



தமிழ்நாடு தமில்நாடு TAMILNADU

18 MAR 2019

D. SARAVANAN

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing

Reheja Towers, Near LIC

No.113-134, Anna Salai, Chennai 600 002

J. JAYAKAR

STAMP VENDOR

L.NO. 17/B3/97

ANNA NAGAR, CH - 40

BT 001501

**BEFORE THE SOLE ARBITRATOR MR.D. SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: www.splunk.in
[INDRP Case No. 1075]

Splunk Inc
270 Brannan St., San Francisco,
CA 94107
United States of America.

.. Complainant

Vs.

Super Software Pvt. Ltd
AI-93, 9th Main Road,
Anna Nagar,
Chennai – 600 040
Tamil Nadu.
+91 8867027100
supersoftware@outlook.com

.. Respondent

..2





தமிழ்நாடு தமில்நாடு TAMILNADU

14 MAR 2019

D. SARAVANAN

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing
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No.113-134, Anna Salai, Chennai 600 002

AW 682946

P.S. SHANMUGA SUNDARAM

STAMP VENDOR

L.No. 84 / 109 / 88

HIGH COURT CAMPUS
CHENNAI - 600 104. (TAMIL NADU)

1. The Parties:

-2-

The Complainant is Splunk Inc, having address at 270, Brannan St., San Francisco, CA 94107, USA. The Complainant is represented through its Attorneys, M/s. Lal & Sethi, having office at D-17, South Extension – II, New Delhi – 110 049.

The Respondent is M/s/ Super Software Pvt Ltd, having address at AI-93, 9th Main Road, Anna Nagar, Chennai – 600 040, Phone: +91 8867027100, Email: supersoftware@outlook.com.

..3.



2. The Domain Name and Registrar:

The disputed domain name is www.splunk.in. The domain name has been registered with .IN REGISTRY through its Registrar "Crazy Domains FZ-LLC" , PO Box A2191 Sydney South New South Wales, 2000, Phone(India) 000 800 100 3215, Fax: 022 6645 9685. The Complainant has submitted **Annexure C** as reference for the same.

3. Procedural History:

25 th February, 2019	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
25 th February, 2019	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
1 st March, 2019	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through courier which was refused to accept by the consignee.
6 th March, 2019	:	Notice was sent to the Respondent by e-mail directing the Respondent to file its response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
13 th March, 2019	:	Respondent sent a written response through e-mail.
18 th March, 2019	:	An e-mail communication was sent to all the concerned intimating that the matter is reserved for passing award.



4. Factual Background:

4.1 The Complainant:

The Complainant is Splunk Inc, having address at 270, Brannan St., San Francisco, CA 94107, USA. The Complainant is represented through its Attorneys, M/s. Lal & Sethi, having office at D-17, South Extension – II, New Delhi – 110 049.

4.2 Complainant's Activities:

(i) The Complainant submitted that having incorporated in the year 2003, today, it is a multination corporation which provides innovative software solutions that enable organizations to gain real-time operational intelligence by harnessing the value of their data. The Complainant's products and services enable users to collect, index, search, explore, monitor, correlate and analyse data regardless of format or source. The Complainant's products and services address large and diverse data sets commonly referred to as big data and are specifically tailored for machine data with the aim of helping organizations gain the value contained in machine data by delivering real-time information to enable operational decision making. A brochure containing the overview of the Complainant and its business is marked by the Complainant as **Annexure D**. The Complainant's profile, as obtained from the website at the domain <https://www.bloomberg.com> is marked by the Complainant as **Annexure E**. The Annual Report of the Complainant, submitted to the United States Securities and Exchange Commission, is marked by the Complainant as **Annexure F**.

(ii) Since its incorporation in the year 2003, the Complainant has continuously used the trade mark SPLUNK (hereinafter to be referred as the '**earlier well-known trade mark**') in connection with its products and services. The trade mark SPLUNK is an invented word that has no known dictionary meaning. Today, the Complainant is a leader in machine data analysis, offering products and services to more than 15,000 customers, including more than 85 of the Fortune 100 companies. The Complainant's flagship product is Splunk Enterprise, a machine data platform, comprised of collection, indexing, search, reporting, analysis, alerting, monitoring and data management capabilities. Splunk Enterprise can collect and index



petabytes of machine data daily, irrespective of format or source. Splunk Cloud delivers the benefits of Splunk Enterprise deployed and managed reliably and scalably as a service. Splunk Cloud is available internationally and eliminates the need to purchase, deploy, and manage infrastructure. An overview of the Complainant's products, as obtained for the Complainant's website at the domain <https://www.splunk.com> is marked by the Complainant as **Annexure G**.

