

Bond



**Indian-Non Judicial Stamp
Haryana Government**



Date: 03/08/2016

Certificate No. G0C2016H5757



Stamp Duty Paid : ₹ 100

(Rs. Hundred Only)

GRN No. 20093326



Penalty : ₹ 0

(Rs. Zero Only)

Seller Detail

Name : Rna Ip Attorneys

H.No/Floor : Na

Sector/Ward : Na

Landmark : Sec 65

City/Village : Gurgaon

District : Gurgaon

State : Haryana

Phone : 9910074336



Purpose : OTHERS

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RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Nowfloats Technologies Pvt. Ltd.
5D, Ten Madhapur, Plot no. 10,
Sector-1, Madhapur, Hyderabad – 500 081

.....Complainant

Ajit Singh
97, Matke Wali Gali,
Jwala Heri Market, Paschim Vihar
New Delhi – 110 063

Also at :

90, Matke Wali Gali
Jwala Heri Market,
Paschim Vihar, New Delhi – 110 063

..... Respondent

Disputed Domain Name: www.NowFloats.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Nowfloats Technologies Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its registered office at 5D, Ten Madhapur, Plot no. 10, Sector-1, Madhapur, Hyderabad – 500 081. The Complainant is represented by its authorized representatives Bharucha & Partners, of Cecil Court, 4th Floor, M.K Bhushan Marg, Colaba, Mumbai – 400 039.

The Respondent in this arbitration proceeding is Ajit Singh at 97, Matke Wali Gali, Jwala Heri Market, Paschim Vihar, New Delhi – 110 063 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.NowFloats.in. The Registrar is Crazy Domains FZ-LLC (R160AFIN).

The Registrant is Ajit Singh at 97, Matke Wali Gali, Jwala Heri Market, Paschim Vihar, New Delhi – 110 063

3) Procedural History:

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 pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules 2(a), 4(a) and 4(b), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.



The complaint was produced before the Arbitrator on June 9, 2016 and the notice was issued to the Respondent on June 10, 2016 at his email address with a deadline of 10 days to submit his reply to the arbitration. As the Respondent did not submit any response. Vide email dated June 20, 2016 the Arbitrator granted further opportunity to the Respondent to submit its response on or before June 28, 2016.

The Respondent submitted its response on June 23, 2016. On June 28, 2016 the Arbitrator called upon the Complainant to file its Rejoinder in response to the Respondent's reply within deadline period of 10 days or not later than July 8, 2016. As the Complainant did not submit any response. Vide email dated July 11, 2016 the Arbitrator granted further opportunity to the Complainant to submit its response on or before July 13, 2016. The Complainant submitted its rejoinder vide email dated July 11, 2016.

In view of the above, the complaint is being decided based on materials and evidence submitted by both the parties and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to Complainant's trademark;
- B. The Respondent has no rights or legitimate interests in respect of the domain name;
- C. The domain name has been registered or is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of his case has made the following submissions

- Since October 2011, the Complainant's website NowFloats.com has provided *inter alia* the following services under its brand such that the same is identified with the Complainant's brand. The brand domain name 'NowFloats.com' has come to be solely associated with the Complainant and none else. The Complainant has established its reputation through its 'NowFloats.com' brand and has extensive coverage of its products and services. NowFloats.com provides *inter alia*:
 - a. the following products which help in automating organic and inorganic online discovery across various customer segments:
 - i. NowFloats LightHouse;
 - ii. NowFloats WildFire;
 - iii. NowFloats Boost; and



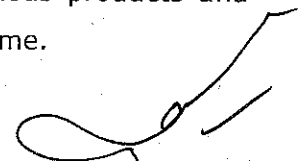
iv. NowFloats Dictate

b. the following services which help optimizing its clients' websites so as to boost customer attraction and customer retention:

- i. website design
- ii. online/digital marketing for business
- iii. boosting online discovery;
- iv. allowing for Google Places integration;
- v. getting customers locally by using location-based SEO;
- vi. providing .com domain or links to existing sites;
- vii. generating unique leads
- viii. marrying location-specific and mobile-specific algorithms to help local businesses create and manage their SEO optimized websites via SMS;
- ix. marketing and promoting of websites even without access to the internet or a computer;
- x. instant promotion of websites;
- xi. providing an analytics dashboard;
- xii. synchronising social sharing like providing Facebook updates; and
- xiii. providing new features like NowFloats Dictate- where a representative gets in touch with their clients to get the latest updates to build content on their websites.

c. a highly advanced platform for online marketing/digital marketing, that has built a client base of over 250,000 businesses since its launch in 2012 in India.

