

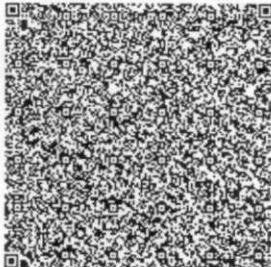


# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	<b>IN-DL60960205740197L</b>
Certificate Issued Date	11-Sep-2013 04:14 PM
Account Reference	IMPACC (IV)/ dl839203/ DELHI/ DL-DLH
Unique Doc. Reference	SUBIN-DL83920320383381180966L
Purchased by	SANJAY KUMAR SINGH ARBITRATOR
Description of Document	Article 12 Award
Property Description	NA
Consideration Price (Rs.)	0 (Zero)
First Party	SANJAY KUMAR SINGH ARBITRATOR
Second Party	Not Applicable
Stamp Duty Paid By	SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.)	100 (One Hundred only)



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BEFORE SANJAY KUMAR SINGH, ARBITRATOR,  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY  
(INDRP)

IN RE:

MICROSOFT CORPORATION — — — — — COMPLAINANT

PIYUSH SOMANI — — — — — RESPONDENT

Sanjay Kumar Singh  
08/10/13

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

MICROSOFT CORPORATION  
ONE MICROSOFT WAY  
REDMOND  
WA 98052-6399. USA

COMPLAINANT

Versus

PIYUSH SOMANI,  
ESDS SOFTWARE SOLUTIONS PRIVATE LIMITED  
B-24 & B-25, NICE INDUSTRIAL AREA.  
SATPUR MIDC.  
NASHIK-422 007

INDIA

RESPONDENT

Disputed Domain Name: <micorsoft.co.in>

The complainant has filed the present Complaint for decision in accordance with the IN Domain Name Dispute Resolution policy (the police), and the INDRP Rules of procedure (the Rules) of the IN Registry

1. The parties are:

The Complainant in this administrative proceeding is MICROSOFT CORPORATION ONE MICROSOFTWAY, REDMOND, WA98052-6399. USA

The Complainant's contact details are:

Address ONE MICROSOFTWAY, REDMOND, WA 98052-6399. USA

The Complainant's authorized representative in this administrative proceeding is:

A) Name: Pravin Anand

Address: Anand and Anand. First Channel, plot No 17A, Sector 16A, Film City, Noida  
Telephone: 91-120- 4059300. Fax: 91-120-4243056.

E-mail: [pravin@anandandanand.com](mailto:pravin@anandandanand.com)

B) Name: Nischal Anand

Address: Anand and Anand. First Channel, plot No 17A Sector 16A, Film City,  
Noida, India

Telephone 91-120-4059300

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Fax: 91-120-4243056

E-mail [nischal@anandandanana.com](mailto:nischal@anandandanana.com).

The Complainant's preferred method of **communication** directed to the Complainant in this administrative proceeding is

Electronic Method: e- mail

Address: [pravin@anandandanand.com](mailto:pravin@anandandanand.com)

[nischal@anandandanand.com](mailto:nischal@anandandanand.com)

Contact: Pravin Anand

Nischal Anand

Material including hard copy:

Method Courier

Address: Anand and Anand

B-41 Nizamuddin East

New Delhi 110013. India

Contact: Pravin Anand

Nischal Anand

RESPONDENT /REGISTRANT INFORMATION:

The Respondent in this administrative proceeding is PIYUSH SOMANI, ESDS SOFTWARE SOLUTIONS PRIVATE LIMITED, B-24 & B-25. NICE INDUSTRIAL AREA, SATPUR MIDC, NASHIK - 422 007, INDIA .

Name PIYUSH SOMANI

Address ESDS Software Solutions Private Limited. B-24 & B-25. NICE Industrial Area, Satpur MIDC Nashik -422 007, Maharashtra, India.

Telephone 91-9850552225

E-mail: [piyush@host.coin](mailto:piyush@host.coin)

2. Disputed Domain Name micorsoft.co.in"

The trademark of the complainant is "MICROSOFT"

The Registry is National Internet Exchange of India (NIXI)

The Sponsoring registrar with whom the domain name is registered is: Directi Internet Solutions Pvt. Ltd. E-mail: [domain.manager@directi.com](mailto:domain.manager@directi.com)

3. BRIEF BACKGROUND:

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This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

#### 4. FACTUAL AND LEGAL GROUNDS:

a) The Complainant has submitted that the Complainant (MICROSOFT CORPORATION) was set up in 1975 and is the biggest software publisher for personal and business computing in the world. The Complainant engages in the development, manufacture, licensing and a support of a range of software products for various computing devices. Its software products include operating systems for servers, personal computers (PC) and intelligent devices; server applications for distributed computing environments; information worker productivity applications; and software development tools. It has been stated by the complainant that it also sells video game console (Xbox), video games and engages in online business through various Internet portals (MSN etc.).

b) The Complainant has submitted that its software products include the most widely used operating system software, MICROSOFT WINDOWS, (various versions) and application software such as MICROSOFT OFFICE (various versions) and VISUAL STUDIO (various versions). These softwares are today installed and used on millions of computers all over the world, including India. Other popular software products of complainant include Microsoft Windows Server System. Microsoft Publisher. Microsoft Visio, Microsoft Project and other stand-alone desktop applications. The Complainant has annexed a more detailed list of the popular software programs with the complainant as ANNEXURE - A

c) The Complainant has submitted that apart from computer software programs, it also manufactures a large range of computer peripherals (hardware). The Microsoft hardware group established in 1982 has been an integral part of the complainant's growth for 27 years. The Complainant has submitted that during this period, it has built its reputation for technological expertise in hardware by developing and launching a series of successful devices including the economically designed Mouse and Keyboard. The Complainant has also submitted that it also provides its customers with the premium cloud computing and hosting services.

