



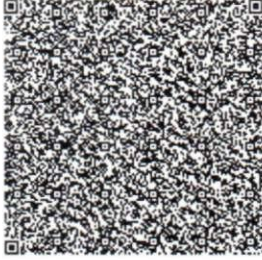
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL76549968611756N  
Certificate Issued Date : 29-Oct-2015 01:36 PM  
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH  
Unique Doc. Reference : SUBIN-DLDSLHIMP1751204239507278N  
Purchased by : AMARJIT SINGH ADVOCATE  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : AMARJIT SINGH ADVOCATE  
Second Party : Not Applicable  
Stamp Duty Paid By : AMARJIT SINGH ADVOCATE  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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COPY COPY COPY COPY

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#### ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET  
EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure

IN THE MATTER OF:

Google Inc.

.....Complainant

**Versus**

Pablo Rigo

.....Respondent

Disputed Domain Name: <loggingmail.in>

**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.

**ARBITRATION AWARD**

**.IN REGISTRY - NATIONAL INTERNET  
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**IN THE MATTER OF:**

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View,  
CA 94043  
United States of America

.....Complainant

**VERSUS**

Pablo Rigo,  
Boliver  
Cordoba 5000  
Argentina

.....Respondent

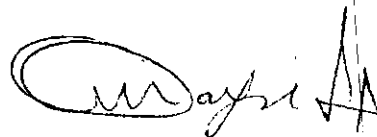
1. **THE PARTIES**

The Complainant in this administrative proceeding is Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America

The Respondent is Pablo Rigo, Boliver, Cordoba 5000, Argentina

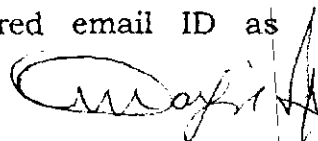
2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <logingmail.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Name.com LLC (R65-AFIN).



### 3. PROCEDURAL HISTORY

- 3.1 The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Pablo Rigo, Boliver, Cordoba 5000, Argentina. The NIXI verified that the Complaint together with the Annexures to the Complaint had satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").
- 3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on July 8, 2015. The parties were notified about the appointment of an Arbitrator on July 10, 2015.
- 3.3 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).
- 3.4 After my appointment as an Arbitrator, I intimated the parties of my appointment and by my email of July 10, 2015, the complainant was directed to transmit soft copy of the complaint as well as the annexures to the Respondent at its registered email ID as



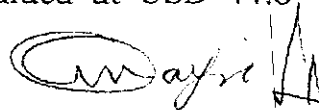
appearing in WHOIS record of the disputed domain name.

- 3.5 The Respondent vide its e-mail dated July 11, 2015 submitted brief response to the complaint.

The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

#### **4. FACTUAL BACKGROUND**

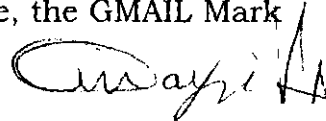
- 4.1 The Complainant in this matter is a Delaware Corporation, located in Mountain View, California, and since its foundation in 1997 the 'Google search engine' has become one of the most highly recognized and widely used Internet search services in the world.
- 4.2 The Complainant has been found to be one of the top 5 most valuable global brands since 2001 with Brand Finance Global 500 ranking the 'GOOGLE' mark as the world's most valuable brand in 2011 valued at USD 44.3 billion.

A handwritten signature in black ink, appearing to read 'M. Agri', is written over the end of the text in paragraph 4.2. The signature is enclosed in a hand-drawn oval.

4.3 The Complainant has used the trademark **GMAIL** in United States commercially since 1998, in connection with the provision of email and electronic messaging services. On March 31, 2004 the Complainant publicly launched its '**GMAIL**' electronic mail and messaging services and the official launch date was April 1, 2004. Since then, the **GMAIL** service has emerged as one of the premier free, web-based email services in the world, with over 900 million active users worldwide as of May 2015.

4.4 The primary **GMAIL** website is located at <http://gmail.com>. The Complainant's **GMAIL** services currently provide more than 15 GB of free storage per user and are available in 71 different languages. Like the *Google search engine*, the **GMAIL** email service integrates with various other products and services of the Complainant.