(iii) The Complainant submitted that since 2005, it has used the earlier well-known trade mark SPLUNK as the part of its official domain name www.splunk.com. The WHOIS details of the aforementioned domain is marked by the Complainant as **Annexure H**. The aforementioned website was registered and used by the Complainant long before the Respondent's registration of the Disputed Domain Name. The Complainant's trade mark is featured throughout the website, and the Complainant specifically claims ownership of the trade mark SPLUNK on webpages of the aforementioned website. Printouts from the said website are marked by the Complainant as **Annexure I**.

4.3 Complainant's Trading Name:

(i) The Complainant is the registered proprietor of the earlier well-known trade mark SPLUNK in India, particulars of which are as under :-

Trade Mark	Number	Application Data	Class(es)
SPLUNK	2203472	September 12, 2011 with use claimed since November 01, 2005	35
Class 35: services related to business management, business administration, office functions			
SPLUNK	2218421	October 10, 2011	9,16,38,41,42



Class: 9

Computer hardware; computer server software; computer search engine software; and instructional manuals sold as a unit therewith being goods included in class 09.

Class: 16

Of printed matter, namely, manuals, white papers, books, magazines, newsletters and user guides on the subject of information technology being goods included in Class 16.

Class: 38

Providing multiple user access to global computer networks for the transfer and dissemination of a wide range of information, providing on-line electronic bulletin boards for transmission of messages among computer users in the fields of computer operation and networking and information technology; information transmission services for peer to peer networking and file sharing via digital communication networks being services.

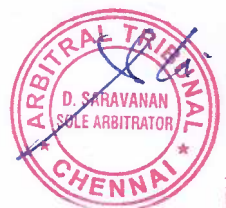
Class: 41

Educational services, namely, providing training, tutorials, classes and seminars in the field of computers, computer software and computer networks and the development and operation of cloud computing networks.

Class: 42

Computer software consulting and design services for others; computer hardware consulting and design services for others; technical support services, namely, troubleshooting of computer hardware; software and computer network problems, maintenance of computer software; application service provider services (asp), namely hosting software applications of others; information technology consultation.

(ii) The Complainant submitted that the aforementioned registrations are valid and subsisting on the Trade Marks Register and that by virtue of the aforesaid registrations, the Opponent has the exclusive right to use the said trademarks. Additionally, by virtue of the registrations and by virtue of the provisions of Section 31 of the Trade Marks Act, 1999, the



registrations are prima facie evidence of their validity. Certificates of registrations in support of the aforementioned are marked by the Complainant as **Annexure J**.

(iii) In addition to the above, the Complainant has also attained registrations in several jurisdictions of the world including but not limited to Australia, Canada, European Union, Malaysia, New Zealand, Qatar, Singapore, United States of America. Copies of the registration certificates/online statuses of selected countries are marked by the Complainant as **Annexure K**.

(iv) The Complainant further submitted that it has extensive presence on social media platforms like Twitter (<https://twitter.com/splunk>), Facebook (<https://www.facebook.com/splunk>), LinkedIn (<https://www.linkedin.com/company/splunk>), YouTube (<https://www.youtube.com/user/splunkvideos>), Instagram (<https://www.instagram.com/splunk/>) and Google+ (<https://plus.google.com/+Splunkofficial>). Print outs of the home pages of the aforementioned websites are marked by the Complainant as **Annexure L**.

(v) Further, since 2003 it has extensively, advertised and marketed its earlier well-known trade mark. The Complainant's products and services are marketed as a targeted solution for specific use cases and as an enterprise solution for machine data. The Complainant engages with existing and potential customers to provide community based education and awareness and to promote expanded use of its software within these customers. The Complainant hosts a number of events, including the SplunkLive! event series, across sales regions to engage with both existing customers and new prospects as well as deliver product training. The Complainant hosts an annual worldwide user conference (".conf") and multiple partner conferences as other ways to support the Splunk community to foster collaboration and help customers drive further business results from its software. The Applicant has incurred \$10.1 million, \$10.0 million and \$ 13.3 million in advertising expenses for fiscal years 2018, 2017 and 2016 respectively. A printout of the annual report for the year 2018, evidencing the same is already marked by the Complainant as **Annexure F**.



