

1. The Parties

The Complainant in this administrative proceeding is President, the Daisy Forum of India, 486, Double Story, New Rajinder Nagar, New Delhi-110060. The Complainant is represented by Amar Jain, M2/5, 3rd Floor, Model Town 3, Delhi-110009. (Email: amarjain@amarjain.com, Phone: +91-9892622230). The Respondent is Maxim Filippov, 94 Evans Ave, Toronto, ON, M6S 3V8, Toronto , Postcode/Zip Code-680032 (Email: silurio@yandex.ru, phone: 1.9625015643).

2. Domain Name and Registrar

- (i) The disputed domain name is <sugamyapustakalya.in>.
- (ii) The Registrar with whom the domain name is registered is NameSilo LLC.

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure("the Rules") which were approved on June 28,2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

On December 26, 2023, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on December 26, 2023 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on December 27, 2023 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit any response to the arbitration notice issued through email dated 27.12.2023 within the stipulated time. The Respondent was further given 5 (Five) days, through email dated 08.01.2024, further time to submit his response to the arbitration notice. The Complainant also failed to submit the proof of delivery of complaint to the Respondent by email/courier. The Complainant through email dated 08.01.2024, was further given 3 (three) days' time to submit



the proof of delivery of complaint to the Respondent. On 11.01.2024 the Complainant submitted proof of delivery of complaint to the Respondent through email/courier. The Respondent failed to submit any response to the arbitration notice issued through email dated 27.12.2023 even within the extended timeline. On 18.01.2024, the Respondent was given yet again one final opportunity to submit his response within five days but the Respondent did not submit any response to the arbitration notice sent through email dated 27.12.2023. The Respondent in fact has not submitted any response to the arbitration notice till date. On 18.01.2024, the Complainant was also directed to submit any additional documents, if any, in support of his contentions within five days but he preferred not to submit any additional information/documents.

4. Grounds for Administrative Proceedings

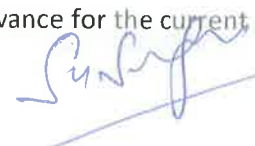
1. The disputed domain name is identical to the domain in which Complainant has rights.
2. The Respondent has no rights or legitimate interests in the disputed domain name.
3. The domain name was registered and is being used in bad faith.

5. Background of the Complainant

The Complainant submitted that the Complainant, Daisy Forum of India, is registered as a society under the Societies Registration Act, 1860 as applicable to the National Capital Territory of Delhi, having its registered office at 486, Double Storey, New Rajinder Nagar, New Delhi - 110060. The Complainant submitted that the Complainant is involved into making print material accessible/sugamya for divyangjan worldwide into various formats such as Braille, Large-Print, Daisy, E-pub, amongst others so that the same can be read by Persons With Disabilities. The Complainant further submitted that amongst other important works carried out by the Complainant, the Complainant interalia also engages in production and distribution of print material into accessible formats of Communication as defined under the Rights of Persons With Disabilities Act, 2016 (the "Act") and development of technologies so that the material can be read by Persons With Disabilities (as defined in the Act). The Complainant further submitted that through this noble cause, the Complainant supports a large number of Persons With Disabilities, especially with Blindness (as defined under the Act) for whom otherwise access to print material in an accessible format would have not



been possible. The Complainant further submitted that realizing the gap that lack of accessible material has on the persons with Disabilities' life, the Complainant and National Institute for the Empowerment of the Persons with Visual Disabilities (Divyangjan), Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India ("DEPWD") launched an online library of accessible materials under the domain. The Complainant further submitted that the Complainant also paid five years renewal cost to the Previous Registrar five years' renewal cost to the Previous Registrar upfront which demonstrates the willingness and wisdom of the Complainant to continue the humongous task of dissemination of accessible material through this online library. The Complainant further submitted that the Disputed Domain expired after the five years' period of renewal was completed as the email address that the Complainant had given had become non-functional and hence the Complainant was effectively unable to renew the Disputed Domain. The Complainant further submitted that the Complainant purchased the Disputed Domain i.e. www.sugamyapustakalaya.in from GoDaddy.com, LLC ("Previous Registrar"). The Complainant further submitted that soon after the Disputed Domain could not be renewed by the Complainant, the current Registrant bought the Disputed Domain and started disseminating objectional pornographic content and linked to various other websites which distributed objectional pornographic content. The Complainant further submitted that as soon as the Complainant realized that the Disputed Domain is being used for wider dissemination of pornographic content, bringing great dismay and disrespect to the aims and objectives for which the Disputed Domain was purchased, the Complainant immediately filed a Complaint with the Cyber Crime cell ("Cyber Crime Complaint"). The Complainant further submitted that the Complainant also wrote emails to the Secretary of Ministry of Electronics and Information Technology, Government of India as well as this Registry highlighting how the Disputed Domain was misused by the current Registrant. The Complainant further submitted that the current Registrant has no interest or right in the Disputed Domain, and the Disputed Domain has been used by the current Registrant with mala fides. The Complainant further submitted that the current Registrant is in breach of the representations and warranties which every Registrant is required to abide by as such representations and warranties are contained in the IN Domain Name Dispute Resolution Policy. The Complainant further submitted that the current Registrant is in breach of applicable laws of India namely; the Information Technology Act of 2000 as amended as the current Registrant has tried to disseminate pornographic content which is in breach of applicable laws of India. The Complainant further submitted that the current Registrant holds a Hindi domain name which is of no relevance for the current



Registrant. The Complainant further submitted that as this is a joint effort of the Complainant and the Government of India, it is only with an intent to bring disrepute to the Government of India the current Registrant has bought this domain and has been making gross misuse of the same. The Complainant further submitted that the Complainant contends that the current Registrant be prohibited from making use of the Disputed Domain in every possible manner, and that the Disputed Domain be transferred to the Complainant by passing an Arbitral Award in favour of the Complainant and that the registrar be directed to initiate the transfer of the Disputed Domain.

