



दिल्ली DELHI

S 114588

**VISHESHWAR SHRIVASTAV**

**SOLE ARBITRATOR**

**IN**

**ARBITRATION PROCEEDINGS OF DOMAIN NAME**

**"msnindia.co.in"**

**MICROSOFT CORPORATION**

**...COMPLAINANT**

**AND**

**AKHIL SHARMA**

**...RESPONDENTS**

**AWARD**

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 23/12/2012. 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 is no PoA in favour of M/s Anand & Anand the Counsels for the Complainants. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier and also supply a copy of their authority to act on behalf of the complainants.

2. That compliance of the order was done by the Complainants vide their letter dated 27/12/2011 sent a copy of a courier receipt of M/s Blue Dart / DHL Courier waybill No. 13265560722. Hence, this Tribunal vide order dated 31/12/2011 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 10<sup>th</sup> January 2012.



3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have served the Respondents on the address provided. This Tribunal on 11/01/2012 was in receipt of a communication from the Respondent's email id which stated as under:

*"Hi Vishal,  
I am unable to understand what exactly it mean. Can you please tell me what it is  
( weak in legal language).  
Also what is required from my side.  
Thanks and regards  
Akhil Sharma"*

Accordingly this Tribunal passed the following order:

**"Order Dated 13/01/2012**

*This Tribunal is in receipt of the communication sent by the Respondent i.e. Mr. Akhil Sharma. My name is Visheshwar Shrivastav & not Vishal. The Respondents are cautioned that instead of indulging in such unnecessary communication, it would be in his best interest that he engages a lawyer and get advised accordingly for which this Tribunal gives him 3 days time.*

*V. Shrivastav  
Arbitrator"*

However, despite the said order the Respondent has chosen to remain silent.





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.
5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal is to decide the controversy within 60 days, and thus 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 by the Complainant that Microsoft Corporation was set up in the year 1975 and is claimed by them to be the biggest software publisher for personal and business computing in the world. The Complainant claims that it engages in the development, manufacture, licensing, and support of a range of software products for various computing

devices and that its software products include operating systems for servers, personal computers (PC), and intelligent devices; server applications for distributed computing environments; information worker productivity applications; and software developments tools. Besides it is also claimed that the Complainant also sells video game console (Xbox), video games and engages in online business through various Internet portals (MSN etc.).

- b) The Complainant also claim that their popular software products include the most widely used operating system software, MICROSOFT WINDOWS (various versions), and application software such as MICROSOFT OFFICE (various versions) and VISUAL STUDIO (various versions). It is further claimed that these software programs are today installed and used on millions of computers all over the world, including India. Other popular software products of Complainant include Microsoft Windows Server System, Microsoft Publisher, Microsoft Visio, Microsoft Project and other stand-alone

desktop applications. The Complainants rely upon **Annexure-A** to substantiate their claim.

- c) It is further stated that the Complainants also manufacture a large range of computer peripherals (hardware). It is further claimed that the Microsoft Hardware group established in 1982 has been an integral part of the complainants growth for 27 years and during this period, the Complainant has built its reputation for technological expertise in hardware by developing and launching a series of successful devices including the ergonomically designed Mouse and Keyboard.
- d) The Complainant emphasize that they adopted the trademark "**MICROSOFT**" in the year 1975 and has used the said trademark continuously and extensively, not only as a trademark but also as a prominent, key, and leading portion of its corporate name and that the trademark "**MICROSOFT**" is one of the most famous and well known trademarks in the world and is exclusively identified and recognized by the

purchasing public as relating to the goods and services of the Complainant. It is also stated that the Complainant is also the registered proprietor, in India of the trademark "**MICROSOFT**" in Classes 9 and 16 and bear the registration numbers 430449 and 430450 respectively. A photocopy of the said registration certificates have been filed as **Annexure-B**.