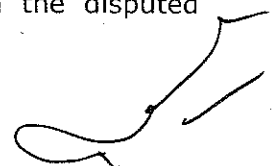
- The Complainant's brand and services have been widely and consistently recognized as is evident by the following prestigious awards won by NowFloats.com over the years inerta Microsoft BizSpark2012 Startup Winner, Nasscom Emerge50 2013 Start-ups to name a few.
- The Complainant's also submit that as per the analytical data, NowFloats.com served as many as 3.6 million visitors/users and has had approximately 10.4 million views over its lifetime. Moreover NowFloats.com has over 250,000 registered users, till date; due to NowFloats.com's unique instant posts/updates features, NowFloats.com (along with its various products and services) is being utilized by about 150 users at any given time.



- On December 2014, NowFloats.com raised Series A funding from Omidyar Network, Blume Ventures, Mumbai Angels, and Hyderabad Angels of approximately \$1,500,000. The investment now establishes the Complainant as an undisputed leader of the Indian online/digital marketing portals, with increased access to new-age and patented technology.
- The Complainant is the owner of diverse domain names including NowFloats.com and NowFloats.org (and was the owner of NowFloats.in till 2014) which are accessible across the globe to any person with an internet connection. Inadvertently, the Complainant neglected to renew the registration for NowFloats.in and the same expired on December 21, 2014. Clearly the Complainant's brand 'NowFloats.com' is more than 'well-known' and is as such exclusively associated with the Complainant's products and services.
- The Complainant has filed applications for registration of its trade/service marks "FLOATS" and "NOWFLOATS" (falling within the "NowFloats.com" brand) across Class 35 of the Fourth Schedule to the Trade Marks Rules, 2002 with the Trade Marks Registry in Delhi as well as Chennai.
- The Complainant has also filed diverse applications for registration of copyrights for 'FLOATING POINT', i.e- the NowFloats Business Process for creating Location-based Mobile Digital Presence; 'NOWFLOATS IDEA & ALGORITHM'; and 'NOWFLOATS DESIGN' (falling within the "NowFloats.com" brand) with the Registrar of Copyrights, New Delhi. The copyright applications are in various stages of registration.
- Further, the Complainant has filed diverse applications for patents of its various unique systems and methods including inter alia a System and Method for creating Floating Points; a System for Location Based Engagement; and a System and Method for Creating Location Pulse Graph (falling within the "NowFloats.com" brand) before the Controller of Patents, Chennai.
- The Complainant submits that clearly the Complainant's trade/service mark 'NowFloats.com' is now acknowledged as more than a 'well-known' mark, and is as such exclusively associated with the Complainant's services. This is evident from a bare search of the word 'NowFloats' on any popular search engine. The same will reveal that almost all references in the initial search results refer to the Complainant and none else.

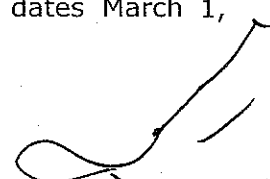


- The Complainant further submitted that it is evident from a bare perusal of the disputed Domain that the same is identical and/or confusingly similar to the Complainant's brand and domain since it uses the very same name as the Complainant's well-known brand. Taking advantage of the Complainant's inadvertent omission to renew its domain 'NowFloats.in' in 2014 and unbeknown to the Complainant, the Respondent underhandedly acquired the disputed Domain in 2015 primarily for the purpose of selling and/ or transferring the disputed Domain back to the Complainant (the owner of the trade mark) for a profit.
 - The name 'NowFloats.in', so named and registered in 2015 by the Respondent, was in fact the Complainant's domain name till 2014, purports to provide the same services as the Complainant under the same name, and is clearly using the exact same shade of orange in its branding efforts. Not only is the name 'NowFloats.in' identical and/or confusingly similar to the Complainant's domain 'NowFloats.com', launched way back in 2012, but also by registering and seeking to use the same for purportedly providing the same services as the Complainant, the Respondent is clearly attempting to brazenly piggyback on the Complainant's goodwill and established reputation.
 - Pertinently, on January 30, 2016, the Complainant's representatives contacted the Respondent regarding the disputed Domain and brought the following to his attention:
 - a. that the disputed Domain is extremely similar to NowFloats.com and as such is an infringement of the Complainant's right in the same;
 - b. that the disputed Domain is likely to confuse the Complainant's customers and could result in the Complainant's customers being unintentionally directed away from NowFloats.com;
 - c. this unauthorized act could have disastrous effects on the Complainant's goodwill and reputation; and
 - d. in the interests of justice, the Respondent ought to cease and desist from using the disputed Domain with immediate effect.
5. In response, the Respondent indicated to the Complainant that he would consider the above request to cease and desist from using the disputed Domain. He also indicated that the 'owner' of the disputed Domain is one Mr. R.K. Yadav. Nevertheless, promptly thereafter, the Respondent pulled down the disputed



Domain in *ex facie* admission of his unauthorized infringement of the Complainant's brand.

