



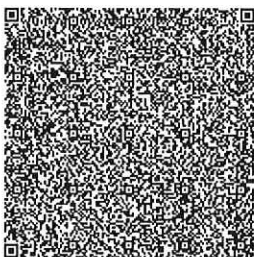
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL89412632855119Q
Certificate Issued Date	: 16-Feb-2018 04:48 PM
Account Reference	: IMPACC (IV)/ dl916803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91680382123946664746Q
Purchased by	: LUCY RANA
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: LUCY RANA
Second Party	: Not Applicable
Stamp Duty Paid By	: LUCY RANA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <HPCOMPUTER.IN>

IN THE MATTER OF
Hewlett-Packard Development Company, L.P.
11445 Compaq Center Drive West,
Houston, TX 77077, United States of America

... Complainant

-----versus-----

Mr. Gupta
Laxmi Nagar
Delhi,
Uttar Pradesh,
Post Code- 110092.
India

... Respondent

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.

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1. **The Parties**

The **Complainant** in this arbitration proceeding is **Hewlett-Packard Development Company, L.P.**, of the address 11445 Compaq Center Drive West, Houston, TX 77077, United States of America.

The **Respondent** in this arbitration proceeding is **Mr. Gupta**, an individual, having address at Laxmi Nagar, Delhi, Uttar Pradesh, Post Code- 110092, India.

2. **The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name **<hpcomputer.in>** with the .IN Registry. The Registrant in the present matter is Mr. Gupta, and the Registrar is GoDaddy.com, LLC.

3. **Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated January 10, 2018, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on January 11, 2018.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated January 16, 2018.

The hard copies of the Domain Complaint along with Annexures as filed by the Complainant were received by the Arbitrator on January 19, 2018, and receipt thereof was confirmed vide email on the same day.

On January 19, 2018, NIXI informed the Arbitrator vide email that service of the hard copies of the domain complaint and Annexures as sent to the Respondent's postal address provided in the WHOIS details of the disputed domain had failed, as intimated to them by the courier agency, on account of the postal address being incomplete/ insufficient. However, NIXI confirmed that the soft copy of the Complaint along with annexures, as sent to the Respondent vide email, had not bounced back.

Therefore, the Arbitrator, vide email dated January 19, 2018, announced that the Complaint along with Annexures has been duly served upon the Respondent vide email as is evidenced by the fact that the emails as sent have not bounced back, and as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that *"If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it."* In view also of the courier agency's intimation that the Respondent was not reachable at the postal contact details as provided in the WHOIS details of the disputed domain, it prima facie appears that



the Respondent has provided incorrect postal contact details in the WHOIS records for the impugned domain. Hence the service of notice was deemed to have been completed upon the Respondent.

Thereafter, the Arbitrator, vide email dated January 19, 2018, informed the Respondent that he is deemed to have been duly served with the Complaint and Annexures thereto and is granted a period of **fourteen (14) days** from the date of receipt of the email in which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

On February 06, 2018, the Arbitrator, vide email, informed NIXI of the expiry of the Respondent's deadline to respond to the Complaint on February 05, 2018 and noted that the Respondent had not filed or communicated a response in the matter within the aforementioned deadline. The Arbitrator requested NIXI to confirm that it had not received a response in this regard from the Respondent within the aforementioned deadline.

NIXI confirmed vide email on the same day that it had not received a response in this regard from the Respondent within the aforementioned deadline.

In view thereof, the Arbitrator, vide email dated February 06, 2018, addressed to the Respondent brought it on the record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on February 05, 2018, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **three (3) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter before either the Arbitrator or NIXI even after expiration of the aforementioned final time period, the Arbitrator, vide email dated February 13, 2018, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background

The Complainant has submitted that it is the exclusive licensee/permitted user of the **HP** and **HP**



logo () marks for goods falling under classes 02, 09 and 16 in India, of which Hewlett-Packard Group LLC is the current proprietor.

The Complainant has submitted details of its history which dates back to 1939, when Bill Hewlett and Dave Packard founded the Hewlett-Packard Company. The Complainant has also submitted that it has grown from its incorporation in the state of California in 1947 to a billion dollar company today, pulling in a net revenue of USD 103 billion in 2015, and employing approximately 287,000 employees worldwide.