4.5 The trade mark **GMAIL** thus identifies the Complainant's award-winning web-based email service. It has been widely promoted among the members of the general consuming public since well before the service's launch, and has exclusively been identified with the Complainant. As a result, the **GMAIL** Mark and name symbolize the substantial goodwill associated with the Complainant and are of incalculable value. Due to wide spread and substantial international use, the **GMAIL** Mark

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and name have become tremendously famous all over the world.

- 4.6 The Complainant also offers the "Gmail Help Center" in connection with its Gmail email service. The Gmail Help Center provides support and information regarding, among other topics, Gmail accounts, messages, contacts and technical issue troubleshooting.
- 4.7 The Complainant is aggrieved by the registration of the impugned Domain Name <logingmail.in> and has thus invoked the jurisdiction of this Arbitration Panel under INDRP Policy.

## 5. PARTIES CONTENTIONS

### 5A COMPLAINANT

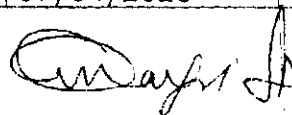
- 5A.1 The trade mark **GMAIL** thus identifies the Complainant's award-winning web-based email service. It has been widely promoted among the members of the general consuming public since well before the service's launch, and has exclusively been identified with the Complainant. As a result, the GMAIL Mark and name symbolize the substantial goodwill associated with the Complainant and are of incalculable value. Due to widespread and substantial international use, the GMAIL



Mark and name have become tremendously famous all over the world.

- 5A.2 The Complainant also offers the "Gmail Help Center" in connection with its Gmail email service. The Gmail Help Center provides support and information regarding, among other topics, Gmail accounts, messages, contacts and technical issue troubleshooting.
- 5A.3 The Complainant owns numerous United States and foreign registrations for the trade mark **GMAIL** dating back to as early as April 1, 2004 and claiming use in the U.S. commercially dating back to 1998. Each registration remains valid and in full force and effect. The Complainant has enclosed an exhaustive list of the Complainant's active worldwide trademark registrations for the trade mark **GMAIL** in various classes along with the copies of Registration Certificates from a few countries.
- 5A.4 The Complainant has also registered its trademark **GMAIL** in India in Classes 9 and 38 and details of the same are set out below:

Registration No.	Mark	Class	Current Status
1349487	GMAIL	9	Registered Falls for renewal on 07/04/2025

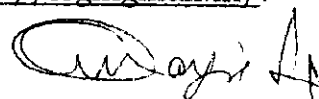


1608506	GMAIL	38	Registered Falls for renewal on 05/10/2017
2365521	GMAIL	38	Registered Falls for renewal on 18/07/2022

5A.5 The Complainant has conceived, adopted and used the trade mark **GMAIL** in connection with its email and electronic messaging services since 1998 in its home country USA and the same has been in use continuously till now. By virtue of its adoption seventeen years ago, and extensive worldwide use thereof, the trade mark GMAIL has become exclusively associated with the Complainant in the eyes of the consumers. The GMAIL mark, due to its extensive use, advertisement, publicity and awareness throughout the world, has acquired the status of a "Well Known Trade Mark" in India under Section 2 (1) (zg) of the Trade Marks Act, 1999. Use of this mark by any third party will lead to confusion and deception among the consumer and general public.

5A.6 The primary **GMAIL** website located at <http://gmail.com> is accessible around the world and the Complainant has held and operated the same since August 13, 1995.

5A.7 Around the month of May 2015, the Complainant was made aware of the existence of the domain name <http://logingmail.in/>.





5A.8 The disputed domain name was registered on February 18, 2015, many years after the Complainant established rights in the famous GMAIL Mark.

5A.9 The <<http://logingmail.in/>> domain name resolves to a website virtually identical to the “**Sign.in**” page that the Complainant uses for its Gmail service.

5A.10 The disputed domain name provides numerous web-links identical and/or similar to the ones provided by the Complainant under the GMAIL Mark such as:

- Gmail Login
- Gmail Sign in
- Create Gmail Account
- Gmail Sign up
- Gmail Account
- Login Gmail
- Sign in Gmail
- Sign up Gmail
- [www.gmail.com](http://www.gmail.com)

The above web-links purport to offer a multitude of services including creating a Gmail account and technical support such as password recovery, to users of the complainant’s Gmail email service.