- On February 12, 2016, a perusal of the disputed Domain, revealed that despite the Respondent's admissions and unbeknown to the Complainant, he has surreptitiously launched the same website once gain offering the same services, under cover of another domain i.e. WebFloats.com. In fact, upon entering the url: "nowfloats.in", one was directly lead to website of the WebFloats.com.
- Therefore, it is evident that there was absolutely no *bona fide* offering of goods or services by the respondent at any time on either of the domains. Further, the surreptitious and furtive manner in which the respondent has re-directed the website to yet another Domain is a clear reflection of his oblique motives and *malafides*.
- It is pertinent to note that the disputed Domain provides no services; and WebFloats.com admittedly provides online/digital marketing services to 80 companies, while the Complainant provides services to over 250,000 Companies at any given time.
- It is clear that the disputed Domain used by the Respondent since 2015, is solely to ride on the reputation and goodwill of the Complainant, who has been providing the services *bona fide* since 2012. The same is indicative of the fact that the Respondent is not only well aware of the fact that the disputed Domain is identical and/or similar to the Complainant's Domain, but is also taking advantage of this similarity to cause confusion in the minds of the unsuspecting public that will no doubt consider the disputed Domain as associated with the complainants brand and consequently free ride on its goodwill and reputation.
- The respondent's bald faced use of the disputed Domain reveals a clear case of the domain-squatting and there exists a definite possibility that the dispute Domain may be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade/service brand.
- Vide an email dated February 23, 2016, the Advocates on behalf of the Complainant served Cease and Desist Notice dated February 23, 2016, inter alia calling upon the Respondent to:
 - a. cease and desist from , in any manner, using the disputed Domain name;
 - b. apply for cancellation of the disputed Domain name; and
 - c. remove the contents of the website of the disputed Domain name.
- The Cease and desist Notice dated February 23,2016 was also subsequently served upon the respondent, by courier, on February 24,2016. That the Cease and desist Notice was delivered to the Respondent was confirmed by the delivered notification received by the Complainants Advocates dates March 1,



2016. Therefore, neither the Complainant nor its Advocates have received any response.

- By April, 2016, it appears that the Respondent, in any attempt to wriggle out of the liability foisted on it by the Cease and Desist Notice issued by the Advocates of the Complainant, shut down the disputed domain. Pertinently, it appears that the Respondent did not completely do away with their online presence as the Respondent's Google Business page and twitter handle are still accessible.
- Further, it appears that the Respondent refused to shut down WebFloats.com and the complaint has filed the necessary proceedings against the Respondent in respect of WebFoats.com; which is still pending adjudication.
- Moreover, it is clear that the Respondent's use of the disputed Domain is not in connection with a *bona fide* offering of goods or services. This is evident by the fact that the disputed Domain [a] was and continues to be unused by the Respondent; [b] was directly linked to WebFloats.com, days after speaking to the Complainant; and [c] was taken offline sometime thereafter. The same reveals that the Respondent is well aware of the fact that the disputed Domain is identical and/or similar to the complainants NewFloats.com Domain. The Respondent's surreptitious use of the disputed Domain through WebFloats.com further reflects that the Respondent's deliberate misuse of the disputed Domain.
- Further, it may be noted that the traffic on the website of the Disputed Domain is low that the same cannot even be tracked by programs such as SimilarWeb Pro which are specific programs designed to tract the amount of traffic on a website.
- The purpose behind creation of the .IN domain name was to establish it as globally "recognized symbol of India's growth in the field of Information Technology." Clearly therefore the Respondent has attempted to free-ride on the complainants goodwill and reputation. The Respondent has sought to squat/hoard the said with mala fide intent to the complainants detriment and prejudice.

