using the HATCO mark not only as a trademark and service mark but also as its trade name. That the Complainant has also owned domain name registration since January 25, 1996, and is hosting a website thereat since then.

5.1.10 The Complainant further submits that it is the first user, owner, and registered proprietor worldwide, including in India, of the "well-known" HATCO mark by its bona fide and worldwide adoption of the trademark in respect of its goods in class 11 and in various other classes, for which it owns several trademark registrations/applications across jurisdictions, including in India. The Complainant has a long history of prior use of the HATCO mark. Over half a century ago, since at least as early as 1950, the Complainant adopted and began using its HATCO mark in interstate and international commerce in connection with its goods and services. The worldwide sales of the Complainant under the mark HATCO in the past few years are as under:

Year	Sales (in US\$)
2016	136410056
2017	135360204
2018	145445737
2019	153379136
2020	110948916
2021	143819710

The Complainant further submits that it has been participating in various events prominently displaying the mark HATCO.

5.1.11 The Complainant submits that it has extensive use of the HATCO mark in India. In addition, the Complainant also receives sales inquiries from various organizations in India. The Complainant further submits that it has participated in various trade shows in India and prominently used the mark HATCO thereat.

5.1.12 The Complainant submits that it is also conducting/sponsoring research about the Indian market and



has been releasing research papers from time to time that also features the mark HATCO.

5.1.13 The Complainant submits that it has also incorporated an Indian subsidiary viz. Hatco Foodservice Equipment India Private Limited since 2019. The Hatco Foodservice Equipment India Private Limited has also obtained an Import Export License from the Indian Government. The Complainant submits that it also conducts training in India from time to time.

5.1.14 The Complainant states that the Complainant has invested substantial money in developing and marketing its products and services under the HATCO mark in connection with its operations as one of the world's most well-known quality food service equipment companies. The HATCO mark has been and continues to be widely publicized through substantial advertising throughout the world, including in India. The Complainant is internationally renowned for its quality and standards in the foodservice equipment company. As a result, the general public has come to associate the HATCO mark with goods and services of high and uniform quality.

5.1.15 The Complainant submits that owing to the long, consistent, and extensive use of the mark HATCO worldwide and the significant goodwill and reputation earned by the Complainant, the mark HATCO has not only attained goodwill and reputation arising from the use of the mark worldwide but has also attained trans-border reputation in India, from diffusion into India of the reputation and goodwill outside India. Without prejudice, the mark HATCO has thus also acquired distinctiveness by its use and consequent goodwill and reputation.



5.1.16 The Complainant submits that by the extensive and significant use worldwide including in India, the reputation and goodwill earned by the Complainant, the HATCO mark has attained the status of a "well-known trademark" (as defined under Section 2(1)(zg) of the Trade Marks Act, 1999) in India. The Complainant's HATCO mark enjoys a significant reputation, brand image, and goodwill worldwide including in India.

6. Submissions of Complainant about the Respondent and its use of the domain name

6.1 The Complainant submits that it recently became aware of the domain name registered in the name of the Respondent.

7. The issues involved in the dispute

7.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

"Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered or is/are being used in bad faith."

7.2 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.



8. Parties' Contentions

The domain name <hatco.in> is confusingly similar to the trademark 'HATCO in which the Complainant has rights.

9. Complainant

- 9.1 The Complainant submits that it has a trademark registration for the mark HATCO in India as well as globally. The Complainant has also been using the mark HATCO since at least 1950 as its trade name, company name, and trademark.
- 9.2 The Complainant submits that the disputed domain name fully incorporates and is confusingly similar to the trademark HATCO registered in favor of the Complainant.
- 9.3 The Complainant submits that the disputed domain name is identical and/or confusingly similar to the Complainant's prior registered, used, and well-known trademark HATCO as it incorporates and reproduces the Complainant's registered trademark "HTACO" in its entirety and differs only in respect of addition of the country code Top Level Domain (ccTLD) extension ".in" which is insignificant.
- 9.4 The Complainant submits that due to overwhelmingly long, consistent, and extensive use, the Complaint has become known by the HATCO mark. The Complainant has statutory as well as common law rights in the HATCO mark and the disputed domain name is confusingly similar to the mark HATCO.
- 9.5 The Complainant submits that it extensively and prominently uses the mark HATCO, as well as domain names incorporating the mark in disseminating, marketing, and



advertising its goods/services. Further, considering the Complainant's rights in the domain name - particularly in - the disputed domain name viz. is confusingly similar to the Complainant's mark. The Complainant has referred to the case titled ITC Limited v. Vishal, INDRP/050 (NIXI November 30, 2007) (Panel held that. Where the Respondent registers a domain name that is identical to the Complainant's domain name used for its official website in another domain it is held to be confusingly similar").