(vi) The Complainant's earlier well-known trade mark has also been extensively discussed and advertised in major international magazines and newspapers. These newspapers and magazines, in print and electronic form are circulated and read by people in India. Copies of selected articles featuring the Opponent and its earlier well-known trade mark are being filed in these proceedings and are marked by the Complainant as **Annexure 'M'**.

(vii) The Opponent's products and services under the earlier well-known trade mark have received numerous awards and recognition. The Opponent is, inter-alia the recipient of the following awards: Computing Technology Product Award 2018 for Best Security Product – Enterprise, Deloitte's Technology Fast 500, Forbes World's Best Employers, Datanami Readers' & Editors' Choice Awards, Forbes 2018 Digital 100 list, Network World Asia Readers' Choice Product Excellence Awards, Fortune Magazine's Future 50, Computing Security Excellence Awards, TSIA STAR Award, CRN Big Data 100, Cisco ISV partner of the year, InfoWorld Technology of the Year Award. The complete list of awards and accolades won by the Complainant is marked by the Complainant as **Annexure 'N'**.

(viii) The Complainant submitted that it would be clear from the above that the Complainant alone has the exclusive rights in the earlier well-known trade mark and the Complainant alone has the exclusive right to use the earlier well-known trade mark SPLUNK as part of its domain name and company name and/or in any other manner whatsoever. The earlier well-known trade mark SPLUNK merits protection from a third party's act of cyber piracy and/or cybersquatting including that of the Respondent.

4.4 Respondent's Identity and activities:

(i) From **Annexure B** marked by the Complainant, the Respondent is identified as M/s. Super Software Pvt. Ltd, based on the WHOIS search database available on the INDRP website (hereinafter referred as "Databases"). The Complainant submitted that such belief is based upon information obtained from the databases by conducting several database queries, which returned consistent results.



(ii) The Complainant further submitted that the dispute concerns the SPLUNK.IN domain, which was registered on April 09, 2013 as per the information provided on the databases.

(iii) From **Annexure C** referred by the Complainant it is seen that the Sponsoring Registrar of the Disputed Domain Name is "Crazy Domains FZ-LLC" with address PO Box A2191 Sydney South, New South Wales, 2000, Phone: (India): 000 800 100 315, Fax: 022 6645 9685. The sponsoring registrar is duly accredited with the .IN Registry and is listed on the website of the .IN Registry and the website of the Sponsoring Registrar is <https://www.crazydomains.com/> and they can be contacted at customercare@crazydomains.com.

5. Dispute

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.

6. Parties contentions:

A. Complainant:

(i) The domain name www.splunk.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

(i) The Complainant submitted that based upon information and belief, the Respondent registered the Disputed Domain Name on April 09, 2013. An extract of the Databases where the creation date is mentioned has already been annexed.

(ii) The Disputed Domain Name is identical to the Complainant's registered trade mark, trade name and domain name. At the time the Respondent registered the Disputed Domain Name, the Complainant had not only been using its earlier well-known mark as a



trademark/trade name and as part of its domain name but also had trade mark registrations in respect of the earlier well-known mark. Furthermore, at the time that the Respondent registered the Disputed Domain Name, the Complainant's earlier trademark had already acquired the status of a well-known mark. The Respondent cannot claim or show any rights to the Disputed Domain name that are superior to Complainant's rights, goodwill and reputation as established by way of documentary evidence that is filed before this Tribunal.

(iii) Accordingly, the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, as per paragraph 4 (i) of the Policy has been satisfied.

(ii) **The Respondent has no rights or legitimate interest in the domain name www.splunk.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**

(i) The Complainant submitted that its trade mark SPLUNK, being an invented word, is a highly distinctive and well-known trade mark and there can be no plausible justification for the adoption of the Disputed Domain Name. The Respondent can demonstrate no legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after Complainant had established rights in the SPLUNK trade mark/ trade name through extensive use and registration in various countries. At the outset, it should be noted that the Complainant's trademarks are so well known and recognized, there can be no legitimate use by the Respondent.