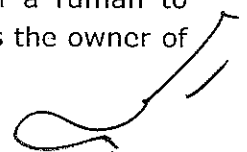
5) Summary of the Respondent's contentions:

The Respondent in support of his case has made the following submissions

- Respondent is a law abiding person and having legitimate interest in the said domain. Respondent's idea to launch "nowfloats.in", is to provide online social networking services platform to every individual of India in social up-liftment and strengthen the society and to say their own thoughts/suggestion on any/all burning issues of our country and to upload extraordinary biographical achievement apart from this; they may also remain associated with the people to whom they adore.



- The Respondent further submits that the Complainant has registered the Domain as www.NowFloats.com whereas the respondent has registered it as www.NowFloats.in. There is no similarity in the idea and modus operandii to complainant's domain as there is difference at large, more importantly difference of ideas. Complainant has falsely stated that the respondent is using his Domain without their authority, The complainant has no reason to look into the affairs of other Domain which is legally registered and running the business without any cause of concern to them.
- The Respondent submits that the Complainant has admitted that they inadvertently neglected to renew the registration for NowFloats.in which expired on December, 21, 2014. It indicates that despite claiming to be having so divergent business activities through the Domain NowFloats.com they had no intention to use this Domain NowFloats.in for more than one year. Had they needed this domain so desperately, which they are claiming now through this litigation, why they were so negligent to renew its registration on the due date. This callousness on their part is indicative of the fact that they had no need for this Domain. After the respondent registered it legally, they realized to monopolize this brand and are now trying to snatch it from the legal ownership of the respondent.
- The Respondent submits that the Complainant admitting for registration of various of their trade/service with various agencies for copyrights and patents. Strangely, they failed to realize the importance of registering NowFloats.in and did not elaborate the exact reasons for this neglect. They are victim of their own mistakes and now trying to harass the respondent by filing this frivolous complaint before this Tribunal.
- The Complainant is making wild and unfound allegations against the respondent that he acquired the Domain NowFloats.in underhandedly through the registering body. The complainant is thus casting aspersion on the registering body that such underhand activities are prevalent there. It is also indicative of the fact that the complainant could also be aware of such activities and indulged in the same to acquire such gains. The complainant further making false and weary accusation against the respondent that he acquired the Domain in question to sell it back to the complainant. The respondent has no such intention but the respondent is trying to make this Domain as disputed whereas legally there is no evidence that the Domain NowFloats.in is at all disputed. It is the sole and undisputed brand of the respondent and the complainant has no right to claim its ownership. The respondent has no desire to piggyback on self-proclaimed goodwill of the complainant.
- The Respondent mentioned that the Complainant has made false averments. However, it is a fact that their representative contacted the respondent over phone. The representative did not discuss any of the points mentioned in para 23 of the Complaint. Instead he used threatened language of a ruffian to forcibly get the Domain in question. It is a fact that R.K.Yadav is the owner of

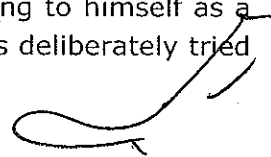


the Domain NowFloats.in. The respondent has no intention whatsoever to infringe on what the complainant is doing. The respondent is running his own business without any intention to harm the complainant.

- Allegations made by the complainant in para 28, 29 and 30 are unfounded and baseless. The respondent has no intention to judge what is the goodwill and reputation of the complainant. He is indulged in his own legal business activities for which the complainant has no reason to file this complaint before this Tribunal.
- The complainant sent the email on February 23, 2016. The respondent duly replied these notices vide his letter dated which they never acknowledged.
- The Respondent further clarified that the Respondent has no intention to sale the domain in question to the respondent. Further respondent is not aware about any processing initiated/pending by complainant in connection with webfloats.com.

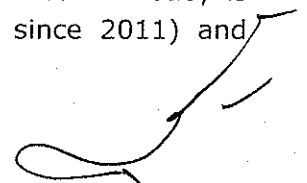
6) Summary of Rejoinder filed by Complainant