d) The Complainant has submitted that the complainant Microsoft Corporation has a current market capitalization of \$ 290.95B as on 12<sup>th</sup> June 2013. The complainant has claimed that this is ahead by leaps and bounds of other well known and famous web sites. The Complainant has

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annexed a copy of an excerpt from [www.finance.yahoo.com](http://www.finance.yahoo.com) showing the complainant's market capitalization as on 21<sup>st</sup> May 2013 as **ANNEXURE-B**

#### **5. COMPLAINANTS' TRADEMARK RIGHTS:**

a) The Complainant has submitted that it has adopted the trade mark "**MICROSOFT**" in the year 1975 and has used the said trade mark continuously and extensively, not only as a trademark but also as a prominent . key, and leading portion of its corporate name. The trade mark "**MICROSOFT**" name is one of the most famous and well known trademark in the world and is exclusively identified and recognized by the purchasing public as relating to the goods and services of the Complainant and no one else.

b) The Complainant has submitted that it is also the registered proprietor of the trademark "**MICROSOFT**". The complainants registrations of the trademark are in classes 9 and 16 and bear the registration numbers 430449 and 430450 respectively. The said registrations have been duly renewed from time to time and are valid and subsisting under the Trademarks Act, 1999. The Complainant has submitted a list comprising of said registration. The Complainant has annexed photocopies of the Certificates of Registration for the above-referenced registrations as **ANNEXURE-C**.

#### **6 INTERNET PRESENCE OF THE COMPLAINANT:**

a) The Complainant has submitted that through its website [www.microsoft.com](http://www.microsoft.com) it provides information of products and services offered by the complainant and its affiliates. It has been submitted by the complainant that it debuted as an online service and internet service provider on 24<sup>th</sup> August 1995, to coincide with the release of the Windows 95 operating system. The Complainant used the MSN brand name to launch and promote numerous popular web-based services in the late 1990s, most notably Hotmail and Messenger, before reorganizing many of them in 2006 under a new brand name, Windows Live.MSN Internet Portal, [MSN.com](http://MSN.com) still offers a wealth of content and is currently the 6<sup>th</sup> most visited domain name on the Internet.

b) The Complainant has submitted that Complainant's rights in the trademark "**MICROSOFT**", its variations/service names and other deceptively similar marks have been upheld before the Hon'ble panels of National Internet Exchange of India (NIXI) as well as world Intellectual Property Organization (WIPO). The Complainant has annexed copies of the Panel's decision in the complainants favour as **ANNEXURE-D COLLY**. The complainant has also given the details of past complaints filed by it and the decisions passed in favour of the complainant as:

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TITLE	CASE NO.	DOMAIN NAME(S)	DECISION
Microsoft Corporation V Lhazang Ladenia	INDRP/134	<microsoftorg.in>	Domain name transferred
Microsoft Corporation V YanWei	INDRP/145	<microsoftstore.in>	Domain name transferred
Microsoft Corporation V Akhil Sharma	INDRP/273	<msnindia.co in>	Domain name transferred
Microsoft Corporation V Microsof com aka Tarek Ahmed	D2000-0548	<microsof com>	Domain name transferred
Microsoft Corporation V Jason Park	D2003-1053	<microsoftcorp.com>	Domain name transferred
Microsoft Corporation V Ping Chuan Ang	D2005-0827	<microsoft.games info>	Domain name transferred
Microsoft Corporation V Cupcake City	D2000-0818	<msninstantmessenger com> <microsoftmessenger com> <msnmessenger.com>	Domain name transferred
Microsoft Corporation V Mr Leonardo Sciascia	D2008-1081	<microsoftbet.com>	Domain name transferred
Microsoft Corporation	D2007-0580	<microsoftvietnam net>	Domain name

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V Luong Xuan Vinh			transferred
Microsoft Corporation	D2005-0020	<microsoftcustomerservice	Domain name
V Wayne Lybrand		com>	transferred
Microsoft Corporation	D2004-1097	<microsoftcares com>	Domain name
V Cedric Thompson			transferred
Microsoft Corporation	D2004-0652	<almicrosoft com>	Domain name
V Arab Chat			transferred
Microsoft Corporation	D2004-0310	<microsoftindia.net>	Domain name
V N R Vinod, Vinsoft			transferred
Microsoft Corporation	D2004-0232	<microsoft888 net>	Domain name
V 3D Roulette			transferred
Microsoft Corporation	D2003-1053	<microsoftcorp com>	Domain name
V Jason Park			transferred
Microsoft Corporation	D200-0046	<microsoftcorporation	Domain name
V Sergei Letyagin		com>	transferred
Microsoft Corporation	D2004-0071	<microsoftmail com>	Domain name
V Superkey Worldwide, Inc			transferred

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Microsoft Corporation V Troy C Montalvo	D2004-0109	<microsoftmall.com>	Domain name transferred
Microsoft Corporation V. The Buzz Int	D2004-0124	<microsoftcore com>	Domain name transferred
Microsoft Corporation V Charilaos Chrisochouu	D2004-0186	<Microsoft-com com>	Domain name transferred
Microsoft Corporation V Amit Mehrotra	D2000-0553	<microsoft org:	Domain name transferred
Microsoft Corporation V Global Net 2000, Inc	D2000-00554	<microsoftnetwork com> xhotmaill com>, <hotmail com>, <hotmai com>. <otmaill com>. <hotmaillcom com>, <activexx comlinksexchange com>.	Domain name transferred
Microsoft Corporation V Stoneybrook	D2000-1274	<wwwmicrosoft com>	Domain name transferred
Microsoft Corporation V J Holiday Co	D2000-1493	<4microsoft2000.com>	Domain name transferred
Microsoft Corporation V Stepweb	D2000-1500	<microsofthome.com>	Domain name transferred
Microsoft Corporation V Montrose Corporation	D2000-1568	<microsoft-office-2000 com>	Domain name transferred