(ii) Furthermore, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization by which the Respondent could own or use the Disputed Domain Name, which is identical to the Complainant's trade mark. The Respondent is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name. The Respondent is clearly trying to associate himself with the Complainant with the mala fide intention to ride upon the immense goodwill and reputation of the Complainant's earlier well-known trade mark to gain undue monetary benefit. Such adoption is against the Indian Domain Name Dispute Resolution Policy. Therefore, the Respondent does not have and / or



cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered only to make unlawful monetary gains.

(iii) Such adoption and use of the domain is likely to confuse the members of trade and public that services under the Disputed Domain Name are arising from the Complainant, which is not the case. Such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the earlier well-known trade mark of the Complainant.

(iv) The Complainant submitted that from all of the above it would be amply clear that the Respondent has not made any legitimate or fair use of the Disputed Domain Name. The only interest of the Respondent is to earn undue monetary gains by such illegal adoption and use of the earlier well-known trade mark of the Complainant and to create an impression in the minds of members of trade and public that the Respondent is in some way affiliated or associated with the Complainant, when such is not the case. In fact, by such illegal adoption and use of the Disputed Domain Name, the Respondent is trying to create an impression to the customers of the Complainant that the services from the Disputed Domain Name originate from the Complainant. Therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name which contains the Complainant's earlier well-known trade mark in its entirety.

(v) The Complainant further submitted that given the fame of the Complainant's Mark as a trade mark, trade name and domain name, it is not possible to conceive any use by the Respondent of the Disputed Domain Name that would not constitute an infringement of the Complainant's rights in its Trade Mark. (See ***Veuve Clicquot Ponsardin v. The Polygenix Group Co.***, WIPO Case No.D2000-0163 at Section 6). Mere registration by Respondent of the Disputed Domain Name is thus further evidence of Respondent's bad faith. See ***Telstra Corporation Limited v. Nuclear Marshmallows***, Case No. WIPO D2000-0003.

(vi) Accordingly, the second condition that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (ii) of the Policy has been satisfied.



(iii) **The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP:**

(i) The Complainant submitted that bad faith of the Respondent in registering the Disputed Domain Name can be simply established from the fact that the Respondent has registered the Disputed Domain Name by adopting the Complainant's earlier well-known trade mark SPLUNK.

(ii) The Complainant submitted that the Respondent has created a website with an intention of misleading the members of trade and public that the website under the Disputed Domain Name belongs to or created by the Complainant in as much as, on logging on to the Respondent's website, users are directed to pay-per-click page, containing sponsored links, which are related to the Complainant's business. This clearly evidences the fact that the Respondent is using the disputed domain name in "bad faith" with the intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well-known mark as to the source, sponsorship, affiliation or endorsement of its website and the services on them. Screenshots of the impugned domain evidencing the same are marked by the Complainant as **Annexure O**.

(iii) It was further submitted that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorisation and no legitimate purpose to utilize the mark reveals bad faith, **Caravan Club v Mrgsale NAF Decision FA 95314**.

(iv) The Complainant submitted the decisions in **Bennett Coleman & Co.Ltd., v. Steven S.Lalwani (Case No. D 2000-0014)** and **Bennett Coleman & Co.Ltd., v. Long Distance Telephone Company** (Case No.D 2000-2015) decided by WIPO, wherein the Complainant, publisher of the daily newspaper "The Economic Times" and "The Times of India" held domain names, , <economictimes.com> and <timesofindia.com> for publication of their respective newspapers. The two respondents had registered the sites <theeconomictimes.com> and <thetimesofindia.com> and the Complainant contended that this was use of identical marks in which it had prior rights. Moreover, the site <thetimesofindia.com> redirected traffic to the site <indiaheadlines.com> while the site <theeconomictimes.com> redirected traffic to



<infindyourperfectmate.com> without having any legitimate interests in respect of the domain names. Hence, the Complainant alleged that the respective respondent's registrations and use of the domain names was in "bad faith" in the sense that their use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered therein. The Administrative Panel held that it is not a sufficient answer to suggest that the defendant will dispel any misleading first impression by use of a different design of the web site. The Panel further held that the necessary implication is that the domains were specifically selected in order to take advantage of the Complainant's very considerable reputation in the two titles of its publications by misleading internet users into believing that the respondent's sites came from or were associated with the Complainant. The Panel ordered that the two domain names be transferred to the Complainant.

