

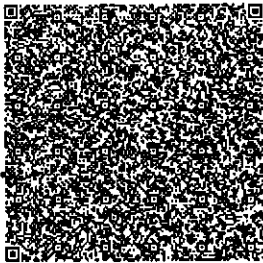
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate No. : IN-DL94147505872328L
 Certificate Issued Date : 22-Mar-2013 02:52 PM
 Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
 Unique Doc. Reference : SUBIN-DL DL-SHCIL87881508534188L
 Purchased by : A K SINGH ADVOCATE
 Description of Document : Article 12 Award
 Property Description : NA
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : A K SINGH ADVOCATE
 Second Party : NA
 Stamp Duty Paid By : A K SINGH ADVOCATE
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



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

BEFORE THE SOLE ARBITRATOR UNDER THE In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Xerox Corporation
45 Glover Avenue
Norwalk, Connecticut 06856-4505, USA

...Complainant

VERSUS

Mani Kannan
Quick2soft Technologies, Renga Road,
Alwarpet, Chennai – 600 028
ALSO AT: No. 3, Bagavantham Street,
Near Venkatanarayana (Tirupati Devastana) Temple,
T Nagar, Chennai – 600 017.

...Respondent

The Parties

The Complainant in this proceeding is Xerox Corporation, having its office at 45 Glover Avenue, Norwalk, Connecticut 06856-4505, United States of America.

The Respondent in this proceeding is Mani Kannan, having his office at Quick2soft Technologies, Renga Road, Alwarpet, Chennai and also at No. 3, Bagavantham Street, Near Venkatnarayana (Tirupati Devstana) Temple, T. Nagar, Chennai- 600 017.

The Domain Name & Registrant

The disputed domain name www.xerox.net.in is registered with Go Daddy.com. The Registrant is Mani Kannan of Chennai, India.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.xerox.net.in.

.IN Registry has supplied the copy of the Complaint and Annexures to me.

On 22.04.2013, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 22.04.2013 with the instructions to file his reply latest by 07.05.2013.

On 23.04.2013, I received an email from the Counsels/Representative of the Complainant, informing that he has sent the copy of the Complaint to the Respondent by post and that I would shortly be receiving the copy of the proof of service shortly. Subsequently a letter dated 23.04.2013 sent by the Counsel of the Complainant, was received in the office of the Arbitrator with copy of proof of service of the complaint on the Respondent.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant.



I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present *ex-parte* award is passed.

That I have perused the record and annexures / document.

Factual Background

1. Complainant

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

As per Complaint, the Complainant is a company incorporated under the laws of USA, having its principal place of business at 45 Global Avenue, Norwalk, Connecticut 06856-4505, USA. The complainant is a US\$22 billion technology and services Fortune 500 company with operations spread over more than 160 countries and 1,40,000 employees worldwide. The complainant offers the world's most pre-eminent and widely accepted array of innovative document solutions, services and systems, including photocopiers, printers, digital press, publishing systems, toners, paper, ink, associated supplies, software and support specifically designed for office and production printing environments.

The complainant's business globally is carried out under its well-known and iconic trademark/ trade name 'XEROX' and its association with the trademark dates back to the year 1948 when no such word was known or in use. Ever since its adoption, the complainant has extensively and continuously used the said trademark worldwide, including in India, where it has directly carried out operations through its Indian subsidiary, Xerox India Limited, since 1983.

The Complainant also operates the website www.xerox.com from the United States and accessible around the world and has held and operated the said domain name since January 9, 1986. The complainant is also the registered proprietor of several other trademarks containing name 'XEROX'.

Around the month of August, 2012, the Complainant was made aware of the existence of domain name www.xerox.net.in. Upon visiting the website, it was noted that the



said redirects to another website www.xeroxpoint.in. This website advertises 'Xeroxworld', which appears to be brand/trade name of photo copiers/printers/multifunction devices and/or related services. The said page also contain the list of 'Other sites' (which also redirects to www.xeroxpoint.in) and links to sections titled 'About Us', 'Services', 'Price list', 'Contact Us', and 'Search'. It was found out that the domain name in dispute, www.xerox.net.in, was registered under the name of Mani Kanan, Quick2soft Technologies, situated in Chennai.

Following the discovery of the activities of the Respondent, the Complainant, through its Indian subsidiary Xerox India Limited sent a legal notice dated August 24, 2012 to the Respondent, outlining the legal rights of the complainant in the trademark XEROX and calling on the respondent to cease and desist from using the trademark/trade name XEROX and thus violating rights of the complainant therein. Upon receiving no response to the said notice, the complainant sent another legal notice on September 25, 2012, reiterating the contents of the earlier notice and requesting a response to the same by October 1, 2012.