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The Complainant has submitted that it is one of the leading personal computer and accessories manufacturers in the world with offices in more than 170 countries, and that it manufactures and markets a wide range of products under the **HP** brand. The Complainant has further submitted that it offers a complete technology product portfolio, including infrastructure and business offerings spanning from handheld devices to some of the world's most powerful supercomputer installations. The Complainant also offers consumers a wide range of products and services from digital photography to digital entertainment, and from computing to home printing. The Complainant prides itself on its ability to match the right products/services/solutions to their customers' specific needs.

The Complainant has submitted that it commenced its operations in India in the late 1980's, and by virtue of its extensive operations, the Complainant has earned extensive goodwill and reputation



for its marks **HP** and **HP logo** internationally as well as in India.



With regard to its marks **HP** and **HP logo**, the Complainant has submitted that it owns several registrations for the same worldwide. Therefore, the Complainant has submitted, by virtue of prior adoption, registration and extensive use, the mark **HP** has become famous and distinctive among the trade and public.

The Complainant has submitted, in this regard that it adopted the trademark **HP** at least as early as 1941 in relation to their business. Since then, they have used their mark **HP** extensively in many countries worldwide, including in India. The Complainant has further submitted that it used the mark **HP** on print cartridges and toner at least as early as 1984. The Complainant has annexed



images of sample products bearing the Complainant's trade marks **HP** and **HP logo** in this regard as **Annexure 2**.

The Complainant has submitted that '**HP**' is not only used as a trademark by the Complainant, but is also a prominent part of the corporate identity of the Complainant. In view thereof, the Complainant submits that the mark **HP** has become inherently distinctive with respect to the goods and services of the Complainant.

The Complainant has submitted that it was the first to use the mark **HP** with regard to computers and related accessories by conceiving and popularizing the **HP** mark through extensive sales, advertisement and by maintaining a high standard of quality for its products. Therefore, the Complainant has submitted that the trade and the public associate the mark **HP** exclusively with the business and the products of the Complainant worldwide.

The Complainant has submitted that it has operations in several countries around the world, including in Australia, China, Indonesia, Taiwan, Malaysia, Singapore, Austria, Germany,

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Hungary, Denmark, Italy, Ireland, Spain, Sweden, United Kingdom, Canada, United States of America, Peru, Chile, Argentina, Colombia, Brazil, Mexico, Israel, etc., as well as in India. The



Complainant has further submitted that their products under the marks **HP** and **HP logo** are extensively manufactured and sold in the above-mentioned countries, as well as many other countries around the world. In view thereof, the Complainant submits that the marks **HP** and **HP**



logo are well-known internationally as well as in India.

The Complainant has submitted that with the passage of time and extensive publicity, the Complainant has become one of the largest sellers of computers and related accessories with revenues exceeding USD 103 billion from their worldwide sales in the fiscal year 2015. The Complainant has further submitted that due to the high quality maintained in respect of their



products under the marks **HP** and **HP logo**, the same have become household names and have acquired repute in the market.


The Complainant has submitted that the earliest registration of the mark **HP** in India dates back to 1967 with a claim of use of several decades by the Complainant. The Complainant further states that it owns all proprietary rights in the mark **HP** under statute as well as under common law, and that the mark has acquired the status of a "well-known mark" on account of its enormous reputation and goodwill across the world, including in India. The Complainant has also submitted that it has more than 600 trademark registrations/ pending applications for the word mark **HP** which are valid and subsisting in law around the world. The Complainant has annexed copies of representative sample global registrations of the mark **HP** in the name of the Complainant's group companies collectively as **Annexure 3**.


The Complainant has submitted that its registrations for the **HP** mark in India are renewed, valid and subsisting and has also submitted details thereof. The Complainant has annexed copies of two registration certificates from 1988 and 1995 for its mark **HP** collectively as **Annexure 4**.




The Complainant has submitted that its trademarks **HP** and **HP logo** are widely recognized all over the world due to its products under the said marks being extensively advertised and promoted on television, print media and bill boards worldwide, including in India. The Complainant has submitted that goods under the aforementioned trademarks range from home PCs to supercomputers, and therefore, the Complainant's aforementioned trademarks are known to a wide and diverse sections of society. The Complainant has annexed copies of advertorials and advertisements related to its products under the aforementioned trademarks as has appeared in various journals and magazines in India as **Annexure 5**.