5A.11 It is apparent that by imitating and advertising the various features and facilities associated with the Complainant’s Gmail

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service, the Respondent is engaged in a *phishing scheme* with the *mala fide* intent to defraud consumer into revealing personal and proprietary information – in this case, users' name, phone number, date of birth, confidential Gmail passwords etc.

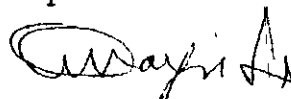
B. **RESPONDENT**

5B(1) The Respondent vide e-mail dated July 11, 2015 submitted its brief informal response to the Complaint before this panel in respect of the disputed domain name <**loggingmail.in**>.

5B(2) The Respondent by its e-mail dated 5<sup>th</sup> August, 2015 submitted before the Panel

“Again, I apologize to Nixi and Google for any inconvenience this situation is causing. First my English is bad, and there are misinterpreted things and I want to clarify the following:

I do not understand why they insist that I commit acts of phishing. I have not received complaints from users, on the contrary. People browsing the site and has knowledge of Gmail accounts, such as maintaining security in the same with 2-step verification and the benefits of having a Google account. I teach all that, simple and easy. There are many sites that are tutorials that explain how to



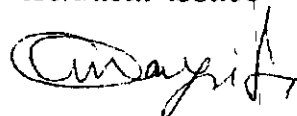
create a Google account. If you want I can name a lot of them.

Moreover, what are showing in the accompanying documentation is a contact form. This contact form is for users to make inquiries and at no time were taken the password of users. I want to show where in the contact form indicated, where I force the user to place your password. There is no option to put the password, the field not exist. I not even forced the user to complete the form, is optional.

So I do not agree that commit acts phishing in my sites because it is not true, they are tutorials. On my sites I have not changed anything. You can browse and check it yourself. I am being accused of something serious and this is not true. I have not committed any acts of phishing.

Later in the text states:

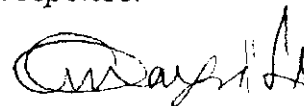
*"The Respondent has included this to pass off his website as a 'Customer Service Forum' affiliated with the Complainant which provides users an interactive platform to discuss their technical issues with forum"*

A handwritten signature in black ink, appearing to read "C. Wright", is written over the bottom right portion of the quoted text.

This is not true at all. My sites are not a forum. You know what is a forum? In a forum, the people exchange knowledge on information to be viewed by registered users, and opine about various topics. In my sites, there is no registration system, hence people do not interact with each other, so my sites are not a forum. I provide information on the precautions to be taken to create an email account correctly and helped to the protect, just that.

Then he states:

*"It is submitted further that the Respondent despite acknowledging the Complainant's ownership of the Gmail trademark has expressed an unwillingness to transfer the disputed domain name to the Complainant forthwith and seeks a time period of four and a half (4 1/2) months to do so citing the potential loss of revenue from the impugned site as a reason. It is submitted that the revenue that is generated on account of misled visitors to the Respondent's site is in itself unlawful and the potential for further harm being caused to the Complainant's goodwill and reputation in the Gmail trademark on account of the acts of the Respondent is obvious from the present response."*



I ask, where is my unwillingness to deliver the domains? In the previous letter I sent, I recognized that I am very respectful of the brand, with Gmail and Google therefore I offered to transfer the following domains: gmailcomlogin.in, gmaillogin.in, gmailloginsignin.in and logingmail.in voluntarily.

That is, the mentioned domains I will deliver right now, with the condition required that the domain: gmailcom.in is delivered dated 30 November 2015. From my domain registrar I transfer my domain to Google or Nixi. Just ask, the necessary indications to make it possible. Who do I transfer domains verified.