9.6 The Complainant submits that it has rights in the mark HATCO, and the domain name is confusingly similar to the mark HATCO.

10. Respondent

10.1 The Respondent has not replied to Complainant's contentions.

11. Panel Observations

11.1 This Panel on pursuing the documents and records submitted by Complainant observes that the Complainant is a USA-based food service equipment manufacturing company that is also involved in innovating many products related to the food goods & service industry under the brand name "HATCO".

11.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark "HATCO". It is also observed by this panel that the Complainant has successfully secured registrations globally for the HATCO marks including in India. The Complainant has proved that it has trademark rights and other rights in the mark "hatco" by submitting substantial documents in support of it.

- 11.2 It is further observed by this panel that the trademark "HATCO" is included, without any addition or deletion, and the fact that the Disputed domain "hatco.in" comprises the Complainant's trademarks "HATCO" in their entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.
- 11.3 This panel, therefore, is of opinion that the disputed domain name "hatco.in" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "HATCO" of the Complainant.
- 11.4 It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner and the Respondent has miserably failed in following this condition.
- 11.5 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy. **The Respondent has no rights or legitimate interest in respect of the disputed domain name**



12. Complainant

- 12.1 The Complainant submits that the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant has never assigned, licensed, or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever. The Complainant does not have any past dealings with the Respondent.
- 12.2 The Complainant submits that the Respondent is not hosting any webpage at the disputed domain name and is only passively holding the same.
- 12.3 The Complainant further submits that the Respondent is not commonly known by the domain name and has not acquired any trade/service mark rights to the knowledge of the Complainant. The Respondent has not shown any demonstrable preparation to use the disputed domain name. The Respondent is not making any legitimate non-commercial and fair use of the domain name. The Complainant has referred to precedent in *Tata Motors Ltd. Vs. Mr. Baliram Devtwal*, INDRP/898 (NIXI June 15, 2017) (Panel held that "the mere addition and difference in top-level domain names of the words like '.in' does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for any legitimate or charitable purpose. He is trying to earn unlawfully out of the registration of disputed domain name, by taking disadvantage of similarity of the disputed domain name with the Complainant's name, fame, goodwill, and global recognition.")



12.4 The Complainant submits that the Respondent is passively holding the disputed domain name since it was created in September 2009. There is no active Website to which the Respondent resolves the disputed domain name. Refer *Monster.com (India) Private Ltd. v. Smt. Usha Rani, INDRP/022 (NIXI November 20, 2006)* ("Respondent has not used the domain name even after the passage of more than 1 year after it was registered. This clearly leads to the conclusion that the Respondent does not have any legitimate interest in the domain name.").

12.5 The Complainant submits that it has prima facie established that the Respondent lacks rights or legitimate interest in the disputed domain name. As such, where a Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element. *Huolala Global Investment Ltd. v. Li Chenggong, INDRP/1027 (Nov. 23, 2018)*

12.6 The Complainant submits that the Respondent has no legitimate rights and interests in respect of the domain name

13. Respondent

13.1 The Respondent has not replied to Complainant's contentions.

14. Panel Observations

14.1 This Panel holds that the second element that the Complainant needs to prove and as is required by



paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

- 14.2 This panel observes that the Complainant by placing documents/records and evidence along with the complaint has been able to prove that the Complainant is trading and doing its business under the mark 'HATCO' in various countries of the world including India. The Complainant by its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'HATCO' mark in respect of its goods and services.
- 14.3 Whereas, it is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Complainant has never assigned, licensed, or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever and, the Complainant does not have any past dealings with the Respondent.
- 14.4 It is also observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the Respondent has not shown any demonstrable preparation to use the disputed domain name and further the Respondent is not making any legitimate noncommercial and fair use of the domain name.
- 14.5 It is further observed by this panel that the Respondent has failed to rebut the contention of the Complainant that the Respondent is passively holding the disputed domain name since it was created in September 2009 and there is no active Website to which the Respondent resolves the disputed domain name.
- 14.6 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate



interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

14.7 It is further observed by this panel that para 6 of the IN Domain Name Dispute Resolution Policy (INDRP) states :

14.7.1 Any of the following circumstances, in particular, but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant is making a 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.

14.7.2 This panel observe that the Respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b): For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name "HATCO".