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The Complainant has submitted that its trademarks **HP** and **HP logo**  have achieved their current worldwide reputation and popularity as a result of their extensive use under strict quality control requirements, a targeted marketing strategy, and the advertisement and promotional activities of the Complainant. The Complainant has, in this regard, annexed copies of a few anti-

counterfeiting advertorials illustrating use of its trademarks **HP** and **HP logo**  as **Annexure 6**.


The Complainant has submitted that its trademarks **HP** and **HP logo**  are well-known and substantial goodwill and reputation have accrued to them on account of the Complainant's efforts at consistent adherence to high standards of quality and targeted marketing strategies which have resulted in the aforementioned trademarks having achieved a highly reputable position in the eyes of the consuming public in terms of quality and appeal.

The Complainant has submitted that it makes use of the ubiquitous medium of the Internet to render and advertise its products and services. The Complainant has further submitted that it owns the domain name www.hp.com, which is accessible all over the world. The Complainant has submitted that it registered the said domain name on March 03, 1986. The Complainant has annexed the WHOIS extract of the said domain name as **Annexure 7**.

The Complainant has submitted that details and information regarding its business activities in different jurisdictions around the world are available on its website www.hp.com, as well as the Complainant's product range and the technical specifications of its products. All the said information can be accessed online by consumers situated in different parts of the world on the Complainant's aforementioned website. The Complainant has also annexed relevant extracts from its aforementioned website as **Annexure 8**.

5. Complainant's Contentions

The Complainant has submitted that it is an accepted proposition of law that famous and well-known trademarks, especially those that embody an aura of eminent quality, such as the

Complainant's trademarks **HP** and **HP logo** , are generally given broader protection. The enormous goodwill enjoyed by a particular trademark is worthy and deserving of a wide scope of protection. The stronger the trademarks, the greater is the protection they deserve in connection with use of closely resembling marks by third parties.

The Complainant has submitted that in view of the fact that the Complainant's trademarks **HP** and



HP logo have a high degree of distinctiveness; that they have been used extensively over a long period of time all over the world; and have been extensively promoted, resulting in the brand attaining immense popularity globally; the marks may be said to be well recognized by the members of the trade and the public. Therefore, the Complainant submits that they are entitled to protection against misappropriation of the aforesaid marks for goods and services whether similar or different in nature to those of the Complainant. In view of the aforesaid, the Complainant has



submitted that its trademarks **HP** and **HP logo** are well known marks, as envisaged under the provisions of Section 2(1)(zg) of the Trade Marks Act, 1999 by virtue of the following reasons:



- a) The Complainant's trademarks **HP** and **HP logo** are prima facie inherently distinctive of its products, services and business. The said marks have been continuously and extensively used by the Complainant for the past several decades worldwide, including in India. Therefore, the Complainant has submitted, that use of any identical or deceptively similar mark would be construed and associated exclusively with the business of the Complainant;
- b) The extensive promotional and marketing activities as undertaken by the Complainant as a result of which a relevant and substantial section of the consuming public associates and knows that the aforesaid marks belong to the Complainant;



- c) The Complainant's trademarks **HP** and **HP logo** have been extensively promoted and distributed throughout India, as a result of which publicity, a relevant and substantial section of the consuming public recognizes and acknowledges the aforesaid marks as belonging to the client;
- d) The Complainant has submitted that it has been vigilant in protecting its trademarks from misuse by third parties and have accordingly taken appropriate legal action from time to time.

The Complainant has submitted that the disputed domain name, i.e. www.hpcomputer.in, was registered on May 08, 2014, which date is subsequent to the adoption and use of the name/mark '**HP**' by the Complainant. Therefore, it has been submitted by the Complainant, that the disputed domain name incorporates the Complainant's prior used and well known registered trademark '**HP**' in its entirety.

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The Complainant has further submitted that it has not licensed or otherwise authorized or given consent to the Respondent to use, utilize or commercially exploit its registered and well-known trademark 'HP' in any manner.

The Complainant has submitted that the disputed domain name www.hpcomputer.in which incorporates the Complainant's trademark 'HP' in its entirety, has been registered by the Respondent in bad faith. The Complainant has further submitted that the Respondent is thereby misusing and misappropriating the Complainant's trademark 'HP'. The Complainant has also submitted that the addition of the word "computer" in the disputed domain name will only add to the confusion and deception among members of the trade and the general public, as they will think that the disputed domain is connected to the Complainant as they are also dealing with computers and accessories.