Moreover, say it:

*"It is Submitted That Is That the revenue generated on account of misled visitors to the Respondent's site is in itself unlawful"*

This is not true. So, how do I cheat the user? I ask for money? Did I steal money? Please, this is not true, I never mislead the user, quite the opposite. I have helped take the necessary time to create an email account and necessary precautions. All I asked, for my good will in this case, it's time to deliver gmailcom.in domain. I put a deadline and delivery date would make November 30, 2015. The other domains do not have to



follow in dispute, have I since offered the immediate transfer of the same, but only on condition that they give me to transfer this term domain. I have acted in good faith and there's been total confusion. They claimed things about me that are not true and I see very affected by this situation”.

5B.3 The Respondent vide its e-mail dated August 17, 2015 submitted:

“I try to transfer the domain to Google, to the registrar Mark Monitor INC. but the domain:

gmailloginsignin.in

gmailcom.in

gmailcomlogin.in

gmaillogin.in

Are blocked by nixi.in on my registrar (name.com).

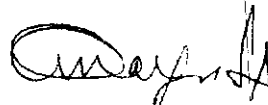
The domain gmailcom.in Expires on 2015-08-22

and the domain: gmaillogin.in Expires on 2015-08-14

And I will not renew these domains”.

### C. REJOINDER

5C.1 The Panel vide its e-mail dated July 11, 2015, granted ten days time to the Complainant to file its Rejoinder if any in terms of the submissions made by the Respondent. The Complainant by its e-



mail dated July 17, 2015 filed submission as follows:-

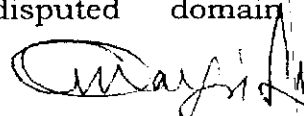
5C.2 The reply by the Respondent which is in the form of a generic email containing consolidated submissions in respect of all the offending domains contains the following key admissions:

- a. Knowledge and awareness of the Complainant's trademark and its associated reputation;
- b. An attempt to create an affiliation with the Complainant's Google/Gmail trademark and associated services;
- c. Commercial benefit being derived from the domain as a result of (b).

It is important to note that the response does not attempt to claim any independent rights over the Gmail trademark by the Respondent in relation to the impugned domain 'LOGINGMAIL.IN' in the present instance.

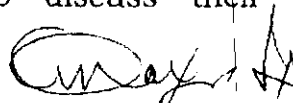
It is submitted that all of the above reasons even if regarded independently, make out a sufficient case for the transfer of the domain 'LOGINGMAIL.IN' in favour of the Complainant.

5C.3. It is submitted that the Respondent's contention that the disputed domain



'LOGINGMAIL.IN' provides a tutorial with respect to the Complainant's Gmail services is an unsustainable defence as admittedly the Respondent has no license from the Complainant to do so and the alleged 'tutorial' apart from being unauthorised involves an act of phishing for *inter alia*, the following reasons:

- a. Under the pretext of operating an 'informative' site/blog to help Gmail users, the Respondent has created a webpage that is similar in its general look and feel to that of Complainant's GMAIL and associated logos and text, to create the impression that Respondent's website originates with Complainant.
- b. Moreover, the Respondent has also incorporated a template or response form as reproduced below for unsuspecting Gmail Users to provide their personal information pertaining to their Gmail accounts allegedly to obtain technical/troubleshooting solutions for issues such as 'Inability to access their Gmail account', 'forgotten password or username', 'account compromised, or any other issues'. The Respondent has included this to pass off his website as a 'Customer Service Forum' affiliated with the Complainant which provides users an interactive platform to discuss their





technical issues with forum experts who are employees of the Complainant.

5C.4 It is submitted further that the Respondent despite acknowledging the Complainant's ownership of the Gmail trademark has expressed an unwillingness to transfer the disputed domain name to the Complainant forthwith and seeks a time period of four and a half (4 ½) months to do so citing the potential loss of revenue from the impugned site as a reason. It is submitted that the revenue that is generated on account of misled visitors to the Respondent's site is in itself unlawful and the potential for further harm being caused to the Complainant's goodwill and reputation in the Gmail trademark on account of the acts of the Respondent is obvious from the present response.

**D. SETTLEMENT**

5D.1 Considering the willingness of the Respondent to settle the dispute, the Panel advised the parties to settle the dispute and file the settlement proceedings with the Panel to consider the same in the light of the arguments made in the Complaint and the response filed by the Respondent.