The domain name <hatco.in> was registered or is being used in bad faith

15. Complainant

- 15.1 The Complainant submits that Bad faith is implicit in the disputed domain name registration. The Respondent registered the disputed domain name in issue on September 17, 2009, by which time the Complainant has been using the mark HATCO mark for more than 50 years.
- 15.2 The Complainant submits that because of (i) Complainant's statutory and common law rights in the mark HATCO (ii) the use of the mark by the Complainant for several years before Respondent registered the disputed domain name, (iii) Complainant's prior use of the HATCO mark on the Internet, in other domain names and as a trading name, and (iv) the tremendous fame, goodwill, and reputation associated with this mark, it is impossible to conceive of any circumstance in which Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark HATCO.
- 15.3 The Complainant submits that this Panel can infer Respondent's knowledge of Complainant's rights in the HATCO mark based on its widespread registration and use of these marks existing at the time when Respondent registered the disputed domain name. The Complainant has referred to the case of Unisys Corp. v. Unisys Consulting, LLC, D2004-0138 (WIPO April 15, 2004) (finding that the Respondent had knowledge of the Complainant's mark in consideration of the wide recognition of the Complainant's mark, as well as the Complainant's registration and use of its mark)



15.4 The Complainant submits that there is no possible good faith reason to register the disputed domain name except to gain from the goodwill associated with the mark HATCO. The Complainant has referred to the cases of Hexaware Technologies Ltd. v. Chandan Chandan, INDRP/649 (NIXI March 5, 2015). It is also an established rule that non-use or passive holding of the disputed domain name is also considered bad faith registration and use. Refer CAC Case No. 102443 (June 19, 2019); HSBC Holding PLC v. Hooman Esmail Zadeh, INDRP/32 (NIXI March 20, 2007) (Panel held that "Non-use and passive holding is evidence of bad faith use"). Also, Bayer Aktiengesellschaft Vs. Henrik Monssen, (WIPO, D2003-0275); Telstra Corporation Limited Vs. Nuclear Marshmallows, (WIPO, D2000-0003); Belmond Interfin Ltd. Vs. Kenneth Palo, (NIXI November 25, 2019).

15.5 The Complainant further submits that, under Para 6 (iii) of the Policy, if the registrant of a domain name has used the domain name to intentionally attract 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.

15.6 The Complainant submits that it is quite apparent that the Respondent's registration and use of the domain name are in bad faith.

16. Respondent

16.1 The Respondent has not replied to Complainant's contentions.

17. Panel Observation

17.1 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :



"(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for 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 over the Registrar's documented out of pocket costs directly related to the domain name; or

(b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

(c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."

17.2 This panel while going through the complaint and documents which are placed in the form of exhibits has observed that the Respondent registered the disputed domain name in September 2009, by which time the Complainant has been using the mark HATCO mark for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark HATCO worldwide including in India and Complainant is also using the HATCO mark on the internet, in other domain names, and as a trading name before registration of disputed domain name. It is observed by this panel that given the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark HATCO.



17.3 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant, that there is no possible good faith reason to register the disputed domain name except to gain from the goodwill associated with the mark HATCO.

17.4 The Complainant rightly established that the Respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in clause 7(c) of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore the Panel concludes that the registration by Respondent is in bad faith. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/registered the domain name in its favor in bad faith.

18. Remedies Requested

18.1 The Complainant has prayed to this Administrative Panel that the disputed domain <hatco.in> be transferred to the Complainant.

19. Decision

19.1 The following circumstances are material to the issue in the present case:

19.1.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "HATCO" is a well-established name globally including in India in the Foodservice equipment/goods sector. The Complainant has established that the hatco, is



popularly known exclusively concerning the Complainant. The Complainant has also established that the trademark HATCO is inherently distinctive of the products, services, and business of the Complainant and has secured trademark protection for HATCO by registering trademarks in many countries including India.

19.1.2 The Respondent, despite repeated opportunities given, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

19.1.3 The Complainant has rather has been able to establish by its contentions and records in the form of Exhibits, that the Respondent has attempted to attract Internet users for gain which is evidence of bad faith. It is therefore established by the Complainant that the domain name by itself is being used for attracting internet users rather than any bona fide offering of goods/services thereunder. While considering the complaint and records in the form of Exhibits submitted by the Complainant, this panel has concluded that there exist circumstances as stated in para 7(C) of INDRP Policy.

19.1.4 Taking into account the nature of the disputed domain name and in particular, the ".in" extension alongside the Complainant's mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated



active use of disputed Domain Name by the Respondent is and would be illegitimate.


19.1.5 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.

19.1.6 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name [hatco.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name [hatco.in] be transferred from the Respondent to the Complainant, requesting NIXI to monitor the transfer.

New Delhi, India
Dated : 22nd August, 2022


[AJAY GUPTA]
Sole Arbitrator