The Complainant has submitted that the Respondent's website is designed in such a manner that any person accessing the same is likely to carry the impression that they are associated with the Complainant, its business, products and services, which is not true. Therefore, it has been submitted by the Complainant, the intention of the Respondent is to leverage the strength and reputation of the Complainant's trademark to divert traffic to the Respondent's business by causing confusion with a view to making illegal commercial gains. The Complainant has further submitted



that the Respondent is also using its registered **HP logo** on its website as hosted at the disputed domain. The Complainant has also submitted that the Registrant has registered the disputed domain name www.hpcomputer.in wherein the Complainant's registered trademark 'HP' is contained in its entirety to show an association or affiliation with the Complainant when none exist in reality. The Complainant has submitted that the Respondent cannot be allowed to ride on the goodwill and reputation of the Complainant's well-known trademark 'HP' and the disputed domain name registration should, therefore, be transferred to the Complainant. The Complainant has annexed screenshots from the Respondent's website as hosted on the disputed domain as **Annexure 9**.

The Complainant has submitted that on becoming aware of the registration of the disputed domain by the Respondent, it had taken up the issue with them to bring down the website as hosted at the domain www.hpcomputer.in for an amicable settlement of the matter. However, the Complainant has further submitted, that the Respondent had taken a adamant stance in the matter and responded stating untenable grounds and has not brought down the impugned website till date. The Complainant has annexed copies of the correspondence in this regard between it and the Respondent as **Annexures 10 and 11**.

The Complainant has submitted that on account of its extensive use and popularity, its trademarks



HP and HP logo are well recognized in India as well as across the world. In light thereof, the Complainant has further submitted that the Respondent can have no plausible explanation for adoption of a domain name that is phonetically, visually and structurally identical to the Complainant's distinctive and well-known trademark 'HP', and that the same is with the

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intention of taking advantage of the goodwill and reputation enjoyed by the Complainant's said mark.

6. **Legal Grounds Submitted by the Complainant**

The Complainant has submitted the following legal grounds for its complaint:

A. **The Disputed Domain Name www.hpcomputer.in is Identical or Confusingly Similar to a Name, Trademark in which the Complainant has Rights**

The Complainant has submitted that it has continuously used the mark 'HP' much prior to May 08, 2014, i.e. the registration date of the disputed domain. The Complainant has further submitted that it owns the domain name www.hp.com dating back to the year 1986. The Complainant has also submitted that it has obtained trademark registrations for the mark 'HP' much prior to May 08, 2014, and such registrations remain valid and in force till date. The Complainant has submitted that registration of its mark 'HP' dates back to 1967 in India, which is the Respondent's place of business/residence. Therefore, the Complainant has submitted, that it has rights in its mark 'HP' that predate the registration of the disputed domain. In support of its contention, the Complainant has relied upon the WIPO judgement given in *Uniroyal Engineered Products v. Nauga Network Services* D2000-0503 (WIPO, July 18, 2000).

The Complainant has submitted that as the disputed domain of the Respondent, i.e. www.hpcomputer.in, incorporates the Complainant's mark 'HP' in its entirety and is identical/confusingly similar thereto, the Respondent's use of the same will cause confusion. The Complainant has submitted that a domain name is "nearly identical or confusingly similar" to the Complainant's trademark when it "fully incorporates" the said mark. The Complainant has relied upon the judgement in *SAP AG v. Domain Admin* WIPO Case No. D2006-1526, February 2, 2007, in support of this contention.

The Complainant has submitted that the Respondent's domain name www.hpcomputer.in contains the Complainant's mark 'HP' in its entirety and the respondent is using the same to attract internet users and consumers for its own commercial gain by abusing the goodwill and reputation of the Complainant's 'HP' mark by suggesting a connection/affiliation with the Complainant. The Complainant has further submitted that internet users are likely to assume that the Respondent's domain is a sponsored or approved listed website of the Complainant targeted towards its users and customers. The Complainant has relied upon the judgements in the following cases in support of its contentions:

- *Yahoo! Inc. v. Chan*, FA162050 (Nat. Arb. Forum, July 16, 2003)
- *PepsiCo*, FA466022
- *SAP AG v. PrivacyProtect.org/John Harvard, John Havard* [WIPO Case No. D2013-1097, August 9, 2013]
- *SAP AG v. Sapteq Global Consulting Services* [WIPO Case No. 2015-0565, May 19, 2015]

The Complainant has submitted that it has not licensed or otherwise permitted the Respondent to use its 'HP' trademark, or any other trademark incorporating its 'HP' mark. The Complainant has submitted that it has also not licensed or otherwise permitted the



Respondent to apply for or use any domain name consisting of or incorporating its 'HP' mark.