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<microsoft-office2000  
com>  
<ms-office-2000 com>

Microsoft Corporation V Mindkind	D2001-0193	<microsofthealth.com>	Domain name transferred
Microsoft Corporation V. Paul Homer	D2002-0029	<microsoftsite com>	Domain name transferred
Microsoft Corporation V WDW <b>hc.</b> and William Claude Dukefield	D2002-0412	<microsoftcertified.com> <microsoftcertified info>	Domain name transferred
Microsoft Corporation V Webbangladesh com	D2002-0412	<microsoftbangladesh.com>	Domain name transferred
Microsoft Corporation V Solutions International	D2003-0935	<microsoftbasics com>	Domain name transferred

The Complainant has submitted that preceding paragraphs clearly demonstrate the exclusivity and reputation associated with the complainant's mark, therefore makes the mark **MICROSOFT** a well known mark as understood under Article 6bis of the Paris Convention.

#### **7. THE RESPONDENT:**

i) The Complainant has submitted that the respondent in the present dispute has registered the present domain name <wwwmicorsoft.co.in> incorporating the term **MICROSOFT** which is substantially similar to the complainant's trademark "**MICROSOFT**" except for interchanging the letters "R" AND "O". Furthermore the respondent registered the term with <.co.in> registration. The Complainant has annexed copy of Whois result depicting the respondent as registrant as **ANNEXURE-E**. The complainant has contended that it appears that the respondent had been using the impugned domain name to divert web traffic to its web hosting

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website [www.host.co.in](http://www.host.co.in). the complainant has also contended that through the said website the respondent appears to be carrying on the business of providing cloud services to its customers which is identical to one of the major business of the complainant. The Complainant has annexed print outs of the respondent's website [www.host.co.in](http://www.host.co.in) as **ANNEXURE-F** The complainant has contended that the respondent is thereby misappropriating the trademark "**MICROSOFT**" which is the exclusive property of the complainant

j) The Complainant has submitted that as soon as it became aware of the registration of the impugned domain name and its misappropriation, it issued through its counsel a cease and desist letter to the respondent on 30<sup>th</sup> April 2013. The Complainant has submitted that pursuant to the same, though the respondent has made the impugned domain name un-operational, he refused to transfer the same in favour of the complainant despite repeated requests. The complainant has submitted that left with no other option, the complainant has filed the present complaint The complainant has annexed the copy of the e-mail containing the correspondence between the complainant's counsel and the respondent as **ANNEXURE-G COLLY**.

**8. The Respondent's domain name is identical or confusingly similar to a name trademark or service mark in which the Complainant has rights.**

a) The Complainant has submitted that the disputed domain name, [www.micorsoft.co.in](http://www.micorsoft.co.in) is a misspelling of the complainant's registered trademark **MICROSOFT** and website [www.microsoft.com](http://www.microsoft.com) and hence is substantially and confusingly similar as a whole to the well- known and registered trademark of the complainant in which the complainant has statutory rights as well as rights in the common law by virtue of being a long time and continuous user and registered proprietor thereof. The Complainant has submitted that interchanging the letters "**R**" AND "**O**" appears to be calculated move to trade on the complainant's name by exploiting likely mistakes by unsuspecting users when entering **URL** address, hence citing a clear example of typosquatting.

b) The Complainant has submitted that due to the abovementioned factors the trademark **MICROSOFT** has acquired fame and is exclusively with the complainant's goods and services As such the users of the word **MICROSOFT** or any valuation thereof in the domain name would be understood as reference to the complainant, thus perpetuating confusion among consumers who wish to access the complainant's webpage. The complainant has relied on **KFC Corporation v, Webmaster Cashions Ltd. (L-2/6/R4)** wherein the domain name <kfc.co.in> was transferred to the complainant as it

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incorporated the KFC Trade mark in whole. The complainant has placed on record the copy of the same as ANNEXURE - H

- c) The Complainant has submitted that it has spent substantial time, effort and money advertising and promoting the **MICROSOFT** mark throughout the world. The Complainant has further submitted that the **MICROSOFT** mark has become famous and well known, and the complainant has developed an enormous amount of goodwill in the mark, which goodwill has been recognized by various INDRP as well as UDRP panels.

**9 . The Respondent has no rights or legitimate interest in the domain name**

- a) The Complainant has submitted that since the disputed domain name is the misspelling of the well known and famous trademark "**MICROSOFT**" it is evident that the Respondent can have no right or legitimate interest in the said domain name, the complainant has contended that it is apparent that sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's Famous trademark "**MICROSOFT**" to unfairly encash on the goodwill attached to the Complainant's aforesaid trademark / name by, as in the present case, diverting traffic to one' website or selling the domain name or profit or, in the alternative, preventing the complainant from registering a domain name in which it has full legal rights.
- b) The Complainant has submitted that the respondent is not commonly known by the domain name nor has he made any demonstrable preparation to use the disputed domain name [www.micorsoft.co.in](http://www.micorsoft.co.in) in connection with a commercial or bonafide purpose.
- c) The Complainant has contended that the respondent that respondent has no rights or legitimate interest in the domain name as:

The respondent is not a licensee of the complainant and neither has the complainant granted any permission or consent to the respondent to use the trademark "**MICROSOFT**" or any variation thereof in any manner or to incorporate the same in the domain name.

