



हरियाणा HARYANA

L 693140

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Microsoft Corporation

A company incorporated and existing
under the laws of the State of Washington,
U.S.A of One Microsoft Way Redmond,
WA 98052-6399,

United States of America

..... Complainant

Vishnu Suhas

Windows Phone Hub,
Arekere Main Road,
Bangalore – 572201
Karnataka, India

..... Respondent

Disputed Domain Name: www.windowshphonehub.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Microsoft Corporation a corporation incorporated and existing under the laws of the States of Washington, USA, whose address is One Microsoft Way Redmond, WA 98052-6399 United States of America. The Complainant is represented by its authorized representatives Pooja Dodd, Partner, LexOrbis, 709/710, Tolstoy House, 15-17, Tolstoy Marg, New Delhi – 110001.

The Respondent in this arbitration proceeding is Vishnu Suhas, WindowsPhone Hub, Arekere main Road, Bangalore , Karnataka – 572201 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.windowshphonehub.in. The Registrar is Webiq Domains Solutions Pvt. Ltd., 102, Osia Friendship, 4th Gaothan Lane, Off J P Road, Opp. Ram Mandir, Andheri (W), Mumbai, Maharashtra.

The Registrant is Vishnu Suhas, WindowsPhone Hub, Arekere main Road, Bangalore, Karnataka – 572201.

3) Procedural History: :

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on May 04, 2015, and the notice was issued to the Respondent on May 04, 2015 at his email address with a deadline of 10 days to submit his reply to the arbitration.



- The Arbitrator also directed the Complainant to provide by email copy of complaint and Annexures to the Respondent which was duly complied.
- Vide email dated May 8, 2015 NIXI informed that the Blue dart courier agency requires the contact number of the Respondent (Mr. Vishnu Suhas) to hand over the Complaint along with Annexures to Respondent.
- Further, vide email dated May 8, 2015 Arbitrator provided the contact no. of Mr. Vishnu Suhas (Respondent) as per the whois records and also directed the Respondent to confirm his mobile no. for the purpose of courier delivery.
- Thereafter, vide email dated May 11, 2015 Mr. Vishnu Suhas (Respondent) confirmed his mobile no.

As the Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before May 22, 2015. Thereafter, the Arbitrator granted final opportunity to the Respondent to submit its response on or before June 1, 2015 and also directed the Respondent to go through the INDRP Dispute Resolution Policy and Rules to prepare the response. However, no response was submitted by the Respondent within the stipulated time of thereafter. Vide email dated June 2, 2015 the Arbitrator informed that sufficient opportunity has been granted to the Respondent to file their response. As no formal response has been received from the Respondent, the deadline to file reply or any documents is being closed and also directed the complainant's counsel to provide a copy of the Power of attorney in their favour from the complainant company which was duly complied.

In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- a) Complainant is recognized as a world leader in software services and solutions. It is established as long back as 1975. Complainant is engaged in development,



manufacture, license, support and sale of computer software, consumer electronics, hand held devices, personal computers and services.

- b) For almost four decades, the Complainant has been the biggest software publisher for personal and business computing in the world. Popular software products of the Complainant include the most widely used operating system software, Microsoft Windows (various versions like Windows 3.1, Windows 7, Windows XP, Windows Vista etc.) and application software such as Microsoft Office, Microsoft Excel and Visual Studio.
- c) In addition, the Complainant manufactures a large variety of computer hardware products. It has earned massive reputation for technological expertise in hardware by developing products that include the ergonomically designed Mouse and Keyboard.
- d) Complainant is the owner and proprietor of several well-known trademarks around the world such as MICROSOFT, WINDOWS, BING, MSN, SKYPE, XBOX, OUTLOOK, and INTERNET EXPLORER, to name a few. The trade mark WINDOWS is highly distinctive and globally well-known globally.
- e) The Complainant has extensively advertised its products and services under the WINDOWS marks by different means of communication. They have spent enormous sums of money on advertisement and promotional activities. Due to extensive promotion and usage in various countries around the world including India, the WINDOWS marks and the goods and services provided under them are identified solely with the Complainant and no one else. Apart from promoting the WINDOWS marks in many media, the Complainant also promotes them through websites operated, owned and controlled by the Complainant which are globally accessible through the Internet. The Complainant's websites are launched on domain names which include www.microsoft.com, www.microsoft.in, www.microsoftstore.com, www.windowssphone.com, www.windowssphone.in and www.windows.com.
- f) The Complainant adopted the WINDOWS mark in the year 1985 for goods and services relating to computer software and hardware and since then it has been using the same in all the 7 continents of the world. The Complainant first used the mark WINDOWS in India in November 1985 and since then, it has been continuously, extensively and uninterruptedly using this mark in India. Due to long and extensive use coupled with extensive online and print media publicity, the WINDOWS marks have acquired well known character in India.
- g) The Complainant submits that the goods and services provided by the Complainant under the WINDOWS marks have acquired colossal goodwill and reputation amongst the members of trade, the consumers and the public at large and are inextricably



linked with the Complainant so much so that any product or service sold under the WINDOWS marks indicates a single source i.e Complainant.