- The Complainant submits that they are in receipt of the undated, unexecuted Reply on behalf of the Respondent circulated by the Ld. Arbitrator on June 29, 2016.
- The Complainant vehemently objects to this Reply being taken on record in its present form. It is submitted that as per the Clause 3(b)(ix) of the Policy, either the Complainant or his representative / Advocate is required to affix his signature at the end of the Complaint; and similarly the Respondent ought to be held to the same standards.
- *Ex facie*, the document forwarded by the Ld. Arbitrator wrongly entitled "*Complaint before the Arbitration Panel*", referred to as the response of the Respondent, is merely a word document that remains unsigned by the Respondent and / or his Advocate, in violation of the Policy and the Rules framed thereunder. It has not even been purportedly typed on any letterhead, whatsoever. Both reply as well as Exhibit annexed with the reply appear to be drafts, and as such ought not to be taken on record.
- By commencing his online / digital marketing services in 2014, with a name identical and / or confusingly similar to the Complainant's domain, three years after the Complainant launched and registered his domain, clearly shows that the Respondent's conduct is nothing short of using the Complainant's reputation and goodwill.
- It is submitted that the Respondent has conveniently failed to mention that the fact that he is admittedly a "*Digital Marketing Advisor*". Referring to himself as a "web developer" through-out the pleadings, the Respondent has deliberately tried



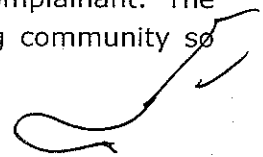
to portray himself as a mere web-developer who jumps from client to client building their sites.

- Since 2014, the Respondent, who is also the registrant of 'websitemaker.co.in', has been providing 'Digital Marketing Services'. According to the Respondent's Google plus Page and his Twitter feed, the Respondent is admittedly a "Digital Marketing Advisor", i.e. – the Respondent admittedly provides services in relation to online / digital marketing. This proves without a doubt, that the Respondent's services do not relate to social networking as is sought to be alleged; and in fact, are services in relation to online/digital marketing services. The Respondent denial of the same is a mere after-thought and a bald-faced attempt to back away from his own wrongdoings.
- Further, it is submitted that the Respondent's bald claim that the disputed Domain was a social networking platform, is evidently an after-thought, that is entirely unsubstantiated and no evidence has been furnished in support of the same. This conduct clearly demonstrates the Respondent's desperate attempts at falsifying, misrepresenting and mis-stating the facts before this Ld. Tribunal in order to snatch awards that it otherwise would not be entitled to.
- Further, it is submitted that the Respondent has chosen to suppress the material fact that the link to the website webfloats.com was included from the disputed Domain without any authority and / or consent of the Complainant.
- It is submitted that 'FLOATS' is a word in the English Language which carries with it a distinct meaning and clear connotations. Peculiarly and arbitrarily, the Complainant has adopted this word 'FLOATS' as the name for its online / digital marketing services.
- The Complainant's use of 'FLOATS' as its trademark is arbitrary, having no specific / established meaning particular to this trade prior to its adoption by the Complainant as a trademark; and further, it serves no other purpose that to identify the source, i.e. – the Complainant's goods and services. It is the arbitrary utilization of the common word 'FLOATS' by the Complainant in the field of online / digital marketing, that lends to this mark its most distinctive and distinguishing feature.
- Due to the Complainant's open, exclusive, continuous and extensive use of the trademarks "FLOATS" since its adoption by it in 2011, the word has become synonymous with the services of the Complainant and the public across the country associates the trademark and brand solely with our client. Further, use of 'NOWFLOATS', i.e. – 'FLOATS' with the prefix 'NOW', openly, exclusively, continuously and extensively by the Complainant since its adoption in 2011 further cements that the word 'FLOATS' has come to be synonymous with the Complainant in the field of online / digital marketing services.
- It is submitted that ex facie, the disputed Domain, so registered in 2015, is similar and / or identical to the Complainant's marks (used since 2011) and



domain name (registered in 2012). From a bare perusal it is abundantly clear that there is only a marginal difference between the domain names 'NowFloats.com' (Complainant's domain) and 'NowFloats.in' (disputed Domain), i.e. - the extensions '.com' vs. '.in'. That the consumers who visit the shops or purchase anything online are not always aware of the nuances and differences between the ccTLD ".in" and gTLD ".com". It is submitted that the average consumer today cannot easily identify the difference between '.com' and '.in' as the same is extremely meagre and not noticeable to the common man. The Respondent's contention that "*There is no similarity in the idea and modus operandii to complainant's domain as there is difference at large, more importantly difference of ideas*"

