



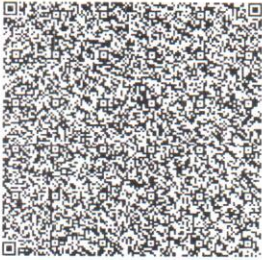
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL04414870712988N
Certificate Issued Date	: 14-May-2015 12:36 PM
Account Reference	: IMPACC (IV)/ dl831103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83110305922663634671N
Purchased by	: SUDARSHAN KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SUDARSHAN KUMAR BANSAL
Second Party	: Not Applicable
Stamp Duty Paid By	: SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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.IN Registry (National Internet Exchange of India)

COMPLAINANT
Mozilla Foundation

Vs.

RESPONDENT
Mr. Kaustav Kumar Gogoi

ARBITRATION AWARD

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.
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3. In case of any discrepancy please inform the Competent Authority.

J. K. Gogoi

.IN Registry
(National Internet Exchange of India)

COMPLAINANT

Mozilla Foundation
331 E, Evelyn Ave,
Mountain View
CA – 94041, USA

Vs.

RESPONDENT

Mr. Kaustav Kumar Gogoi
Na-ali
Jorhat
Assam – 785001
India

ARBITRATION AWARD

The Complainant Mozilla Foundation is aggrieved by the Respondent's registration of the domain name www.firefox.co.in through the Registrar Business Solutions (R54-AFIN) and with the server names NS1.SEDOPARKING.COM & NS2.SEDOPARKING.COM.

1. The case of the Complainant as set out in the complaint, in so far as it is relevant herein, is as under :-

- (a) The Complainant Mozilla Foundation claims itself to be a not – for - Profit Corporation dedicated to public benefit and being a Corporation established under the laws of California, USA. The Complainant claims to have been established in the year 2003 and who in the year 2005 established a Corporation by the name of M/s Mozilla Corporation as its wholly owned subsidiary and licensee. The Complainant alleges its main objective is to coordinate and integrate the development of internet related applications by a global community of open source software developers.

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- (b) The Complainant claims itself to be the owner of the trade mark FIREFOX, FIREFOX formative trademarks and its domain name www.firefox.com which bears the word/trade mark FIREFOX and which domain name it claims to own and control [for the sake of convenience collectively referred to as the FIREFOX trade mark].
- (c) The Complainant claims its said FIREFOX trademark to be registered in various countries of the world including in India and in addition to the statutory rights conferred by registration also claims to enjoys common law rights in its said FIREFOX trademarks which according to the Complainant have achieved tremendous goodwill, reputation and distinctiveness.
- (d) The Complainant claims to have developed and launched through its subsidiary a web browser under the word/trademark FIREFOX with efficient speed and security. The Complainant claims that on 18th June 2008 it launched a web process FIREFOX 3 named as 'Download Day 2008' and on the day of the launch itself claims to have experienced a download of more than 6.88 million people world over.
- (e) The Complainant claims to control and regulate a software community of individuals throughout the globe that uses, develops, spreads and supports its products as also claims to manage an online marketplace of applications and promotes innovation and choice on the internet besides focusing on development, promotion and delivery of end-user products and coordinates marketing, sponsorships and a range of distribution related activities.
- (f) The Complainant claims to have earned immense goodwill and reputation in the course of trade and to have received several awards from different Juries details of some such awards have been incorporated in the complaint.

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- (g) The Complainant claims itself to be the prior adopter and user of its FIREFOX trade mark which it has been using in respect of its distinct products and services. The Complainant claims to have undertaken extensive promotion of its FIREFOX trade mark by way of events, localization of products, assistance, knowledge and resources and to have initiated community driven initiative in India by the name Mozilla India. The Complainant alleges that the use of the key FIREFOX in any leading search engine to automatically throw the web pages of the Complainant among the leading hits.
- (h) The Complainant claims to have coined the word/mark FIREFOX and consequently to be inherently distinctive and which trademark according to the Complainant endures as a symbol of efficiency, dependability and reliability of its products in relation to which the Complainant has been so using its said FIREFOX trade mark.
- (i) According to the Complainant, the Respondent has adopted and registered the domain name www.firefox.co.in (impugned domain name) and which the Respondent is so using. According to the Complainant the impugned domain name bears the Complainants trade mark FIREFOX and which domain name is identical to the Complainant's registered FIREFOX trademark. According to the Complainant, the Respondent has no claims, rights or legitimate interests in the impugned domain name and which impugned domain name has been adopted by the Respondent wrongly, illegally, dishonestly and to trade upon the reputation of the Complainant. According to the Complainant, the impugned domain name adopted, registered and being used by the Respondent is without any authorization and approval of the Complainant and which domain name has been registered in bad faith.
- (j) According to the Complainant by the impugned domain name, deception would be caused in the public who would be deceived into believing that

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the Respondent and its impugned domain name is sponsored or affiliated to the Complainant and which impugned domain name would otherwise be detrimental to the distinctive character and repute of the Complainant's said FIREFOX trademarks and domain names.