- e) It is also claimed that the Complainant owns, among other trademarks, the trademark "MSN" and it has obtained trademark registrations in numerous countries for the MSN mark in several classes of goods and services. It is also claimed that the Complainant has invested significant time, effort and money advertising and promoting the MSN Mark throughout the world and using the MSN Mark, the Complainant offers localized versions of its MSN services, including MSN Hotmail and MSN Messenger, in eighteen languages to more than thirty countries worldwide and thus MSN has become one of the world's most popular Internet destinations. To buttress their claims the complainants rely



upon colour printouts of some of the web pages from the Complainant's website <msn.com> which are annexed as **Annexure-C.**

- f) The Complainant claims that they are also the registered proprietor, in India of the trademark "**MSN**" in Classes 35, 36, 38, 39, 41, 42 respectively and bear the registration number 1236751 and reliance is placed on **Annexure-D.**
- g) The Complainant claims that it has a huge internet presence including their own website [www.msn.com](http://www.msn.com) is a collection of Internet services provider by the Complainant. It is stated that the Complainant debuted as an online service and Internet service provider on August 24, 1995, to coincide with the release of the Windows 95 operating system. The Complainant used the MSN brand name to launch and promote numerous popular web-based services in the late 1990s, most notably Hotmail and Messenger, before reorganizing many of them in 2006 under a new brand name,



Windows Live. MSN's Internet portal, MSN.com and it offers a wealth of content and is currently the 6th most visited domain name on the Internet. It is stated that the Complainant, Microsoft Corporation has collaborated with many other service providers and offers services like MSN shopping, MSN Encarta, MSN space blog, MSN adCenter, MSN Premium that includes MSN Virus Guard and Firewall, etc.

The complainants rely upon some decisions which are annexed as **Annexure- E**.

- h) The Complainant state that they are aggrieved by the Respondents registering the domain **<msnindia.co.in>** by which he is misappropriating illegally and without authority the trademark **MSN** which is the exclusive property of the Complainant. Reliance is placed upon **Annexure- F**.
- i) It is alleged that the Respondent had further replicated the copyrighted content of the Complainant's India specific website [www.in.msn.com](http://www.in.msn.com) in its entirety onto his website in

such a manner that the two websites were exactly the same with the same content upon it. Reliance is placed upon **Annexure-G(Colly)**.

- j) It is alleged that the complainant upon noticing the said content, wrote to the hosting server of the impugned website i.e. Bluehost.com to take down the copyrightable content of its website from the impugned website as per Clause 9.06 of its 'Terms of Use' and the said content was thereafter removed from the impugned website.
- k) It is alleged that pursuant to the content being taken down, the Respondent has openly addressed his malicious intention of causing harm to the Complainant on the impugned website. It is further alleged that the Respondent's intention behind registration of the impugned domain name and putting the content of the Complainant's website was solely to bring down the organic search rankings of the Complainant's legitimate



website for India i.e. [www.in.msn.com](http://www.in.msn.com). Reliance is placed upon **Annexure-I**.

- l) It is also *interalia* alleged that the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and that the complainants have spent substantial time, effort and money advertising and promoting the **MSN** mark throughout the world. As a result, the **MSN** mark has become distinctive and well known, and the complainant has developed an enormous amount of goodwill in the mark, which goodwill has been recognised by UDRP panels. Thus, the Respondent has no rights or legitimate interest in the domain name.
- m) It is also alleged that the Respondent is not commonly known by the domain name nor has he made any demonstrable preparation to use the disputed domain name <msnindia.co.in> name in connection with a commercial purpose nor have the complainants given any license to him or



granted any permission or consent to use the trademark 'msn' in any manner or to incorporate the same in a domain name.

Hence, the Respondent's website is not bonafide as the Respondent has registered the impugned domain name in order to cause initial interest confusion and bait internet users to accessing its website. Thus, the domain name was registered and is being used in bad faith by the Respondents and have enumerated their fears as under:

(Quote) " .... that an actual or potential visitor to the Respondent's present web page or a any future webpage that the subject domain name resolves to, will be induced to:

- Believe that the Complainant has licensed their trademark MSN to the Respondent or has authorized the Respondent to register the disputed domain name.



- Believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant. (Unquote)"

### **ORDER**

7. This Tribunal has given an anxious consideration to 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 Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.
8. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <msnindia.co.in> hence this Tribunal directs the Registry to transfer the domain name <msnindia.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred

in their name. 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 19<sup>th</sup> day of January 2012.

NEW DELHI  
19/01/2012



V. SHRIVASTAV  
ARBITRATOR