No website has been uploaded on the said domain name. In fact , the only reason the domain name has been registered is to misappropriate the same in a domain name.

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The respondent has not shown any demonstrable preparation to use the disputed domain name in connection with a bonafide offering of goods and services

- d) The Complainant has submitted that the Respondent's website is not *bona fide* since the Respondent is trading on the fame and recognition of the Complainant's well-known trademark in order to cause initial interest confusion and bait internet users to accessing its website is typically the strategy of such cyber-squatters. The Complainant has also submitted that the Respondent has made obvious his intention to divert traffic through the impugned domain name to its own web hosting website www.host.co.in and has therefore laid bare his intent to commercially exploit the Complainant's trademark and/or service mark and for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation; resulting in dilution of the Complainant's trademark and/or service mark. Furthermore, an average internet user will be forced to believe that the services offered by the Respondent through its website www.host.co.in emanate from the Complainant thereby furthering the elements of confusion and dilution through the use of the impugned domain name.
- e) The Complainant has submitted that the Respondent has no bona fide intention to use the impugned domain name and the same has been registered only for the purpose of trafficking and for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation, resulting in dilution of the Complainant's trademark and/or service mark. In fact by acquiring the domain name www.micorsoft.co.in solely for this purpose he has shown crass opportunism in encashing the typographical mistakes of the Internet users and the popularity of the Complainant's services, which are available to the Internet users in the form of www.microsoft.com. The Complainant has submitted that the malafide intentions of the respondent to reap unfair rewards by registering the domain name < www.micorsoft.co.in > are clear from the above stated actions. Hence, the Respondent has no rights or legitimate interest in the domain name.

**10. The domain name was registered and is being used in bad faith:**

- a) The Complainant has submitted that the domain name www.micorsoft.co.in was acquired by the Respondent on 16<sup>th</sup> February 2005. It is pertinent to note that the Complainant offers its online service via the domain name www.microsoft.com. The

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Respondents domain name www.micorsoft.co.in is a typographical and phonetic misspelling of the complainant's website and trademark MICROSOFT, which indicates bad faith on the part of the Respondent as by doing so he plans to trade on the fame and recognition of the Complainant's well-known trademark in order to cause initial interest confusion and bait internet users to accessing its website. The complainant has argued that the Respondent acquired the confusingly similar name, in which the Complainant has a substantial interest, as it being its registered trademark and/or service mark. By interchanging the letters "R" and "O" in MICROSOFT, it appears to be calculated on part of the Respondents, to trade on the Complainants' name by exploiting likely mistakes by users when entering the URL address. The Complainant has submitted that Respondent was aware of the commercial value and significance of the domain name www.microsoft.com and that's why Respondent grabbed the domain name www.micorsoft.co.in. This is nothing but an act of opportunistic bad faith registration on the part of the Respondent. The Respondent is thus trying to seek illegal commercial gratification.

- b) The Complainant has submitted that it is very likely that many Internet users seeking to locate the official Microsoft website on the Internet will type www.microsoft.com or <www.microsoft.co.in > (incidentally, which too has been malafidely registered by the Respondent) into their Internet browsers. While some internet users will have correctly identified the location of the Complainant's website, a certain proportion of the users undoubtedly will misspell MICROSOFT or make a typographical error while typing MICROSOFT into their Internet browsers by inadvertently interchanging the letter 'O' with the letter "R" and/or try to access the Indian version of the site by entering <co.in > instead of <com >. Thus, some Internet users seeking to search for the Complainant on the internet will mistakenly arrive at Respondent's website at www.micorsoft.co.in. It is submitted that this gives rise to deception and confusion in the minds of the internet users.
- c) The Complainant has submitted that 'Micorsoft' is a common typographical misspelling of MICROSOFT. It has been submitted that respondent has registered and used this typographical misspelling of the well-known mark to divert Internet traffic for his own commercial advantage. It is submitted that in Microsoft Corporation v. Microsof.com aka Tarek Ahmed2 the panel held that the Respondent's choice of the misspelled version of the Complainant's domain name was deliberate and was thus likely to cause confusion for the consumers as to the sponsorship of the Respondent's website. The Complainant has further submitted that typosquatting is by itself strong evidence of bad

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faith in registration and use of a domain name This was held by the panels in *The Sportsman's Guide Inc. v Vipercom3* where the respondents had registered two domains names <sportsmenguides.com> and <sportsmanguides.com> which were minor spelling variations of the domain name registered by the Respondents. The complainant has further submitted that Similar findings were reiterated by various UNDRP Panels in *Joanne Rowling v. Alvaro Collazo4 Oxygen Media, LLC v. Primary Source5 Yahoo! Inc. v. Eitan Zviely, et a 1.6 Pfizer Inc. v. Seocho and Vladimir Snezko7 Dell Computer Corporation v. Clinical Evaluations8, Wal-Mart Stores, Inc v. Longo9 Longs Drug Stores California, Inc. v. Shep Doe, Autosales Incorporated dba Summit Racing Equipment v. John Zuccarinin and ESPN, Inc v. XC22* The complainant has attached aforesaid references as "ANNEXURE I-COLLY".

