



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL05444976260754L
Certificate Issued Date : 20-Apr-2013 11:20 AM
Account Reference : IMPACC (IV)/ dl717003/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71700310315242319237L
Purchased by : V SHRIVASTAV
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : V SHRIVASTAV
Second Party : NA
Stamp Duty Paid By : V SHRIVASTAV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"ganeshxerox.in"

between

XEROX CORPORATION

...COMPLAINANT

AND

MANI KANNAN

...RESPONDENT

AWARD

1

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 25/03/2013. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents and also there was no Power of Attorney/ Board Resolution of Complainant Corporation in favour of Mr.Manish Gupta, the person who has affixed his signatures on the Complaint. Further, one Law Firm M/s Fidus Law Chambers had been mentioned but no Vakalatnama or PoA was annexed. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier and also send a duly authorized Power of Attorney in favour of Mr.Manish Gupta, along with a Vakalatnama / PoA of M/s Fidus Law Chambers.

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2. That compliance of the order was done by the Complainants vide their letter dated 01/04/2013 by email and sent the hard copy by courier received on 04/04/2013 which had a courier receipt dated 02/04/2013 of M/s Blue Dart waybill No.13816144650. On tracking it showed " Consignee's address incomplete & contact customer service" by the courier company. Hence, this Tribunal vide order dated 05/04/2013 directed the Respondent to send their correct and complete postal address within 3 days by email.
3. That this Tribunal noticed that the Respondents have not sent any email / communication notifying their new address hence on 11/04/2013 vide its order the Tribunal reserved the order.
4. In view of this, this Tribunal holds that the Respondents are fully aware of the present proceedings and are deliberately not joining the same.

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5. In view of these peculiar facts and circumstances of the present matter and also in view of INDRP this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant, Xerox Corporation, is a company incorporated under the laws of USA, having its principal place of business at 45 Glover Avenue, Norwalk, Connecticut 06856-4505, USA and that Mr. Manish Gupta is the authorised signatory for the Complainant. That it is further stated that the Complainant is a US\$22 billion technology and services Fortune 500 company with operations spread over more than 160 countries and 140,000 employees worldwide offering pre-eminent and widely accepted array of innovative document solutions, services and systems, including photocopiers, printers, digital presses, publishing systems, facsimile machines, multifunction devices, toners, paper, ink,

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associated supplies, software and support specially designed for office and production printing environments. It is also claimed that the Complainant's business globally is carried out under its well-known and iconic trademark/trade name 'XEROX' and its association with the trademark XEROX dates back to the year 1948 when no such word was known or in use. Ever since its adoption, the Complainant has extensively and continuously used the said trademark worldwide, including in India, where it has directly carried out operations through its Indian subsidiary, Xerox India Limited, since 1983.

B. It is further claimed that the Complainant also operates the website <http://www.xerox.com> from the United States and accessible around the world and has held and operated the said domain name since January 9, 1986 besides having registered / pending registration trade marks globally. Reliance is placed on **Annexure-A and Annexure B** Colly.

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C. It is alleged that around the month of August, 2012, the Complainant was made aware of the existence of domain name <http://www.ganeshxerox.in> and on visiting this website, the Complainant noted that the said URL redirects to another website <http://www.xeroxpoint.in> which allegedly advertises 'Xeroxworld', which appears to be a brand/ trade name of photocopiers/ printers/ multifunction devices and/or related services on the lead page. Further the said page also contains a list of 'Other Sites' (which also redirect to <http://www.xeroxpoint.in>) and links to sections titled 'About Us', 'Services', 'Price List', 'Contact Us' and 'Search'. The Claimants allege that none of these links are accessible and appear to be dead links. Reliance is placed on **Annexure-C**. It is further stated that the domain name details for the website <http://www.ganeshxerox.in>, including the results of WHOIS Lookup Search on the .IN Registry website, are displayed on **Annexure-D (Colly.)** and the contact details of the Respondent, are as under: *f*

Mani Kannan



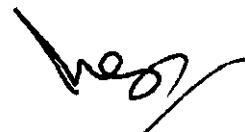
Quick2soft Technologies

Postal Address 1: Renga Road, Alwarpet, Chennai - 600 028.

Email: quick2soft@gmail.com

D. It is alleged that following the discovery of the activities of the Respondent, the Complainant, through its Indian subsidiary Xerox India Limited, sent a legal notice dated August 24, 2012 to the Respondent, outlining the legal rights of the Complainant in the trademark XEROX and calling on the Respondent to cease and desist from using the trademark/trade name XEROX and thus violating the rights of the Complainant therein. Upon receiving no response to the said notice, the Complainant sent another legal notice to the Respondent at its alternate address on September 25, 2012, reiterating the contents of the earlier notice and requesting a response to the same by October 1, 2012. Reliance is placed on **Annexure-E (Colly.)**.

E. The complainant states that the impugned domain name/URL <http://www.ganeshxerox.in> which is registered and used by the Respondent directly uses the trademark/trade name XEROX



as one of the operative words and this trademark/trade name is identical to that of the registered trademark XEROX of the Complainant and as a consequence of the impugned domain name/URL being identical to the registered trademark of the Complainant as well as being extremely similar to the international website of the Complainant <http://www.xerox.com> operated by the Complainant, ordinary internet users are likely to be confused by the presence of the impugned domain name/URL on the internet ostensibly offering goods and services similar/identical to that of the Complainant and thus cause loss of business and reputation to the Complainant.

F. Further the Complainant emphasize that being the registered proprietor of the trademark XEROX and the continuous user of the same for several decades it is their sole and genuine in the trademark/trade name XEROX and the Respondent, who allegedly carries out business in photocopiers/ printers/ multifunction devices and/or related services, by registering the impugned domain name/URL is blatantly seeking to cash

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in on the brand value and reputation of the Complainant's trademark XEROX for personal gain.

G. It is stated that the impugned domain name/URL has been registered by the Respondent despite having no affiliation, past or present, with the Complainant thus the Respondent has no legitimate rights or interests in respect of the impugned domain name/URL.

H. It is stressed that the said domain name/URL has been created recently on May 26, 2012 and that the Respondent also runs several other websites, all of which feature identical content and use the Complainant's trademark XEROX or some confusingly similar word(s)/name(s) clearly prompts the conclusion that the Respondent and that the same has been done purely for the purpose of promoting the Respondent's own business and causing loss of business and reputation to the Complainant and therefore, the registration and use of the impugned domain name/URL by the Respondent is clearly in bad faith.

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I. The Complainant also states that no other legal proceeding(s) have been commenced, terminated or are pending in connection with or relating to the domain name that is the subject of the present Complaint and thus prays that the.IN Registry of NIXI be directed to transfer the domain name/URL of the Respondent - <http://www.ganeshxerox.in> - to the Complainant or, in the alternate, cancel the registration of the said domain name/URL and cause it to be deleted/removed besides claiming the costs of the present proceedings.

ORDER

7. This Tribunal has considered the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his correct and complete postal address and take further steps in the present proceedings

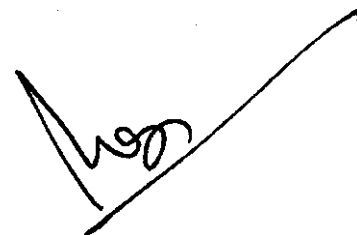
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chose not to give any and hence the allegations of the complainants remain un rebutted/ admitted.

8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <ganeshxerox.in>, hence this Tribunal directs the Registry to transfer the domain name <ganeshxerox.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 17th day of April 2013.

NEW DELHI
17/04/2013



V. SHRIVASTAV
ARBITRATOR