B. The Respondent has No Rights or Legitimate Interests in Respect of the Domain Name

The Complainant has submitted that the Respondent registered the disputed domain name in 2014, several years after the Complainant had invested millions of dollars in popularizing and seeking registration of its 'HP' mark and domain name www.hp.com. The Complainant has further submitted that by the time the Respondent registered the disputed domain name, the Complainant has already generated hundreds of millions of dollars in revenue under its 'HP' mark, and the same had already attained the status of a well-known mark. In light thereof, the Complainant has submitted, the Respondent would have been well aware of the Complainant's 'HP' mark by the time it registered the disputed domain name in 2014. The Complainant has relied upon the judgements in the following cases in support of its contentions:

- *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX* [WIPO Case No. D2005-0179, April 20, 2005]
- *Accord Young Genius Software AB v. MWD, James Vargas* [WIPO Case No. D2000-0591, August 7, 2000]

The Complainant has submitted that there is no credible or legitimate reason for the Respondent to have chosen to adopt a domain name consisting of the identical 'HP' mark. Therefore, the Complainant has submitted, the Respondent's purpose in selecting the disputed domain name was to use the fame of the Complainant's 'HP' mark to generate web traffic and confuse internet users visiting the Respondent's website/domain when looking for the Complainant and their famous suite of goods and services. The Complainant has further submitted that the Respondent is not nor has ever been known by the 'HP' mark/name or any other similar name.

The Complainant has submitted that the Respondent has adopted an identical domain name containing its 'HP' mark for offering information technology training services in order to attract internet users who will believe that the Respondent's services have been authorized or licensed by the Complainant. The Complainant has submitted that this, in turn, creates confusion with the Complainant's 'HP' mark as to the sponsorship, affiliation or endorsement of the Respondent's website, and that such use by the respondent is neither a bona fide, nor a legitimate non-commercial/fair use of the disputed domain name.

The Complainant has submitted that at the time when the Respondent registered the disputed domain name, it was aware of the Complainant's activities, its 'HP' mark and the several domains comprising the Complainant's 'HP' mark, and that the aforementioned facts establish a prima facie case that the Respondent has no right or legitimate interest in the disputed domain name and that, pursuant to the provisions of the INDRP, the burden

shifts to the Respondent to show that it does have rights or legitimate interests in the same. The Complainant has relied upon the judgements in the following cases in support of its contentions:

- *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, [WIPO Case No. D2003-0455]
- *Clerical Medical Investment Group Limited v. Clericalmedical.com (Clerical & Medical Services Agency)* [WIPO Case No. D2000-1228].

The Complainant has submitted that, upon information and belief, the Respondent is not commonly known by the name or nickname of the disputed domain name, or any other name containing the Complainant's 'HP' mark. The Complainant has further submitted that the Respondent/Registrant's details, as mentioned in the WHOIS information for the disputed domain does not make any mention of the Complainant's 'HP' mark as being associated in any way with the Respondent/Registrant, either as a name, nickname, or otherwise. The Complainant has also submitted that the Respondent has not been authorized by the Complainant to register or use the disputed domain name, and that such unlicensed and unauthorized use by the Respondent of the disputed domain name which incorporates the Complainant's 'HP' mark is strong evidence that the Registrant does not have rights or legitimate interests in the same. The Complainant has relied upon the judgements in the following cases in support of its contentions:

- *Popular Enterprises, LLC v. Sung-a Jang*, FA0610000811921 (Nat. Arb. Forum, November 16, 2006)
- *SAP Systeme/SAP India Systems v. Davinder Pal Singh Bhatia* [WIPO Case no. D2001-0504, June 8, 2001]