- d) The Complainant has submitted that the bad faith intention of the Respondent becomes obvious as the Respondent himself has admitted to misappropriating the impugned domain name to divert traffic to its own website [www.host.co.in](http://www.host.co.in). The Complainant has submitted that in response to the Complainant's request to transfer the impugned domain name, the Respondent refused to do so stating that "I was hosting a website on this domain earlier and getting good visibility for Cloud Hosting Business..." Therefore, the bad faith registration and use of the impugned domain name becomes apparent in light of the admissions of the Respondent. The Complainant has placed Reliance on "ANNEXURE G-COLLY"
- e) The Complainant has stated that in the light of aforesaid submissions, the bad faith registration and bad faith use of the domain name [www.micorsoft.co.in](http://www.micorsoft.co.in) on the part of the Respondent is thus proved. In *TELSTRA CORP LTD. V. NUCLEAR MARSHMALLOWS* the Administrative Panel has very clearly articulated that the requirement in paragraph 4(a) (iii) (of UDRP) that the domain name "has been registered and is being used in bad faith" will be satisfied only if the Complainant, proves that the registration was undertaken in bad faith and that the circumstances of the case are such that Respondent is continuing to act in bad faith." Similarly in *Veuve Clicquot Ponsardin. Maison Fondée en 1772 v. The Polygenix Group Co*". It was held by the Administrative Panel that "[VEUVECLICQUOT.ORG](http://VEUVECLICQUOT.ORG)" is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The complainant has relied on the same judgment and has annexed Copies of the said judgments as "ANNEXURE J- COLIY". The Complainant has submitted that the Respondent has, no doubt, been aware prior to its registration of the domain name that there was substantial reputation and

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goodwill associated with the Complainant's trademark and/or service mark, which inures and continues to inure to the Complainant

- f) The Complainant has reiterated the pleadings of the earlier paragraph the disputed domain name a www.micorsoft.com is not only a minor spelling variation of the Complainant's well-known and famous marks MICROSOFT as it is. but it is also evident that the Respondent can have no rights or legitimate interest in the domain name and rather the sole purpose of the adoption of the Complainants trademark in entirety by the Respondent is to misappropriate the Complainant well-known and famous trademark MICROSOFT.
- g) The Complainant has submitted that the Respondent till the present day is not providing any service of its own on the said domain name, and has registered it with an intention of diverting traffic to its 3 website www.host.co.in and generating revenue thereof Further, since cloud hosting is one of the many services provided to its consumers by the Complainant, the said diversion will induce internet users to believe that the Respondent is in some way linked to the Complainant. With a domain name as innocuous as " vwww.host.coin, which merely talks about a service and not a trademark, the general public will be induced to believe that it is a service provided by the Complainant Therefore, the bad faith intention of the Respondent is not only restricted to cause harm and injury to the Complainant but to also cheating internet users of quality web and cloud hosting services.
- h) Hence, it is evident that the Respondent has neither intention nor reason to legitimately use the impugned domain name and is merely misrepresenting itself as the Complainant and inducing users to believe that it has some kind of affiliation with the Complainants. The Complainant submits that the disputed domain name was registered and is being used in bad faith as it resolves to a website of the Respondent. This conduct of the Respondent is evidence of registration and use of the domain name in bad faith. Some notable UDRP panels which have held that this conduct of the Respondent amounts to bad faith are Zinsser Co. Inc., Zinsser Brands, Co. v. Henry Tsung" and Micro Electronics, Inc. v. J Lee". The Complainant has the annexed a copy of these decisions as "ANNEXURE K-COLLY".
- i) The Respondent has registered the impugned domain name www.micorsoft.com in order to disrupt the business of the Complainant. It is apparent that the Respondent has attempted to attract for commercial gain Internet users to the website to which the impugned domain name resolves to by creating a likelihood of confusion with the Complainants well-known and famous trademark MICROSOFT.

Lawyer for Signl.  
08-10-13

The complainant has submitted that the Complainant's MICROSOFT mark is a well-known mark, and the Respondent is presumed to have had knowledge of Complainant's mark at the time it registered the confusingly similar domain name. The complainant has submitted that this is prima facie evidence of the Respondents bad faith use and registration. It has been submitted that the domain name has only been registered in bad faith for monetary gains and Registration of a famous trademark without legitimate commercial interests in the same is prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademark/name. The complainant has submitted that the Respondent has registered the domain name in bad faith. The complainant has relied on Rediff.com India Limited v. Mr. Abhishek Verma & Others wherein the disputed Domain Name www.rediff.in was ordered to be transferred to the complainants. The panel held, "the Respondent has registered domain name before the Complainant, for selling, renting or otherwise transferring the same for monetary gains..." The complainant has submitted that the domain name has only been registered in bad faith for monetary gains. The complainant has filed a copy of the award as "**ANNEXURE-L**". The proposition that the registration of a domain name incorporating a well-known trademark of the Complainant is bound to be in bad faith has been upheld by numerous UDRP decisions. The complainant has filed some notable cases which have upheld these propositions are Marie Claire Album v. Marie-Claire Apparel, Inc". Veuve Clicquot Ponsardin, A Maison Fondée en 1772 v. The Polygenix Group Co<sup>o</sup>, Adidas-Salomon AG v Domain Locations" , wherein it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith. The referenced cases has been filed by complainant as **ANNEXURE M-COLLY**". The complainant has relied on "The Sportsman's Guide. Inc. v. Vipercomz". where it was held that typo squatting is by itself strong evidence of bad faith in registration and use of a domain name as the Respondents' intention of using domain names with only minor spelling variations was to lure unsuspecting users to their website and divert traffic from the complainant's website.

Further, there is a likelihood that a potential visitor to the Respondent's future webpage that the subject domain name would resolve to. will be induced to:

- i) Believe that the Complainant has licensed their trademark MICROSOFT to the Respondent or has authorized the Respondent to register the disputed domain name.