(v) In addition to the above, it is submitted that the Respondent registered the Disputed Domain Name primarily for purposes of selling it. A perusal of the website <https://whois.domaintools.com> would reveal that the Impugned Domain is being offered for sale. The printouts from the aforementioned website, evidencing the same, are marked by the Complainant as **Annexure P**.

(vi) In *Playboy Enterprises International, Inc. v Hector Rodriguez*, WIPO Case No.D2000 -1016 (Playboy channel .com and play boynetwork.com), it was observed that "People, who manifest an Intent to traffic in domain names that incorporate well-known or famous trademarks, as the Respondent does here, simply do not expend their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking". Consequently, bad faith use of the Disputed Domain Name is quite clear in this case, given the content on the Respondent's web site and his intent to sell the Disputed Domain Name.

(vii) It is also submitted that the Respondent has registered the domain name in order to prevent the Complainant, who is the owner of the earlier well-known mark, from reflecting the mark in a corresponding domain name. In this regard, it is submitted that the respondent



herein is a habitual offender. It is submitted that in the matter of **Thoughtworks Inc. Vs. Super Software Pvt.Ltd., and Ors.** 2017(69) PTC 303(Del), The Hon'ble Delhi High Court, recording a finding against the Respondent herein, held that 'With the domain name taking up the entire name of the Petitioner, there could be no doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of Respondent No.1 with the Petitioner when there is none. A copy of the aforementioned judgement is marked by the Complainant as **Annexure Q.**

(viii) Such activities shows the bad faith and mala fide intention on part of the Respondent to cause prejudice not only to the Complainant but the public at large and therefore, the Disputed Domain Name merits cancellation on this ground alone.

(ix) Copies of the aforementioned orders are marked by the Complainant as **Annexure R (colly).**

(x) The Complainant made reference to the case in SATYAM INFOWAY LTD. Vs. SIFYNET SOLUTIONS PVT.LTD., [2004 Supp (2) SCR 465], wherein the Appellant was the registrant of the domain names www.sifynet.com, www.sifymall.com, www.sifyrealestate.com, etc., since the year 1999. The Respondents subsequently adopted the domain names www.siffynet.net and www.sijfynet.com in the year 2001. The Supreme Court of India while allowing the Appeal, held the following:

"11. Analysing and cumulatively paraphrasing the relevant parts of the aforesaid definitions, the question which is opposite is whether a domain name can be said to be a word or name which is capable of distinguishing the subject of trade or service made available to potential users of the internet?"

"12. The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site. In the commercial field, each domain name owner provides information/services which are associated with such domain name. Thus a domain name may pertain to provision of services within the meaning of Section 2(z). A domain name is easy to



remember and use, and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the Internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its goods or services, and to specify its corresponding on line Internet location. Consequently, a domain name as an address must, of necessity, be peculiar and unique and where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical. "As more and more commercial enterprises trade or advertise their presence on the web, domain names have become more and more valuable and the potential for dispute is high. Whereas a large number of trademarks containing the same name can comfortably co-exist because they are associated with different products, belong to business in different jurisdictions etc., the distinctive nature of the domain name providing global exclusivity is much sought after. The fact that many consumers searching for a particular site are likely, in the first place, to try and guess its domain name has further enhanced this value". The answer to the question posed in the preceding paragraph is therefore an affirmative".

"16. The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off."

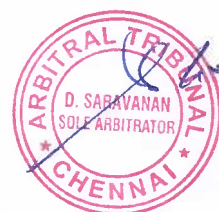
"18. However, there is a distinction between a trademark and a domain name which is not relevant to the nature of the right of an owner in connection with the domain name, but is material to the scope of the protection available to the right. The distinction lies in the manner in which the two operate. A trademark is protected by the laws of a country where such trademark may be registered. Consequently, a trade mark may have multiple registrations in many countries throughout the world. On the other hand, since the internet allows for access without any geographical limitation, a domain name is potentially accessible irrespective of the geographical location of the consumers. The outcome of this



potential for universal connectivity is not only that a domain name would require world wide exclusivity but also that national laws might be inadequate to effectively protect a domain name. The lacuna necessitated international regulation of the domain name system (DNS). This international regulation was effected through WIPO and ICANN. India is one of the 171 states of the world which are members of WIPO. WIPO was established as a vehicle for promoting the protection, dissemination and use of intellectual property throughout the world. Services provided by WIPO to its member states include the provision of a forum for the development and implementation of intellectual property policies internationally through treaties and other policy instruments." A copy of the said judgement is being filed with the present complaint and is marked as **Annexure S**.