C. The Domain Name was Registered and is being used in Bad Faith

The Complainant has submitted that the evidence tendered so far overwhelmingly supports the conclusion that the Respondent registered and is using the disputed domain name in bad faith, namely that in light of the Complainant's extensive prior use and registration of its 'HP' mark, and its domain www.hp.com, it is extremely unlikely that the Respondent created the disputed domain name independently. The Complainant has further submitted in this regard that the Respondent's choice of domain name, i.e. www.hpcomputer.in in respect of their business of providing IT training and showing an association with the Complainant when there is no connection between the two in reality is proof of bad faith. The Complainant has also submitted that the Respondent was free to adopt any domain name instead of one comprising of the Complainant's 'HP' mark in its entirety. The Complainant has submitted that, given the prominence and well-known stature of the Complainant's products and services under its 'HP' mark, it is incomprehensible that the Respondent would have been unaware of the Complainant's 'HP' mark at the time when the disputed domain name was registered. The Complainant has relied upon the judgements in the following cases in support of its contentions:

- *The J. Jill Group, Inc. v. John Zuccarini d/b/a ReveClub Berlin*, FA0205000112627 (Nat. Arb. Forum, July 1, 2002)
- *SAP AG v. Peifang Huang* [WIPO Case No. D2014-0928, July 28, 2014]

The Complainant has submitted that even constructive knowledge of a famous/well-known trademark is sufficient for the purpose and has relied, in this regard upon the judgement in the case of *Google v. Abercrombie 1*, FA0111000101579 (Nat. Arb. Forum, December 10, 2001).

The Complainant has submitted that despite its prior knowledge of the Complainant's 'HP' mark, the Respondent registered the disputed domain name which is virtually identical to the Complainant's aforesaid mark. In light thereof, the Respondent's conduct in this regard amounts to bad faith registration and use of the disputed domain name. In so doing, the Complainant has submitted, the Respondent has intentionally attempted to attract for commercial gain internet users to the disputed domain and its website thereon, by misleading them and creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the said website.

The Complainant has submitted that the Respondent's choice of domain name is not accidental and has been made with a view to derive unfair monetary advantage. The Complainant has relied on the following points in support of its contention:

- a) At the time of registration of the disputed domain name by the Respondent, i.e. May 08, 2014, the Complainant's 'HP' mark was well-known and registered in numerous jurisdictions around the world, including in India. In fact, the earliest registration of the 'HP' mark in India dates back to 1967. Additionally, the Complainant's domain name www.hp.com has been registered since 1986. Thus, the Respondent registered the disputed domain name much subsequent to extensive use of 'HP' as a trademark and domain name. Also, the popularity and numerous registrations of the 'HP' mark, and the domain name acted as constructive notice to the Respondent of the Complainant's rights in the same. Thus, adoption of an identical/deceptively similar domain name by the Respondent is in bad faith.
- b) The 'HP' mark exclusively refers to the Complainant and its suite of products and services. Thus, adoption of the 'HP' mark as part of the disputed domain name by the Respondent, and an attempt to align its business with that of the Complainant's cannot be a coincidence, but reflects bad faith.
- c) The Respondent's disputed domain name, which has been previously contended to be virtually identical to the Complainant's 'HP' mark, along with the entire business activity of the Respondent, is to deceive the innocent trade and public by misrepresenting itself as part of the Complainant's company or to misrepresent their activities as having been authorized, approved or sponsored by the Complainant. The Respondent has wrongfully registered the disputed domain name to deceive consumers. Thus, it is the adoption of the disputed domain name by the Respondent was not independent but parasitic and in bad faith.
- d) The business activities carried out by the Respondent through the virtually identical disputed domain name are only to divert internet traffic by using the

Complainant's well-known and famous 'HP' mark. Thus, the registration of the disputed domain name by the Respondent is in bad faith.

The Complainant submits that it is not aware of any other legal proceedings that have been commenced or have terminated with regards to the disputed domain name.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed the following reliefs by means of the present Complaint:

- i. The domain name www.hpcomputer.in be transferred to the Complainant;
- ii. Costs be awarded in favour of the Complainant.

7. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the trademark 'HP' as the acronym of its business name, i.e. 'Hewlett-Packard', that has further been derived from the joint names of its founders, i.e. **Bill Hewlett** and **Dave Packard**, by virtue of its numerous (over 600) trademark registrations for the same in jurisdictions worldwide, including in India. In fact, the earliest registration of the mark 'HP' in India dates back to 1967. The Complainant has placed copies of the registration certificates of trademark registrations obtained by it in selected countries worldwide, including India, on the record, all of which pre-date the registration of the Respondent's domain name.

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by filing documents of its registered trademarks has established that it has prior statutory rights in the mark 'HP' in jurisdictions around the world.