- h) In addition, the Complainant further submits that they have registrations for the WINDOWS marks in various countries around the world including but not limited to India, EU, US, UK, Japan, and Australia. WINDOWS is registered under the International Registration System of WIPO since 2012 under no. 1135413. Moreover, the Complaint has also obtained registration for the WINDOWS PHONE mark under the International Registration System of WIPO since 2011 under no. 1095057.
- i) The Complainant further submits that in addition to the WINDOWS trademarks, the domain names www.windows.com; www.windowophone.com; www.windowophone.in are well known and directly associated with the Complainant.
- j) The Complainant submits that the Respondent has dishonestly obtained the registration of a deceptively similar domain name www.windowophonehub.in which hosts pirated/cracked XAP files (XAP is the file format used to distribute and install application software and middleware onto Microsoft's Windows Phone 7/8 operating system) and other unlicensed copies of copyrights works published by the Complainant.
- k) The address bar of the website of the Respondent to which the disputed domain name leads has a four paneled rectangular logo in red colour which is similar to the well known WINDOWS logo of the Complainant in blue color. This further enhances the possibility of confusion to the internet users who are likely to be deceived by the confusingly similar disputed domain name of the Respondent.
- l) The domain name of the Respondent fully incorporates the Complainant's registered trademark WINDOWS and the registered domain names windowophone.com and windowophone.in. Respondent has merely added the word 'hub' possibly in an attempt to camouflage infringement. However, the minor change does not make the disputed domain name dissimilar. Thus, the use of the disputed domain name is likely to falsely induce the customers to confuse the goods/ offered by the Respondent as associated with or approved by the Complainant.
- m) The Complainant further submits that the adoption of the disputed domain name which is deceptively similar to the WINDOWS mark and the registered domain names windowophone.com and windowophone.in and www.windows.com clearly shows that the Respondent has illegally and in bad faith obtained registration of the disputed domain name for the purpose of illegal trade and marketing. The use of the disputed domain name for the purpose of illegal trade and marketing.
- n) The Respondent is not commonly known by the disputed domain name. The Respondent has not been authorized by Complainant to use the trademark



WINDOWS or WINDOWS PHONE in any manner and or to seek registration of any domain name incorporating these marks, nor is it affiliated with the Complainant.

- o) The Respondent was surely aware of the Complainant's trademarks WINDOWS and WINDOWS PHONE since they are well-known trademarks that are widely advertized and used. The Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. By using the disputed domain name and establishing a website deliberately designed to confuse consumers regarding the identity of the seller of the goods and services, the Respondent has not undertaken a bona fide or good faith offering of the goods and services.
- p) The Complainant further submits that when they approached the Respondent and requested him to remove the unauthorized / pirated content from its website, he aggressively refused to do so and further threatened the Complainant's authorized representative. His response is reproduced below:

"Dont you have any work to do? Your foolish marketly site is silly and illegal. If I get a mail from you again il start targeting ur foolish site for DDOS. DO NOT BOTHER US"

- q) The bad faith of the Respondent is further evident from the fact that it is also the registered owner of the domain name www.windowshub.org which is indicative of a parasitic behavior of the Respondent showing repeated instances of adopting well-known WINDOWS marks of the Complainant as its domain names. This establishes that Respondent is a perpetual offender. The Complainant reserves its right to take appropriate action for cancellation of www.windowshub.org before the appropriate forum.

5) Respondent

The Respondent has not filed any formal response to the Complaint other than the following email that it sent to Complainant's counsel:

"Where is the proof that windowsphonehub is the trademark of the complaints company" ?

"I dont find anything registered in that name. Can you please provide proper details?"

"Also marketly doesn't have any rights to rise a dispute. There are 3rd party scam site. I need proper contact details of the correspondent."



In the absence of response and considering several opportunities granted, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark WINDOWS and 'WINDOWS PHONE' leads to the conclusion that the Complainant has superior and prior rights in the mark containing the word 'WINDOWS' particularly when used for IT related goods and services. Thus it can be said a) the web users are likely to associate the word 'WINDOWSPHONEHUB' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.windowssphonehub.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'WINDOWS, WINDOWS PHONE and several other WINDOWS formative mark. The Complainant has in support submitted substantial documents. The disputed domain name contains the Complainant's 'WINDOWS PHONE' mark in its entirety. The word HUB is descriptive and commonly used in technology world to denote common connection point. The mark WINDOWS has been extensively used by the Complainant to identify its business, goods and services. The mark WINDOWS has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'WINDOWSPHONEHUB' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose of registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own



rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.windowsphonehub.in'.

- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. In particular, the Respondent has not rebutted the contentions of the complainant that it had knowledge of the complainant's marks WINDOWS and WINDOW PHONE. Further, it has used the disputed domain to direct Internet users to webpages offering pirated/cracked software to generate revenue. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that adoption by the Respondent of the domain name/mark 'WINDOWSPHONEHUB' shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.windowsphonehub.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.windowsphonehub.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

June 5, 2015