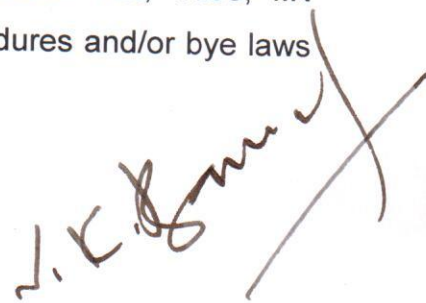
- (k) The Complainant alleges the Respondent to have created and registered the impugned domain name subsequent to the Complainant's conception, adoption and usage of the Complainant's FIREFOX trademark and domain name bearing the word/mark FIREFOX.
- (l) The Complainant alleges the Respondent to be neither a bonafide owner nor honest adopter or true or actual user of the impugned domain name and which impugned domain name the Respondent has malafide adopted being fully aware of the Complainant's said prior FIREFOX trademark and domain name so as to trade and benefit upon the Complainant's reputation and goodwill therein.
- (m) According to the Complainant, the impugned domain name has been registered by the Respondent only on 5th day of October 2012 and that to almost fourteen (14) years of the Complainant's adoption and use of its FIREFOX domain name.
- (n) The Complainant alleges the Respondent's registration of impugned domain name to be a clear case of cyber squatting and to tarnish the repute and goodwill of the Complainant with the purpose to derive profit from Pay-Per-Click links. According to the Complainant, the Respondent is resorting to domain parking practices thereby making illegitimate gains through advertisement links that are displayed on its impugned domain name.
- (o) In support of and alongwith the complaint, the Complainant has annexed the documents thereunder :-

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- (i) **Annexure-A** Copy of search report conducted in the official website of the .IN Registry i.e. www.registry.in/whois on 19th February, 2015;
- (ii) **Annexure-B** Printout of the web pages pertaining to the disputed domain name;
- (iii) **Annexure-C** A true and correct copy of the domain name dispute policy;
- (iv) **Annexure-D** Complainant trade mark policy;
- (v) **Annexure-E** Printout of the search result procured from the famous search engine google.com;
- (vi) **Annexure-F** Copies of the registration certificates and print out of the relevant web pages taken from the website of the respective patent and trade mark offices;
- (vii) **Annexure-G** Complainant's Manifesto

2. Accordingly and being aggrieved, the Complainant has submitted the instant complaint for decision in accordance with and pursuant to .IN Domain Name Dispute Resolution Policy of .IN Registry; and the .IN Domain Name Dispute Resolution Policy Rules of Procedure with the prayer that the impugned domain name www.firefox.co.in be transferred to the Complainant herein or for any other proper favourable orders as may be deemed fit in these proceedings.

3. The .IN Registry appointed me as a sole Arbitrator to adjudicate the complaint in accordance with the Arbitration & Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules or procedures and/or bye laws Rules and guidelines made therein.



4. On being appointed as an Arbitrator, I caused a notice to be issued upon the Respondent on 8th April 2015 notifying the Respondent of my appointment and calling upon him to submit a written response to the complaint stating its reply, defenses together with documents and supporting its position within ten (10) days. Alongwith the notice the copy of the complaint alongwith Annexure-A to G were also attached. A copy of this notice was also served upon the Complainant through its authorized representative.

5. On 8th April 2015, the Respondent addressed a mail to me which reads as under:-

"Hello Sir,

I had registered the domain name firefox.co.in, more out of curiosity, i have no use of it and would be glad to hand it over to the company firefox.com, i had been communicated regarding the name by email from depenning.com and I had expressed my willingness to hand it over to them provided they prove to be actual representatives of firefox.

i request you to assist me in handing over the domain name to firefox corporation.