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- ii) Believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant.
- iii) Believe that the website to which the impugned domain name resolves to is affiliated to the Complainant or that it is the Indian arm of the Complainants Service, [www.microsoft.com](http://www.microsoft.com).

L) The complainant has reiterated in the preceding paragraphs, the disputed domain name [www.micorsoft.co.in](http://www.micorsoft.co.in) registered by the Respondent substantially incorporates the complainant's well-known and famous trademark MICROSOFT and is typographical and phonetic misspelling. The complainant has submitted that by interchanging the letters "R" AND "O" in the complainant's well-known and famous trademark MICROSOFT and registering such a domain name with a <.co.in> registration the respondent is trying to reap unfair and illegal rewards by exploiting likely mistakes by users when entering the URL address. The complainant has submitted that the disputed domain name has been registered in bad faith.

The complainant has prayed for transfer of the disputed domain name to it.

PROCEDURAL BACKGROUND:

11. A copy of complaint has already been sent to the respondent by the In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 12-07-2013 to the respondent to send his defense / counter to the complaint along with supportive documents / evidence at his e-mail address within 07 days from receipt.
- 12 The Arbitrator again sent a notice dated 15-07-2013 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within 07 days from receipt. The respondent sent his response to the arbitrator. The factum of filing of reply by respondent was sent to complainant by the arbitrator vide e-mail dated 28-07-2013. The complainant filed the rejoinder dated 01-08-2013 to the reply of the respondent vide e-mail dated 02-08-2013.

Therefore, this complaint is being decided on the pleadings of the parties to the complaint, on merits of the case and as per law of the land.

13. CONTENTIONS OF PARTIES:

The respondent has submitted ANNEXURE -A in response to the complaint of the complainant. The respondent has submitted that Domain Name [www.micorsoft.co.in](http://www.micorsoft.co.in) was not registered in bad faith by the Respondent.

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The respondent has placed reliance on Case Laws on Domain Name Not Registered in Bad Faith and on grounds of Limitation Period AND WIPO Arbitration and Mediation Center ADMINISTRATIVE PANEL DECISION

1. Johnson & Johnson v. Chad Wright, WebQuest.com, Inc Case No. D2012-0010

Respondent concedes that the disputed domain name is identical to a trademark in which Complainant has rights. The Respondent alleges, however, that it was unaware of the existence of the TUCKS mark when registering, and that it registered the disputed domain name as a part of its business, which invests and trades in descriptive, generic, dictionary word, and keyword domain names. With support in the Declaration of its president, Chad Wright. Respondent avers the following:

1. That it purchased the disputed domain name in good faith for around USD 1,000 when it expired in 2002, registering it solely for its value as a dictionary word and plural of the last name "Tuck."

2. That Respondent's president, at the time of registration, "had never heard of Tucks brand medicated pads."

3. That for nearly nine years, Respondent "used the [disputed domain name] in connection with pay-per-click advertising of generic goods and services, none of which mentioned or were competitive with Complainant's TUCKS® brand medicated pads."

4. That Respondent did not register the disputed domain name with the intent to sell it to Complainant or a competitor, and that Respondent "did not target Complainant."

5. That "at some point after [Respondent] switched to a new parking company, DomainNameSales.com, in June 2011, the web page associated with the [disputed domain name] apparently displayed advertisements for Complainant's Tucks® medicated pads and competing products. As soon as Respondent learned of these ads - after the commencement of this action - it had the site redirected to a generic parked page."

**Findings by Panel on following Points:**

(i) circumstances indicating that the respondent has registered or 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 that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name;

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(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;

(iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The circumstances listed in paragraph 4(b) of the Policy are not exclusive, as paragraph 4(b) expressly provides Panels may draw inferences about bad faith registration or use in light of the circumstances, such as whether there is no response to the complaint, a lack of active content appearing on the respondent's.

First, there is nothing in the record reflecting Respondent's intent to sell, rent or otherwise transfer the disputed domain name. The Complaint also does not show any circumstances upon which inferences of such an intention could be based. Therefore, the Panel rules that the Complaint fails to demonstrate circumstances that fall within Policy paragraph 4(b)(i).

The Complaint does not address the significance of the use of the website before 2011, even though it appears that the website for nine years made no use of the disputed domain name in any way related to the TUCKS trademark.

The Panel takes into consideration that Respondent's website did not refer to the TUCKS trademark or advertise complainant's competitors for a full nine years after Respondent's registration. The Panel concludes that the Complaint provides insufficient evidence to conclude that the disputed domain name was registered in bad faith.

**Decision: For all the foregoing reasons, the Complaint was denied.**

2. Audi AG v. Stratofex; Case No. D2012-1894

**Findings by the Panel:**

There are no circumstances that indicate that the Respondent has registered the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant. The Domain Name has been registered for more than

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10 years, and there is no evidence that the Respondent has ever attempted to sell the Domain Name. Furthermore, when asked by the Complainant to transfer the Domain Name, the Respondent refused without making a counter-offer, citing the costs that the transfer would impose on him in changing his various email addresses.

There is no evidence that the Respondent has engaged in a pattern of conduct of registering domain names (including the Domain Name) to prevent trade mark owners from registering a corresponding domain name. The Respondent admits to registering five or six additional domain names for personal purposes but there is no evidence that they reflect a trade mark or that the Respondent has used them to prevent an entity from reflecting its marks in a corresponding domain name.