- The disputed Domain in no way distinguishes the Respondent's services from the Complainant's; and in fact, it purposefully associates the two. Not only is the name 'NowFloats.in' identical and / or confusingly similar to the Complainant's domain 'NowFloats.com', launched way back in 2011, but also by registering and seeking to use the same for purportedly providing the same services as the Complainant, the Respondent, a competitor, is clearly attempting to brazenly piggyback on the Complainant's goodwill and established reputation.
- It is submitted that the Respondent acquired the disputed Domain name with full knowledge of the Complainant's trade mark and with *mala fide* intent, and any contentions to the contrary such as the Respondent coined the domain name 'Nowfloats.in' unawares of the Complainant's brand and domain names are obfuscations intended to sway the Ld. Panel and denied. Further, the Respondent is neither himself known by the term 'floats' or 'nowfloats'; nor had he ever used the term 'floats' himself in relation to any marketing services provided by him. Unmistakably, the Respondent is attempting to free ride on the Complainant's goodwill and reputation.
- The Respondent is a competitor of the Complainant, who jumped on the opportunity to grab the Complainant's lapsed domain, is plainly evident. Further, from the fact that the Respondent [a] purported to offer the same services as the Complainant; and [b] upon receiving the Notice, linked the disputed Domain to another identical and / or confusingly similar domain offering the same exact services, it is more than evident that the Respondent has no legitimate interests or rights in the disputed Domain name and is merely squatting on the same. The Respondent has neither denied these submissions in his Reply, nor adduced any evidence to the contrary.
- The Respondent knew of the reputation and goodwill that the Complainant had established in this name and registered the disputed domain name with knowledge of the Complainant's rights and reputation. Under these circumstances, it cannot be concluded that the Respondent is offering bona fide goods or services or making a "fair" use of the disputed domain name when the goods and services that the Respondent intends to offer using the disputed domain name are in direct competition with those of the Complainant. The intention appears to be to cause confusion amongst the gaming community so

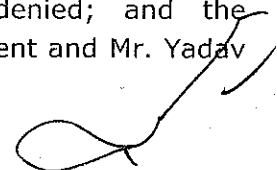


that those who are interested in the Complainant's services are diverted to a web site of the Respondent or a competitor of the Complainant."

- The Respondent's contention that he has a legitimate interest in the disputed Domain is denied. The suggestion that the Respondent's idea to use the name 'NowFloats.in' in reference to his to-be launched social networking platform because the Respondent "*thought of this name now you float your idea and suggestion*" is absurd, patently false, and denied. That this submission is an after-thought is clear from the fact that this was never mentioned by the Respondent during the phone call between the Complainant and the Respondent.
- The Respondent's claim that "Respondent's Idea to launch "nowfloats.in", is to provide online social networking services platform to every individual of India in social up-liftment and strengthen the society and to say their own thoughts/suggestion on any/all burning issues of our country and to upload extraordinary biographical achievement apart from this; they may also remain associated with the people to whom they adore" is baseless, unsubstantiated, patently false, and extremely verbose; and in any event, is denied.
- It is denied that the "*complainant is trying to confuse the issue*". That 'NowFloats.in', the disputed Domain, is identical and / or confusingly similar to the Complainant's domain, 'NowFloats.com' is undeniable, and is well-settled. Admittedly, the only difference between 'NowFloats.com' and the disputed Domain is the difference between '.com' and 'in'. The Respondent's contention that "there is no similarity in the idea and modus operandii to complainant's domain as there is difference at large, more importantly difference of ideas" is proved false on a bare perusal of the names of the two domains.
- The Complainant submitted that the fact that the Complainant has admitted its inadvertent error is not renewing the domain name, indicates that the Complainant has approached this Panel with clean hands and with the *bona fide* intent to protect its rights and interests; and any contentions to the contrary are denied.
- It is denied that the Complainant is trying to create a monopoly of any nature whatsoever. It is submitted that the Complainant is seeking protection of the marks 'FLOATS' and 'NOWFLOATS', and thus, of its brand 'NowFloats'.
- The Respondent has not denied that 'NowFloats.com' has been in continuous use or that the public across the country as such associates 'NowFloats' exclusively with the Complainant or that the Complainant's trade / service marks are now acknowledged as more than a 'well-known'; and the same is noted. Further, that the Respondent has not denied that the 'NowFloats.com' brand has created substantial brand value and generated immense goodwill for the Complainant and the Complainant has taken adequate steps to protect its right title and interest thereto, is noted as well.



