



दिल्ली DELHI

ARBITRATION CASE NO. 3/2007

D 175756

IN THE ARBITRATION MATTER OF:

THE HARTZ MOUNTAIN CORORATION

...COMPLAINANT

VERSUS

CHANDULAL RANCHHODDAS
KUNDALIYA

...RESPONDENT

AWARD:

The present dispute has arisen over the registration of the domain name hartz.in, which was registered in favour of the respondent. The Complainant has filed the present complaint seeking the aforesaid domain name hartz.in be transferred in its favour.

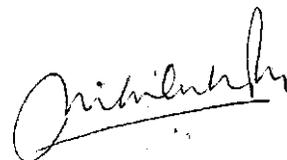
The Complainant filed the present complaint under the .IN Domain Name Resolution Policy of .IN Registry. After being appointed as an Arbitrator in the present dispute, I had issued two notices to the Respondent interalia calling

upon them to present their reply to the complaint filed by the Complainant herein. The notices were sent on 10th June 2007 and then on 1st July 2007 granting a final opportunity to the respondent. Last notice was sent on 21st July 2007. To which the Respondent took time to file his reply to the aforesaid claim. The reply was filed on the 30th July 2007.

The Complainant alongwith its complaint has filed a declaration on behalf of the Complainant. In the declaration it has been stated that the Complainant was established in the 1930s in the field of pet care products business globally. It has also stated that it does business globally under the registered trade mark of HARTZ ®. In order to support this claim it has also filed the registration of its trade mark in various countries.

Furthermore, the Complainant has filed registered its trade mark "hartz" in India and exhibited the proof of registration thereof.

The Complainant has also stated that the Respondent has no connection with the word and mark "hartz" in regard to its use and business. It has also stated that the respondent has primarily registered the domain name **hartz.in** for the purpose of selling the said domain name to the Respondent. In order to support its claim, the Complainant has filed the correspondences, which it had with the respondent via e-mail. The e-mail dated 11.03.2007 received by the Complainant from the Respondent has been exhibited alongwith the complaint. It states that the Respondent intended to sell the domain name **hartz.in** at a "legitimate cost and price". To which the Complainant issued a cease and desist letter dated 14.03.2007 to the respondent. On 11.04.2007, the respondent sent another mail stating that if no response were received from Complainant, then it would dispose off the same to the next legitimate claimant. In reply to which an e-mail was sent by the counsel for the Complainant to the Respondent requesting to transfer the

A handwritten signature in black ink, appearing to read "Prithvi", written over a horizontal line.

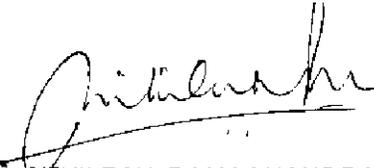
said domain name in favour of the Complainant, as the Complainant did not indulge in paying extortion fees.

The Respondent in his reply has stated in his reply that he is proprietor of a service unit, engaged in providing various kind of tailor made services and his work was mainly in the field of developing various sites and is also engaged in creating intellectual property assets by registering the domains. According to him, he has stated that name 'Hartz' is not a prohibited name in any law and that the Complainant was never interested in registering its name during the sunrise period of the .in registry in India and that the Complainant has no *locus standii* in claiming rights over the name after the Respondent has registered the domain name.

After going through the claims and counter claims of the both the parties, the Complainant has placed on record all materials regarding its right over the name 'Hartz'. In fact it has registered the name world over and the proof of registration has placed before me. The Complainant has established its rights over the name 'Hartz'. The Respondent has not placed any material that how he has right over the name 'Hartz'. He has only registered the name during the sunrise period, which according to me is not enough to establish the right over the said name. The Complainant has proprietary right over the said name and the same cannot be taken away if some one registers it earlier under a policy. The Law is very clear on the issue of proprietary rights over names of a registered user. Hence this is a clear case of cyber squatting done by the Respondent herein. The Respondent has not been able to show that he had created the website with the intention to use for his purpose and that he has a proprietary right over the said domain name. In fact he has also not been to show to what kind of research has been done by him for creating the name nor has he been able to show that there was absence of bad faith in registering the domain name. It has been admitted by the Respondent that he offered to sell the domain name to the Complainant. No person can sell

unless he has right over the property which he intends to sell. Therefore the Respondent has not proved that the registration was not done in bad faith and that he had no other intention but to sell the same. Furthermore the respondent has submitted that he has not used the name as he is aware that infringe the rights of the Complainant.

Considering all facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant to the transfer of the said domain name **hartz.in** in its favour.


NIKILESH RAMACHANDRAN
ARBITRATOR

DATED : 16th August 2007