(xi) It was further submitted that the activities of Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's Mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws. Moreover, these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the Policy under paragraph 6 which promulgates that bad faith can be found where there is evidence of:

- a. *circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of [Respondent's] documented out-of-pocket costs directly related to the domain name; or*
- b. *[Respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [Respondent] has engaged in a pattern of such conduct; or*
- c. *by using the domain name, the [Respondent has] intentionally attempted to attract Internet users to the [Respondent's] website or other-on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the [Respondent's] website or location or of a product or service on the Registrant's website or location.*



B. Respondent:

- (i) The Respondent by their e-mail dated 13.03.2019 submitted that they do not own the impugned domain name, www.splunk.in since 2015 and the said domain name is auto-renewed by the domain registrar "Crazy Domains", over which they do not have any control.
- (ii) Except for such submission, the Respondent did not provide any documents in support of the contention that the domain name is auto-renewed.

7. Discussion and Findings:

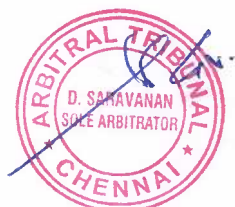
Now, it has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant and the Respondent submitted their written response on 13th March, 2019.

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:

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

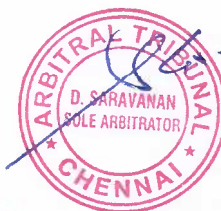
(a) Identical or confusing similarity:



- (i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "Splunk" around the world, including in India. The same is evident from **Annexure J** and **Annexure K** marked by the Complainant.
- (ii) The Respondent had created the impugned domain name much later to Complainant's registration, on 9th April, 2013. The same is evident from the Whois databse of the Respondent marked as **Annexure B** by the Complainant.
- (iii) It is hence observed that the Respondent had used the identical mark of the Complainant.
- (iv) The Arbitral Tribunal therefore concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

- (i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name.
- (ii) It is seen that the WHOIS lookup in **Annexure B**, relates the Respondent to the Disputed Domain name. However, it identifies the registrant as 'Crazy Domains FZ-LLC', which name is not in the slightest way similar to the Disputed Domain name.
- (iii) The Respondent had agreed that they do not own the impugned domain name since 2015 and that the Registrant might have auto-renewed the impugned domain name.
- (iv) Therefore, undisputedly, the Respondent does not have any rights or legitimate interest in the domain name.



- (vi) Hence, the Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) **Registration and Use in Bad faith:**

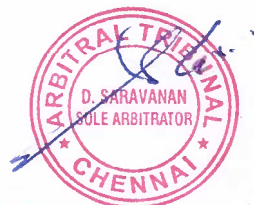
- (i) The Respondent has registered the Disputed Domain Name by adopting the Complainant's earlier well-known trade mark SPLUNK.

(ii) It is evidenced from **Annexure O** marked by the Complainant that the Respondent has created a website with an intention of misleading the members of trade and public that the website under the Disputed Domain Name belongs to or created by the Complainant in as much as, on logging on to the Respondent's website, users are directed to pay-per-click page, containing sponsored links, which are related to the Complainant's business. The Respondent uses the disputed domain name with the intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well-known mark as to the source, sponsorship, affiliation or endorsement of its website and the services on them and hence amounts to registration and use in bad faith.

(iii) Further, from **Annexure P** marked by the Complainant it is seen that the Respondent's website portrays, "**Splunk.in in for sale**", which reflects that the sole purpose for which the website was created is for sale which amounts to registration in bad faith.

(iv) The Complainant have relied on the decision in Hon'ble High Court, Delhi in **Thoughtworks Inc. Vs. Super Software Pvt.Ltd., and Ors.** 2017(69) PTC 303(Del), and marked the same as **Annexure Q**. It is observed by this Tribunal that the Respondent herein the Respondent in the said case and the Hon'ble Court has held that 'with the domain name taking up the entire name of the Petitioner, there could be no doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of this Respondent with the Petitioner'.

(v) From the above, this Tribunal finds that the registration of the impugned domain name by the Respondent is registration and use in bad faith. Hence, the Arbitral Tribunal is



satisfied that the Respondents registered and used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.

8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "splunk" and also the disputed domain name www.splunk.in be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator

26th March, 2019
Chennai, INDIA