There is no evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. The Domain Name was first registered in 2001. There is no evidence that any of the four circumstances listed in paragraph 4(b) of the Policy as evidence of bad faith exist in the present proceeding.

a) When the Respondent knew or should have known" of the registration and use of the Complainant's trademarks prior to the registration of the domain name, bad faith should be found

b) The non-reaction to a cease and desist letter can constitute additional evidence of the Respondent's bad faith.

c) The Domain Name has been passively held, and given that the Respondent knew or should have known of the AUDI Mark at the time of the registration, the passive holding of the Domain Name amounts to bad faith.

d) There is no conceivable plausible actual or contemplated active use of the Domain Name that would not infringe the Complainant's rights.

The Panel finds that the Complainant's arguments are insufficient to prove that the Respondent registered and used the Domain Name in bad faith.

In the present case the Respondent has claimed that it has used the Domain Name for a number of purposes that are not visible on the Respondent's Website.

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a) The Respondent has provided a plausible explanation of the reason he registered the Domain Name. Passive holding should only result in a finding of bad faith if the panel considers that the reason why a domain name was registered was for the purposes of cybersquatting. This is not the case in this proceeding.

b) The Respondent's claimed examples of use of the Domain Name, while not supported by evidence, are also plausible. It is not uncommon for individuals to register a domain name to be used as an e-mail address or for private purposes

c) The Respondent's evidence of its use of the Domain Name is supported by the fact that the Domain Name has been registered for 11 years. Given the implausibility of the suggestion that the Respondent passively held the Domain Name for 11 years in case the Complainant started using "Audi City" as a dealership brand, the fact that the Respondent has continued to renew the registration of the Domain Name would suggest that it had been used by the Respondent during that time, possibly in the manner suggested in the Respondent's e-mails.

d) The Respondent has never hidden its identity (it has clearly provided contact details that were sufficient for notice of the Complaint to reach him in the present proceeding) and has provided an informal response to the present proceeding.

e) There is no evidence that the Respondent is a domain name trader or has ever registered any other domain names for illegitimate commercial purposes.

In relation to the Complainant's argument that there is no conceivable plausible actual or contemplated active use of the Domain Name that does not infringe the Complainant's rights, the Panel notes that the Respondent appears to have held and used the Domain Name for the past 10 years without apparently infringing the Complainant's rights. The present stated use of the Domain Name (for email addresses and occasionally for the Respondent to share personal information and music using sub-domains) does not appear to infringe the Complainant's trademarks though the Panel does not make a formal finding on that ground. There is no positive obligation on a domain name registrant to maintain an active website at the domain name.

In this case the Respondent has provided a plausible reason for registering a Domain Name. It has maintained the registration for 11 years, and claims to have used the Domain Name extensively for personal purposes during that time. From 2001-2012 the term "Audi City" was not in common use and there was no reason for the Respondent to consider that the

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Complainant would find that combination of words valuable. The Respondent has never used the Domain Name for commercial purposes, nor has he attempted to sell the Domain Name.

In the present case, the Panel finds that the record simply does not yield clear evidence of cybersquatting, or other facts showing that Respondent registered and used the Domain Name in bad faith.

**Decision:** For the foregoing reasons, the Complaint was denied.

3 Ticket Software, LLC v. Domains By Proxy, LLC / Stephen Troy Case No. D2013-0215

**Findings by the Panel:** Registered and Used in Bad Faith

(i) circumstances indicating that the holder has registered or 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 that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) The holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the holder's website or location.

With respect to this proceeding, the Complainant has failed in its burden to show that the Domain Names were registered and had been or are being used in bad faith by the Respondent. Particularly, the Complainant has failed to provide evidence that the Respondent: (i) registered the Domain Names primarily for the purpose of selling, renting or otherwise transferring the Domain Names to the Complainant for valuable consideration; (ii) registered the Domain Names to prevent the Complainant from reflecting its mark in a corresponding domain name and has engaged in a pattern of conduct of registering domain names incorporating the trademarks of third parties; (iii) registered the Domain Names primarily for the purpose of disrupting the business of a competitor; or (iv) by using the Domain Names, has intentionally

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attempted to attract, for commercial gain, Internet users to a site by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of a site or of a product or service on a site

The Panel therefore finds that the Complainant's limited assertions, without more, are not enough to satisfy the burden that the Complainant must meet under the Policy. Based upon the above, the Panel finds that paragraph 4(a) (iii) of the Policy has not been satisfied.

**Decision:** The Panel finds that the Complainant has not proven all three elements in paragraph 4(a) of the Policy and determines that the Complainant's request to transfer the Domain Name is denied.

4. Cosmetic Research Group v. John Miller; Case No. D2012-0014

The "registration" cannot be considered as a continuous process that would have to be construed in line with the circumstances surrounding the case as of the time the Complaint is filed. Such a construction would render the difference between "registration" and "usage" pointless. Those are clearly two distinctive requirements whose rationale lies in the very goal the UDRP is trying to pursue. It is indeed to be kept in mind that the UDRP was enacted in order to fight against a particular set of circumstances, namely the undue and abusive registration of domain names in so-called cybersquatting cases. Under the UDRP, such cases presuppose the registration itself to occur in bad faith. While this might, and actually has been considered as a weakness from the UDRP in particular with regards to some ccTLDs alternative dispute mechanisms that have resulted in the putting in place of alternative criteria, namely registration or use in bad faith, there is no reason to depart from the interpretation given by a majority view that, under the Policy, paragraph 4(a) (iii), the conjunctive "and" indicates that there must be bad faith both at the time of registration and subsequently.