- It is further stated that the Respondent's allegations that the Complainant's representative used "*threatened language of a ruffian to forcibly get the Domain in question*" is baseless, unsubstantiated, and denied *in toto*. Further the submission that "*It is a fact that R.K.Yadav is the owner of the Domain NowFloats.in.*" is a repetition of the statement made verbally by the Respondent and does not in any manner substantiate the Respondent's right, title and / or interest in the disputed Domain; and in any event, is denied in the absence of any evidence of the same.
- The Complainant further stated that it is noted that the Respondent had received the Notice as sent by the Advocates of the Complainant. It is vehemently denied that the Respondent ever replied to the same. It is denied that the alleged reply was ever delivered to the Advocates of the Complainant or to the Complainant; let alone that acknowledgment of the delivery was refused.
- It is denied that the Notice "is colourable exercise to harass and blackmail" the Respondent and the contention that it "is wrong, baseless and based on misleading facts with ulterior motive" is also denied. In fact, the Complaint has produced substantial evidence in support of its case, whereas it is the Respondent who has produced no evidence, whatsoever. The Complainant's request that the Respondent "should transfer his domain" is a valid one given the circumstances; and the contention that the same "is smacking, sheer threat which tantamount to act of crime on your client's part" is absurd, patently false and denied. The contention that "being reputed legal experts, it is extremely in bad taste that you wrote the language of the above mentioned notice implying to threat him to stop his business" is another brazen and unsubstantiated allegation; and is in any event, denied.
- The submission that the Respondent was "genuinely not aware" about the Complainant's domain is false to his own knowledge. Admittedly, the Respondent is a competitor of the Complainant as the two operate in the same sphere of online / digital marketing services. Pertinently, the Complainant first offered the online / digital marketing services through its domain 'NowFloats.com' in 2012; while admittedly the Respondent's online / digital marketing services were first offered by him in 2014.
- It is submitted that the Respondent never even invited the Complainant and / or its Representative to have a discussion let alone "requested" it to do so. The statement that "*if there is anything impugned and resolve this issue*" is laughable. Immediately after the said phone call, the Respondent linked the disputed Domain to webfloats.com, in an admission that there was something "*impugn*" which needed to be resolved.
- It is denied that "*my client is visionary and to float his own vision in the virtual and physical world, he has registered this domain*", and the Respondent is put to the strict proof thereof. That the Respondent has invested time and money, is merely a baseless, unsubstantiated submission and is denied; and the Respondent is put to the strict proof thereof. That the Respondent and Mr. Yadav



have invested "*their emotion and concern*" is also unsubstantiated and irrelevant and merits no response.

- It is denied that the Respondent was ever genuinely open to discussing and settling the matter, and it is denied that he is "still" so open. In fact, it is submitted that had he been, the Respondent himself would have contacted the Complainant via email or phone; or at least replied to the said Notice within a timely manner.
- It is denied that the Respondent has obtained the disputed Domain name genuinely, in good faith and with legitimately interest in it. It is denied that no document in support of the same has been annexed. In fact, the Whois Lookup for the disputed Domain reveals that the Complainant was the prior owner of the disputed Domain until 2014.

7) Discussion and Findings:

Based on the elaborate submissions and documents submitted by both the sides, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below.

- (1) the Respondent's domain name is identical or confusingly similar to the Complainant's trademark in which he has rights;

The submissions and documents provided by Complainant supports that the Complainant is providing the online marketing/digital marketing, that has built a client base of over 2,50,000 businesses since its launch in 2012 in India. The Complainant has provided various documents to support their case. Further, the Complainant has filed diverse applications for registrations of its trade/service marks, copyright registrations and Patent and filed supporting documents. Also, the Complainant has secured domain registrations for NowFloats formatted marks such as NowFloats.com and NowFloats.org (and was the owner of NowFloats.in till 2014).

Therefore, the Complainant has statutory and common law trademark rights in the mark NowFloats and therefore the next consideration is whether the domain name <www.NowFloats.in> is identical to or confusingly similar with Complainant's mark.

For a domain name to be regarded as confusingly similar to the complainant's trademark; there must be a risk that Internet users may actually believe there to be a real connection between the domain name and the complainant and/or its goods and services. This risk can be assessed keeping in mind, factors such as the overall impression created by the domain name, letters or numbers in the domain name additional to the relied-upon mark, etc. The applicable top-level domain (e.g., ".com", ".in" wherein .in is the Internet country code top-level domain (ccTLD) for India) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration). In view of the

above, the disputed domain name www.NowFloats.in is identical to the Complainant's domain name www.NowFloats.com

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

While the overall burden of proof rests with the Complainant to prove that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a Complainant is generally deemed to have satisfied paragraph 4(ii) of the INDRP policy.

Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Names which includes (i) 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; (ii) 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 (iii) 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.