The Respondent

The Respondent is Maxim Filippov, 94 Evans Ave, Toronto, ON, M6S 3V8, Toronto, Postcode/Zip Code-680032 (Email: silurio@yandex.ru, phone: 1.9625015643). The Respondent has registered the domain name <SUGAMYAPUSTAKALYA.IN> on November 09, 2022.

6. Legal Grounds

A. The domain name <sugamyapustakalya.in> is identical to domain name in which the Complainant has rights.

Complainant's Contentions

The Complainant submitted that the Disputed Domain expired after the five years' period of renewal was completed as the email address that the Complainant had given had become non-functional and hence the Complainant was effectively unable to renew the Disputed Domain.

Respondent's Contentions

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

The Respondent's lack of rights or legitimate interest in the domain name.

Complainant's Contentions

The Complainant submitted that the current Registrant has no interest or right in the Disputed Domain, and the Disputed Domain has been used by the current Registrant with mala fides. The Complainant further submitted that the current Registrant holds a Hindi domain name which is of no relevance for the current Registrant.

Respondent's Contentions

The Respondent has failed to submit any response to the arbitration notice issued by this panel.



The domain name has been registered and used in bad faith.

The Complainant submitted that soon after the Disputed Domain could not be renewed by the Complainant, the current Registrant bought the Disputed Domain and started disseminating objectional pornographic content and linked to various other websites which distributed objectional pornographic content.

Respondent's Contentions

The Respondent has failed to submit any response to the arbitration notice issued by this panel.

DISCUSSION AND FINDINGS

The Complainant, Daisy Forum of India, claims to be involved into making print material accessible/sugamya for divyangjan worldwide into various formats such as Braille, Large-Print, Daisy, E-pub. The Complainant also claims to be engaged in production and distribution of print material into accessible formats so that the material can be read by Persons With Disabilities. The Complainant also claims that the Complainant with association of Government institutions launched an online library of accessible materials under the domain. The Complainant has not substantiated any of his claim with supporting documents/evidences. The disputed domain name <sugamyapustakalya.in> was registered by Mr Prashant Verma on 11.8.2016 and his association with the Complainant is not established. The disputed domain was renewed by Mr Prashant Verma on 07.08.2017 for a period of 5 years which could not be renewed further and domain expired on 07.08.2022. The disputed domain was purchased in 09.11.2022 after almost three months. The Complainant has not submitted any evidence to establish that the Complainant was hosting website for persons with disability as claimed by him. The Complainant contentions, that the disputed domain name is used to distribute pornographic contents, is also devoid of any evidence. This panel also takes notice of the fact that the Complainant has sent complaint to cybercrime cell and ministry.

Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

“ In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present



their case.”

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

“In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law.”

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant’s contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator’s decision is based upon the Complainant’s assertions, evidence and inferences as the respondent has not replied.

The domain name <sugamyapustakalya.in> is identical to domain name in which the Complainant has rights.

The Complainant has not been able to prove that it has rights in disputed domain name <sugamyapustakalya.in> by submitting substantial documents. The disputed domain was purchased by Mr Prashant Verma whose association with the Complainant is not established. The disputed domain name expired on 07.08.2022 due to non-renewal of the domain and it was subsequently purchased by the Respondent after more than three months. According to .IN Registry Domain Life Cycle “The domain needs to be renewed within a period of 45 days after expiry date of domain. If the domain is deleted by the Registrar during this period, the domain is still eligible for restoration within further period of 30 days from the date of deletion by the Registrar. After another period of final hold period of 5 days, the domain is available for re-registration.” The Complainant should have been vigilant regarding renewal of the disputed domain well before expiry date of the disputed domain name. The Respondent registered the disputed domain name only after it was available for reregistration.

Based on the forgoing analysis, I am of the opinion that the disputed domain name is identical but the Complainant has no right in the disputed domain.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has not been able to prove by submitting evidences that it has right or interest in the disputed domain < sugamyapustakalya.in>. The Complainant should have come forward by submitting documents to establish that it has right and legitimate interest in the disputed domain.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Complainant has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered or is being used in bad faith

The Complainant has not submitted any evidence to establish that the disputed domain name <sugamyapustakalya.in> was used to distribute pornographic contents. In absence of any evidence, it is not possible for this panel to infer that the disputed domain was used in bad faith.

In view of the above, I am of the opinion that registration of disputed domain name is not being used in bad faith.



Decision

Based on the submissions of the Complainant, the attached documents, and in view of the above read with all the facts of the present case, the Complainant's contentions are not tenable. The Complainant has not been able to substantiate his contentions by supporting evidences. The Complainant should have come forward with documentary evidences to prove his contentions. The previous registrant of the disputed domain name does not have any association with the Complainant. The disputed domain name expired due to its non- renewal and it was purchased by the Respondent only when it was available for re-registration. There is no evidence on record to establish that disputed domain name is used to distribute pornographic contents.

In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical to the Complainant's domain. The Complainant does not have rights or legitimate interest in the disputed domain name and disputed domain name was not registered in bad faith.

In accordance with the Policy and Rules, the complaint of the Complainant is hereby dismissed. In view of the forgoing, the Disputed Domain name <SUGAMYAPUSTAKALAYA.IN> cannot be transferred to the Complainant. However the Complainant may submit afresh to NIXI with supporting evidence to claim the disputed domain name.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

February 01, 2024


Sudhir Kumar Sengar 1/2/24

SOLE ARBITRATOR