



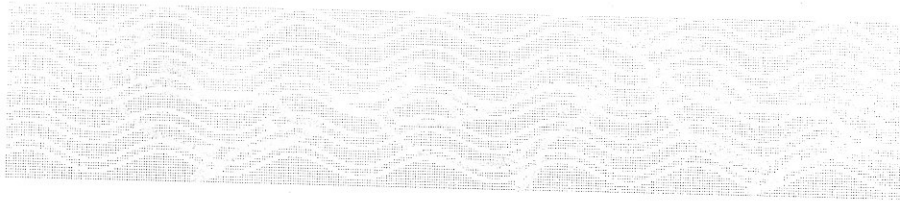
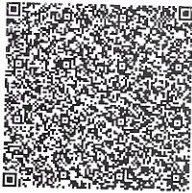
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## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL99449295552392R
Certificate Issued Date	: 06-Jun-2019 04:02 PM
Account Reference	: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730304486545907124R
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA  
6C, 6D, 6E, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110 001

APPTIO, Inc., v. Kenneth Palo

*V K Agarwal*

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## AWARD

### 1. The Parties

The Complainant is APPTIO, Inc., 11100 NE 8<sup>th</sup> Street, Suite 600, Bellevue, Washington 98004, United States of America

The Respondent is Mr. Kenneth Palo, 4203, Maple Court, Risco, Missouri 63874, United States of America.

### 2. The Domain Name and Registrar

The disputed domain name is <www.APPTIO.CO.IN>. The said domain name is registered with Endurance Domains Technology, LLP. As per Whois, the details of registration of the disputed domain name are as follows:

- |                       |                          |
|-----------------------|--------------------------|
| (a) Domain ID:        | D8064319 - IN            |
| (b) Registrar URL:    | publicdomainregistry.com |
| (c) Date of creation: | January 21, 2014         |
| (d) Expiry date:      | January 21, 2020         |

### 3. Procedural History

- (a) A Complaint dated May 09, 2019 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 1. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has





submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (b) In accordance with the Policy and the Rules, an attempt was made to send a copy of the Complaint to the Respondent on the e mail address given in the Complaint, that is, kenpalo@outlook.com. However, no response has been received. Hence, the present proceedings have to be ex parte.

#### **4. Factual Background**

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant is a company existing and incorporated in the United States of America in the year 2007.

According to the Complaint, the Complainant is engaged in the business of "Technology Business Management" ("TBM") software and provider of cloud based TBM tools and solutions in the information technology "(IT)" industry.

The Complainant provides services to customers in a wide verity of industries through a cloud-based platform containing a suite of powerful software as a service ("SaaS") applications which enable chief information officers and IT professionals to analyze, optimize and plan technology of their company's investments as well as benchmark financial and operational performance against their peers.

The Complainant has business operations through 16 offices located in 11 countries of the world. According to the Complaint, the Complainant's customer base spans a broad spectrum of industries, including financial services, professional services, technology, energy, consumer goods, manufacturing, healthcare, media, retail, transportation and various state and federal government agencies.

Further that, the Complainant has received many awards and accolades for its TBM products and services which are availed by the topmost global

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brands in the world.

According to the Complaint, in India, the Complainant is developing a presence with broad ranging products and capabilities. The Complainant's capabilities include engineering, IT support, product management, business analysis, customer support and professional services. The Complainant has recently registered Apptio India LLP with the Corporate authorities.

### **Respondent's Identity and Activities**

The Respondent's activities are not known as no response has been received from the Respondent.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the Complainant has obtained the registration of the trademark "APPTIO" since 2007. The word "APPTIO" is an invented word and inherently distinctive. The said trademark is registered in many countries including Australia, European Union, Singapore, United States of America, etc. It is registered in Classes 9, 41 and 42. The public and traders use the trademark "APPTIO" exclusively to refer to the Complainant's services.

The Complainant has obtained the domain name registration for <www.apptio.com> on September 25, 2007. The Complainant is also the registrant and proprietor of various domain name registrations at international and domestic levels incorporating the designation APPTIO. Some such illustrations are as follows: <www.appt.io>; <www.apptio-  
aus.com>; <www.apptio-lab.com>; <www.apptio-poc.com>;  
<www.apptio-test.com>; <www.apptio.biz>; <www.apptio.ch>; <www.  
apptio.co.uk>; <www.apptio.de>; <www.apptio.education>; <www.  
apptio.fr>; etc.

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The Complainant contends that the disputed domain name contains the registered trademark of the Complainant, that is, APPTIO. The addition of the generic words "co" or "in" in a domain name is insignificant. They do not lead to any distinctiveness or reduce the similarity to the trademark "APPTIO" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the services offered under the disputed domain name from the Complainant. Further that, they do not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the services rendered by the Complainant.

It is critical especially, because the Complainant has recently commenced operations in India and the consumers will mistakenly be redirected to the Respondent's website which uses the identical domain name [www.apptio.co.in](http://www.apptio.co.in) believing that it belongs to the Complainant.

Therefore, the Complainant contends that the disputed domain name is identical and/or confusingly similar to their registered trademark 'APPTIO'.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "APPTIO". The Respondent does not own any trademark registration as "APPTIO" or a mark that incorporates the expression APPTIO. The Respondent has no license or authorization or permission from the Complainant to either use the designation APPTIO or to register the disputed domain name. The Respondent does not have any *bona fide* reasons to adopt the domain name which is identical to the trademark of the Complainant.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed domain name in bad faith and for its

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actual use in bad faith. The main object of registering the domain name <www.apptio.co.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has registered the disputed domain name on January 21, 2014 but has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services.

Further, the Respondent offer the disputed domain name for sale to the Complainant at a very high cost through the brokering service, GoDaddy.com. This clearly demonstrates that the Respondent has registered the domain name solely with an intention to derive undue pecuniary benefit from the Complainant and not for any genuine or legitimate use.

The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

#### **B. Respondent**

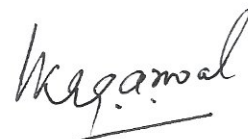
The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.apptio.co.in> or any trademark right, domain name right or contractual right.

#### **6. Discussion and Findings**

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;



- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

*A. Identical or Confusingly Similar*

The disputed domain name <apptio.co.in.> was registered by the Respondent on January 21, 2014. The registration of the said disputed domain name is due to expire on January 21, 2020. It is not known as to why the Complainant has not taken action for the last 5 years.

The Complainant is an owner of the registered trademark "APPTIO". The Complainant is also the owner of a large number of domains with the trademark APPTIO as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <apptio.co.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for APPTIO products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.apptio.co.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

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*B. Rights or Legitimate Interests*

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Kenneth Palo. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "APPTIO" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

*C. Registered and Used in Bad Faith*

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Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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's 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

Further, as has been mentioned above, if there are 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, it will amount to the registration or use of the domain name in bad faith.

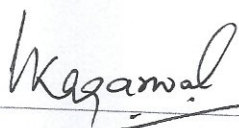
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In the present case, the Complainant had approached a broking service, GoDaddy.com, LLC to request the Respondent to transfer the disputed domain name to the Complainant. The Respondent had asked the Complainant to pay an exorbitant amount to transfer the domain name to the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

## 7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.apptio.co.in> be transferred to the Complainant.



Vinod K. Agarwal  
Sole Arbitrator

Date: ~~May~~ 10, 2019

June  