*In **Yahoo! Inc., v. Silicon City and Osama Al-Ayoub Case No. D2000-1711**, the Panel noted that Paragraph 4 (c) (i) of the Uniform Policy recognizes the use, prior to a Complaint, of a Domain Name in connection with a bona fide offering of goods or services; however that clearly does not legitimise an otherwise non-legitimate use of a Domain Name. Evaluation of all of the evidence in the present matter, including the adoption of a Domain Name confusingly similar to that of a well-known corporation and competitor, leads the Administrative Panel to the conclusion that any purported offering of goods or services was superficial, part of an overall scheme of bad faith use of the Domain Name, and not bona fide. In respect of Paragraph 4 (c) (ii) of the Uniform Policy there is no evidence that the Respondent as an individual or as a business has been commonly known by the disputed Domain Name. The Respondent's submission includes reference to an "investment" of \$US 5000 in development of the site, and to the presentation or hosting of auctions, car dealers, real estate and other activities of a commercial nature on the disputed website. Notwithstanding the appearance of a "non-profit" disclaimer on later versions of the disputed web site, the only realistic interpretation of the evidence is that the Respondent created the site as a skeleton commercial operation for sale as a going concern. In respect of Paragraph 4 (c) (iii) of the Uniform Policy there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the Domain Name. While acknowledging that the circumstances listed under Uniform Policy Paragraph 4 (c) are without limitation, the Administrative Panel finds that the*

Respondent does not have any rights or legitimate interest in the Domain Name. The Complainant succeeds under Paragraph 4 (a) (ii) of the Uniform Policy."

The Respondent has asserted that there is no similarity between Complainant's domain www.NowFloats.com and Respondent's domain www.NowFloats.in and the idea and modus operandii to complainant's domain as there is difference at large, more importantly difference of ideas.

In the Arbitrator's view, the Respondent being in the same line of business, though they have claimed that they are providing a social networking platform however, seems like an after-thought as the claim is entirely unsubstantiated and no evidence has been furnished in support of the same. Further, it is hard to believe that the Respondent was not aware of the Complainant's rights and use of the NowFloats mark. Therefore, registration of a confusingly similar domain by the Respondent in respect of similar services, seems to suggest that the Respondent's such act was to benefit from the fame of the Complainant's prior existing mark.

Therefore, even though the Respondent may have been using the subject domain name for offering bonafide services, such use clearly does not legitimise an otherwise non-legitimate use of a Domain Name which is confusingly similar to a prior well established trade mark of the Complainant.

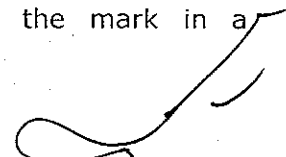
Moreover, the Respondent is making commercial use of the disputed domain name therefore there is no non-commercial fair use of the subject domain so as to attract exception under Paragraph 7(iii) outlined above. Based on the above, I find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3) the domain name has been registered in bad faith.

Paragraph 6 of the INDRP policy states that "**Evidence of Registration and use of Domain Name in Bad Faith-** For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that 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 trademark 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; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a



corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

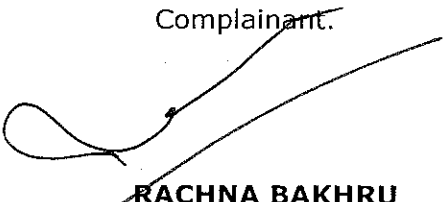
Based on prior adoption, use and various trademark and domain name registrations of NowFloats and NowFloats formatted marks, it is believed that the Respondent was well aware of the Complainant's business, its products and services, its reputation and rights in the trade mark NowFloats.

Further, it is pertinent to mention that the services covered by both Complainant and Respondent are overlapping i.e. offering online/digital marketing for business. Therefore, the Arbitrator is of the view that the registration of a confusingly similar domain name <NowFloats.in> for offering similar services as that of the Complainant seems to be in bad faith with a view to attract web traffic and create confusion with the Complainant's name or mark.

Therefore, in my opinion, the circumstance provided in Paragraph 6(iii) is also present.

8. Decision:

In view of the foregoing, I am convinced that the Complainant has made its case and the complaint is accordingly allowed. The Respondent's domain name www.NowFloats.in is confusingly similar to the Complainant's trademark NowFloats in which it has statutory and common law rights. Thus, the registration of the disputed domain name in which the Respondent has no legitimate rights was registered in bad faith. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.NowFloats.in be transferred to the Complainant.



**RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA**

August 9, 2016