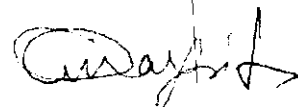
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The Panel did not hear anything from the parties and is pronouncing the Award in terms of the submissions and the documents available on record in the matter.

**6. DISCUSSIONS AND FINDINGS**

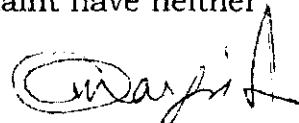
6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the



determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 The Respondent did not file any response to the complaint.
- 6.5 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.6 The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither



been dealt with nor specifically disputed or denied by the Respondent.

6.7 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.8 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

A. **IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The mark GMAIL is a registered trade mark of the Complainant vide Registration nos. 1349487, 1608506 & 2365521 in India. The Complainant's registration Certificates are annexed with its Complaint. The Complainant has used the GMAIL Mark well prior to February 18, 2015 which is the registration date of the disputed domain <loggingmail.in>.

By an e-mail dated July 11, 2015, the Respondent has admitted the proprietorship of the Complainant with



respect to the mark GMAIL and has not disputed the trade mark right therein.

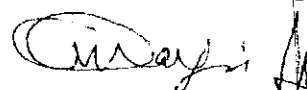
6A.2 In view of the facts and circumstances, the Panel concludes that the impugned Domain Name **<logingmail.in>** identically and deceptively similar to the trade/service mark of the Complainant.

**B. RIGHTS OR LEGITIMATE INTEREST**

6B.1 The Respondent is not commonly known by the disputed domain name or any name containing the Complainant's GMAIL mark.

6B.2 The Complainant has not authorized or licensed the Respondent use any of its trade marks in any way. Such unlicensed and unauthorized use of domain incorporating the Complainant's trade mark is strong evidence that Respondent has no rights or legitimate interest in the disputed domain name.

6B.3 By its e-mail dated July 11, 2015, the Respondent submitted that the purpose of registering the impugned Domain Name or Logos was to provide information and training regarding use of Gmail service to the users. He submits that the site hosted on the impugned Domain Name is informative site to help



Gmail users to understand Gmail services.

6B.4 The Complainant while filing its Rejoinder submits that under the pretext of operating an 'informative' site to help Gmail users, the Respondent has created a Webpage that is similar to that of the Complainant's Gmail.

The Complainant further submitted that the Respondent has incorporated a template or response form to create confusion amongst the users.

6B.5 The Respondent by its e-mail dated August 5, 2015, submitted before the Panel that he is willing to transfer the impugned Domain Name in good faith.

6B.6 The Panel after going through the evidence on record, most specifically the contact form and the look and feel of the Website and its contents therein, concludes that the Respondent has no right in the impugned Domain Name. Moreover, the willingness of the Respondent to transfer the impugned Domain Name to the Complainant is evident of the fact that the Respondent is no more interested in operating the Website of impugned Domain Name

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incorporating the trade mark of the Complainant.

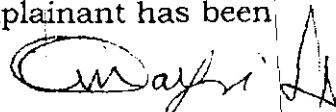
**C. REGISTERED IN BAD FAITH**

6C.1 That the disputed domain registered and used by the Respondent incorporates the famous GMAIL Mark in its entirety, and is confusingly similar to the Complainant's registered website www.gmail.com. The disputed domain differs from the Complainant's registered website by mere addition of the descriptive term 'login' and the generic top-level domain ("gTLD") ".in" which are insufficient to distinguish the Respondent's domain from the Complainant's registered trade mark.

6C.2 The Complainant has used the GMAIL Mark well prior to February 18, 2015 which is the registration date of the disputed domain.

6C.3 The Respondent has also submitted that it does not intend to operate its Website on the impugned Domain Name before this Panel and is willing to transfer the Domain to the Complainant.

6C.4 In the above circumstances, the Panel concludes that the Complainant has been



successful in established the third element of INDRP Policy.

**7. DECISION**

The impugned domain name <**loggingmail.in**> is thus directed to be transferred to the Complainant.



**AMARJIT SINGH**  
Sole Arbitrator

Dated: 26<sup>th</sup> October, 2015