2. Respondent

The Respondent in the present proceedings is Mani Kannan having his registered address at Quick2soft Technologies, Renga Road, Alwarpet, Chennai – 600 028 and also at No. 3, Bagavantham Street, Near Venkatanarayana (Tirupati Devastana) Temple, T. Nagar, Chennai – 600 017, who has registered the domain name www.xerox.net.in on 26th May, 2012.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical to the trademark XEROX of the Complainant.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and the hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *" An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "XEROX".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (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 Complainant has rights.

The Complainant has stated in his complaint that domain name of Respondent www.xerox.net.in is confusingly similar and identical to its name/mark XEROX. The Respondent has applied for domain name that is identical with complainant's name and mark XEROX.



It is further stated that the complainant is the registered proprietor of the "XEROX" trademark in numerous countries in the world including India and has gained significant reputation and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registrations at International and Domestic level.

The complainant has established its prior adoption of the mark /name XEROX. The Complainant's association with the trademark "XEROX" dates back to 1948. Even in India, the Complainant has carried out its business through its subsidiary Xerox India Ltd., since 1983.

The Complainant avers that the impugned domain name www.xerox.net.in registered and used by the Respondent directly uses the trademark/trade name XEROX as one of the operative words and this trademark/trade name is identical to that of the registered trademark XEROX of the Complainant

As a consequence of the impugned domain name being identical to the registered trademark of the Complainant as well as being extremely similar to the international website of the Complainant www.xerox.com operated by the Complainant, ordinary internet users are likely to be confused by the presence of the impugned domain name on the internet ostensibly offering goods and services similar/identical to the Complainant and thus causing loss of business and reputation to the Complainant.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in the respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)



- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

As per Complainant, in August, 2012 it discovered that the domain name in question www.xerox.net.in was registered in the name of the Respondent. By this time, the Complainant had already made use of the mark XEROX as a trademark and corporate name in several parts of the world. The Complainant had also registered the domain name www.xerox.com on 9 January, 1986 and enjoys considerable reputation in respect of the XEROX mark and domain name. Further, the Complainant's corporate name comprises the word XEROX (Xerox Corporation). Therefore it is obvious that the Respondent was aware of the Complainant's trademark rights in the XEROX mark/name.

It is further submitted by the Complainant that the Respondent is not and has never been known by the XEROX name or by any similar name. The Respondent did not have any active business in the name of XEROX. The registration of the disputed domain by the Respondent is thus a typical example of "cyber squatting". The fact that the Respondent's website carries nothing but sponsored links of other websites further proves that the Respondent is just a cyber squatter.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website



of the Complainant and to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Complainant noted that the said disputed domain name redirects to another website www.xeroxpoint.in. This website advertises 'Xeroxworld', which appears to be a brand/ trade name of photocopiers/ printers/ multifunction devices and/or related services along with the following description on the lead page:

"The streamlined design fits easily on your desktop, and the toner cartridge is simple to access and replace, and requires minimum storage space. The Hi-Q LED print engine same breakthrough technology found in some of our higher-end devices."

The said page also contains a list of 'Other Sites' (which also redirect to www.xeroxpoint.in) and links to sections titled 'About Us', 'Services', 'Price List', 'Contact Us' and 'Search'. However, none of these links are accessible and appear to be dead links.

That the fact that the impugned domain name has been registered by the Respondent despite having no affiliation, past or present, with the Complainant also clearly suggests that the Respondent has no legitimate rights or interests in respect of the impugned domain name.

The said domain name has only been created as recently as May 26, 2012 and the Respondent also runs several other websites, all of which feature identical content and use the Complainant's trademark XEROX or some confusingly similar word(s)/name(s). This clearly prompts the conclusion that the same has been done purely for the purpose of promoting the Respondent's own business and causing loss of business and reputation to the Complainant and therefore, the registration and use of the impugned domain name by the Respondent is clearly in bad faith.

The Tribunal is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

Since, the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexures

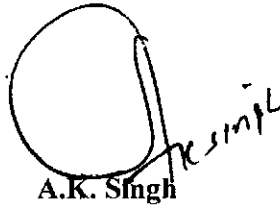


establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.xerox.net.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 21st day of May 2013.

A handwritten signature in black ink, appearing to read 'A.K. Singh', is written over a circular stamp or mark.

A.K. Singh

Sole Arbitrator

Date: 21st May, 2013