The Complainant has also submitted that it has registration of its own domain www.hp.com since 1986 wherein it showcases its wide suite of products and services



under its trademarks **HP** and **HP logo**

The Complainant has, in support of its arguments, further pointed out that the disputed domain name, www.hpcomputer.in, incorporates its trademark '**HP**' in its entirety and may, therefore, be said to be identical/confusingly similar to the Complainant's aforementioned trademark.

The Complainant has submitted that Respondent has intentionally adopted a domain name identical/ confusingly similar to the Complainant's popular trademark '**HP**' with a view to attracting internet users and consumers for commercial gain by abusing the goodwill and reputation associated with the Complainant's aforementioned mark and has further used it with respect to services such that the lay public consumers may easily, though erroneously, infer affiliation, association or sponsorship of the Respondent's activities by the Complainant.

The Complainant has established that it did not at any time license or otherwise authorize the respondent to register the disputed domain name or carry out its activities under the Complainant's trademark '**HP**'.

The Complainant has referred to several WIPO decisions as well as decisions by the National Arbitration Forum, as has been mentioned above, in favour of its contentions and arguments.

The Complainant has submitted a number of annexures, as described above, to establish the availability, extent of use and popularity of its trademarks **HP** and **HP**



logo in India as well as worldwide..

It may be stated that the disputed domain name 'HPCOMPUTER.IN' is confusingly identical/similar to the Complainant's trade mark '**HP**' and completely incorporates the said trade mark of the Complainant. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia* INDRP/093, *Indian Hotel Companies Limited v. Mr. Sanjay Jha*, INDRP/148 <Gingerhotels.co.in>, *Carrier Corporation, USA v. Prakash K.R.* INDRP/238 <Carrier.net.in>, *M/s Merck KGaA v. Zeng Wei* INDRP/323 <Merckchemicals.in>, *Colgate-Palmolive Company & Anr. v. Zhaxia* INDRP/887 <Colgate.in> and *The Singer Company Limited v. Novation In Limited* INDRP/905 <singer.co.in>.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademark '**HP**' under Paragraph 4(i) of the INDRP has been established.

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ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The disputed domain name incorporates the mark 'HP' which is confusingly and deceptively identical/similar to the Complainant's trademark HP in which the Complainant has statutory rights by virtue of having valid and subsisting prior trademark registrations in several jurisdictions around the world and being globally well known, including in India.

The Complainant has further contended, with substantiating arguments, that there is no credible or legitimate reason for the Respondent to have adopted a domain name identical/ deceptively similar to the Complainant's trademark HP other than to ride on the goodwill and reputation accumulated by the Complainant's mark by the time of the Respondent's registering the disputed domain name, and derive unjust enrichment therefrom by causing consumer confusion.

On the other hand, the Respondent has not submitted any registration certificates for the mark 'HP', or in fact any evidence of its rights in the mark 'HP'. It has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under paragraph 7 of the INDRP.

The Complainant has established a prima facie case of its rights in the mark 'HP', and has referred to several WIPO decisions as well as decisions by the National Arbitration Forum, as has been mentioned above, in favour of its contentions and arguments. Therefore, in accordance with the holding of previous panels under the INDRP, the evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or interests in the domain name, which it has failed to do in the current proceedings.


The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name.

Use of such a confusingly and deceptively identical/similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.


In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

The Respondent is not making any fair and non-commercial use of the disputed domain name as on date. The Respondent is in fact using the website at the disputed domain in

conjunction with the Complainant's trademarks **HP** and **HP logo**  to offer IT services and training which may further lead to confusion amongst the lay public and consumers as well as members of the trade as they are allied services to the business of the Complainant. The Respondent's website is, therefore, not bona fide as the Respondent is using the disputed domain name to divert/re-direct internet users seeking the Complainant's website and services to its own website for financial gain.

Further, the fact that the Respondent was not willing to comply with the requisitions as proposed by the Complainant vide its Cease and Desist letter dated October 04, 2017 towards resolving the matter amicably only goes further to establish the Respondent's bad faith in attempting to financially profit from its misuse of the Complainant's

trademarks **HP** and **HP logo**  on the website hosted on the disputed domain.

It is pertinent to mention, also, that the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

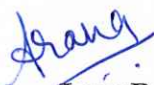
7. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark '**HP**' and variations thereof. The Complainant has herein been able to prove conclusively that:

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**hpcomputer.in**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

Sole Arbitrator

Date: March 09, 2018

Place: New Delhi, India.