*Regards
Kaustav kumar
9911894236"*

(Italics supplied)

6. I caused a notice to be issued upon the Complainant on 24th April 2015 bringing to its notice the said letter dated 8th April 2015 of the Respondent and seeking its response thereto within ten (10) days. A copy of this notice alongwith the letter was also served upon the Respondent. On 24th April 2015 I caused a notice to be issued on the Respondent bringing to its notice its letter dated 8th April 2015 and giving to the Respondent one final opportunity to submit its written response to the complaint together with its reply, defenses, documents supporting its position within 10 days.

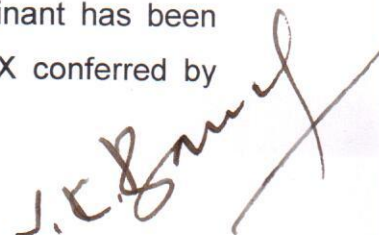
7. Neither the Complainant nor the Respondent has complied with the aforesaid notices dated 8th April 2015 and 24th April 2015 resp. Consequently I

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proceed to decide the complaint on the basis of the complaint along with documents filed with its and the letter dated 8th April 2015 of the Respondent.

8. The Respondent has not contested any of the Complainants complaint claims and allegations therein. The Respondent did issue a letter dated 8th April, 2015 as set out above. In its said letter dated 8th April 2015, the Respondent has raised no defense except to say that he adopted the disputed domain name out of curiosity and that he had no use of it and would be glad to hand it over to the Complainant. However in its very same letter, the Respondent added a rider to the effect that he (the Respondent) would so do so provided the Complainant proves to be the actual representative of the FIREFOX trademarks.

9. With the complaint, the Complainant has annexed as **Annexure-F**, the copy of the registration certificate for the trademark FIREFOX issued by the Registrar of Trade Marks, Government of India under the Trade Marks Act, 1999 under registration No. 1698245 dated 12th June 2008 in Classes 9 and 38. The Complainant under the very same **Annexure-F** has also filed a document issued by the United States Patent & Trademarks Office for the trademark FIREFOX under registration No. 2974321 with registration date 19th July, 2005 in International Class 9 as also copy of the certificate of registration with related documents issued by OHIM to the trademark FIREFOX under registration No. 003888617 dated 11th October 2005. All these three registrations are in the name of Mozilla Foundation the Complainant herein. The Indian registration certificate does establish the trademark FIREFOX to be registered in favour of the Complainant w.e.f. 12th June 2008 and which registration is valid for a period of 10 years commencing from 12th June, 2008 i.e. upto the period 12th June, 2018. From the above certificates it can safely be taken that the trademark FIREFOX is duly registered in favour of the Complainant in India, USA and OHIM. Consequently it can safely be held that Mozilla Foundation is the owner/proprietor of the above noticed Registered Trade Mark FIREFOX and consequently I have no hesitation in holding that the Complainant has been able to prove his proprietary rights in the trademark FIREFOX conferred by



registration. Along with the complaint, the Complainant has also filed an Authorization dated 9th March, 2015 in favour of various persons mentioned therein like Anita Dhar Roy, Malavika TV etc. of DePENNING & DePENNING having offices at No.120, Velachery Main Road, Guindy, Chennai – 600032 authorizing them to act as their agents for the purposes of this complaint. The said authorization has been signed by one Mark Surman, Executive Director of Mozilla Foundation. Neither the above referenced registrations nor Authorization have been contested to by the Respondent. Besides apparent from the Respondents aforesaid letter dated 8th April, 2015 the Respondent had been communicating with DePENNING & DePENNING and the present complaint filed and instituted through the persons authorized in the authorization cannot be considered to be a stand alone viz-a-viz the afore noticed communication of the Respondent. The Respondent has not traversed the complaint contents which include the said Authorization. The said Authorization has an element of credibility attached to it. Consequently I have no hesitation in holding that the Complainant is the proprietor of the Trade Marks FIREFOX and the persons/firms in whose name the Authorization has been issued are the authorized legal entities on behalf of the Complainant and that the Complainant has the locus and entitlement to prefer the complaint and which has been instituted and filed through their duly authorized representatives as per the afore referenced Authorization.

10. The Respondent's impugned domain name as per the copy of the search report conducted on the official website .IN Registry (as Annexure-A to the complaint) has been granted only on 5th October 2012, which is much subsequent to the date of 12th June 2008 with reference to which date the registration has been granted to the trademark FIREFOX by the Indian Trade Mark Office under registration No. 1698245 in Class 9 and 38.

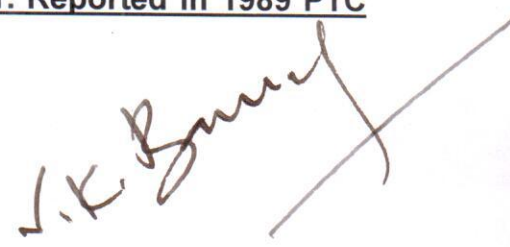
11. I am of the considered opinion that the word/mark FIREFOX forms an essential, distinguishing and memorable feature of the impugned domain name. This word/mark FIREFOX is identical to the FIREFOX trademark of the

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Complainant which is duly registered in India under No.1698245 in Class 09 and 38.

12. The Respondent in its letter dated 8th April 2015 has not furnished any plausible explanation as to how he came to adopt the impugned word/mark FIREFOX as a material part of its domain name except to say that he did so out of curiosity. The word/trademark FIREFOX is not a dictionary word and nor forms part of the ordinary Indian languages. In such circumstances, the very adoption and registration of the rival impugned domain name by the Respondent bearing the Complainant's entire trademark FIREFOX as its essential feature can only be considered to be in bad faith, especially in the absence of any justifiable reason given by the Respondent as to its adoption.

13. It can reasonably be taken that the Respondent was aware of the Complainant's FIREFOX trademark at the time of its adoption and registration of the impugned domain name. This can be deduced from the Respondent's aforesaid letter dated 8th April, 2015 itself wherein the Respondent claims to have registered the impugned domain name "more out of curiosity". 'Curiosity' has been defined by The Living Webster Encyclopedic Dictionary of the English language as a desire to see what is new or unusual; to gratify the mind with new discoveries. In my understanding 'Curiosity' by its very nature is a quality related to inquisitive thinking such as exploration, investigation and learning. It can be taken that the Respondent did have knowledge of the Complainant's said trademark FIREFOX for which he was curious and/or his curiosity would have led him to become aware of such a prior FIREFOX trademark of the Complainant which the Respondent came to adopt in its impugned domain name. Thus, being aware of the Complainant's FIREFOX trademark and despite the same having adopted and registered it as a material part of its domain name smacks of dishonesty and taint at inception and which cannot be purified by any amount of subsequent use **M/s Hindustan Pencils Pvt. Ltd. v/s M/s India Stationary Products Company & Anr. Reported in 1989 PTC 61]**



14. As noticed above, the trademark FIREFOX is duly registered in India under registration No. 1698245 dated 12th June 2008 in Class 9 and 38. The impugned domain name bearing the identical registered trademark of the Complainant would be in complete violation of the said registered trademark of the Complainant (Section 29 of the Trade Marks Act, 1999) **[See Lt Foods Limited Vs. Sulson Overseas Pvt. Ltd. reported in 2012(51)PTC 283(Del)]** It is with reference to the word/mark FIREFOX that any internet user would be directed to the impugned domain name and consequently the onward internet incidences involved. The word/mark FIREFOX would be retained in the mind of the internet user. Not only that, and in addition, by the impugned domain name, which bears the identical trademark FIREFOX of the Complainant, and by its impugned usage there is complete likelihood of deception and confusion being caused especially amongst the internet users, who may think that the Respondent is associated, affiliated, sponsored or connected with the Complainant. Such a use of the rival impugned domain name is also likely to result in blurring, tarnishment and dilution of Complainant's FIREFOX trademarks especially as the Complainant would have no control over the Respondent or its activities being conducted under the impugned domain name and would always be adversely effected by any dereliction or wrongs that may be committed by the Respondents thereunder. **[See Bharati Airtel Limited v. Rajiv Kumar - 2013 (53) PTC 568 (Del); Tata Sons Limited v. D. Sharma & Anr. - 2011 (47) PTC 65(Del.; Dr. Reddy's Laboratores Limited v. Manu Kosuri & Anr. - 2001 PTC 859 (Del); McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03].**

15. Consequently I have no reservation in holding that the Respondent has no and nor can have any right or legitimate interest in the impugned domain name and which domain name has been registered or intended to be so used in bad faith. By the Respondent's impugned usage and activities under the impugned domain name, whether present or prospective, loss and injury would be caused and/or likely to be caused to the Complainant as well as to the market, trade and public. The Respondent cannot derive any benefit from its own wrong.

In the aforesaid view of the matter, I am of the confirmed view that the complaint must be allowed.

Accordingly, it is decided herein that the disputed domain name www.firefox.co.in be transferred to the Complainant.

Signed at New Delhi on this 13th day of May, 2015.


Sudarshan Kumar Bansal
Sole Arbitrator