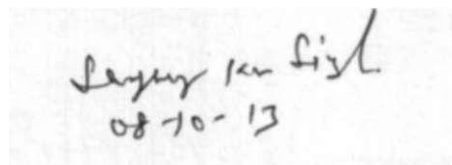
As a result, the Panel is of the opinion that the disputed domain name <institutsoskin.com> has not been registered in bad faith.

**Decision: For all the foregoing reasons, the Complaint is denied.**

5. T. Rowe Price Associates, Inc. v. J A Rich; Case No D2001-1044

Findings of the Panel: **Bad Faith**

The evidence suggesting bad faith registration and use includes the following:



Handwritten signature and date: "Laying on file 08-10-13"

First, although Respondent claims that he had no knowledge of Complainant's registered trademark for INVEST WITH CONFIDENCE when he registered the Domain Name, the presence of a federal registration offers constructive notice of the Complainant's rights.

Second, the repeated transfers of the Domain Name immediately following letters sent by Complainant may be indicative of bad faith registration. There is no evidence provided to show an arm's length acquisition of the Domain Name from the prior owner and the timing of the transfers seems suspicious.

Third, bad faith may also be suggested by Respondent's failure either to use the Domain Name in connection with a bona fide offering of goods and services before the Complaint was filed, or to prove that he had a demonstrable plan to do so, and by Respondent's actions after the Complaint was filed -- specifically, altering the content of the Domain Name portal and filing for a state registration of the Complainant's mark.

There is no evidence that Respondent has tried to sell the Domain Name for profit or has engaged in a pattern of conduct to prevent others from using trademarks as domain names. Further, it does not appear that Respondent is seeking to disrupt the business of a competitor. And while it is apparent that Respondent uses the Domain Name to direct traffic to a book site for commercial gain, it is not clear that Respondent has done this in a deliberate or reckless attempt to trade on confusion with Complainant's mark

**Decision:** The Domain Name is confusingly similar to the Complainant's mark, and Respondent lacked any legitimate interest in the Domain Name prior to this dispute. Complainant, however, has failed to prove that Respondent registered and used the Domain Name in bad faith. Therefore, Complainant's request for transfer of the Domain Name <investwithconfidence> is denied.

6. Case Laws in correspondence to Limitation Period:

The respondent has submitted that the complainant has filed litigation beyond the limitation period under the Limitation Act, 1963. It is a general principle of law that law is made to protect only diligent and vigilant people. Equity aids the vigilant and not the indolent. Law will not protect people who are careless about their rights. (Vigilantibus non dormientibus jura subveniunt). Moreover, there should be certainty in law and matters cannot be kept in suspense indefinitely. It is provided that Courts of Law cannot be approached beyond fixed period. In civil matters, the limit is provided in Limitation Act, 1963.

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7 contention of respondent in respect to bar of limitation - Subject to provisions of sections 4 to 24 of the Act (i.e. Limitation Act), every suit instituted, appeal preferred and application made after the prescribed period' shall be dismissed, although limitation has not been set up as a defense [Section 3(1)]

Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the schedule to the Act and 'prescribed period means the period of limitation computed as per provisions of the Act [Section 20)].

a. Raj Bahadur Singh & Another v. D.J. & Others (Civil Misc. Writ Petition No.12718 of 2002):

According to the learned Judge the application 4-Ga had been rejected on two grounds firstly being barred by limitation and secondly being without any valid ground Thus, the appeal filed by the respondents was fully maintainable. He further submitted that the learned District Judge vide order dated 1.2.2002 had admitted the appeal while over ruling the preliminary objections and the writ petition filed by the petitioners is not maintainable

In the present case the question is as to whether an appeal lies against an order passed by the trial Court wherein it had by a common order rejected both the applications under section 5 of the Limitation Act and Order 9 Rule 13 C.P.C. on the ground that the application is barred by Limitation and no ground for condonation of delay has been made out, or a revision lies. If it is held that no appeal lies then the order admitting the appeal is wholly without jurisdiction and in such a circumstance a writ petition is maintainable.

The respondent has contended the following:

- i. The above mentioned relevant case laws and inferences drawn by the WIPO, the administrative panel has denied the complaints where the registration of domain name was not in bad faith and where the respondent is legitimate owner of the domain name.
- ii. The complainant has filed the complaint beyond the limitation period and thus the complaint be dismissed on grounds of time bar

**The respondent has filed the written statement whereby he has agitated the following:**

- i The respondent has submitted that it operates a Data Centre and is Hosting Service provider. Respondent with a view to provide service registered the domain name www.micorsoft coin from registrar Direct Internet Solutions Pvt. Ltd.

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- ii The domain name www.micorsoft.co.in is registered in respondent's name, bearing ID no. D490934-AFIN; dated 16th February, 2005; it was last updated on 29<sup>th</sup> June, 2010: Expiry date of the said domain name is 16th February. 2014
- iii The complainant has filed false and frivolous complaint against respondent before National Internet Exchange of India (NIXI) vide Notice to respondent under Rule 5 © of INDRP Rules of Procedure dated 8<sup>th</sup> July 2013
- iv. The respondent had registered domain name in the year 2005. It has been around 8 years since then respondent has legitimate right and ownership of the domain name.
- v. The complainant has provided false information by filing fake document in the in **ANNEXURE - E (Pg. No. 197)**. The complainant is trying to lay false allegations on respondent by giving fictitious information to tribunal. Complainant's misconduct is clearly foreseen from its fraudulent acts.
- vi. That the complainant falsely alleges and claims that the respondent's domain name is identical, confusing or similar to the name, trademark or service in complainant has rights.

The respondent has referred South Fork Hardware, Inc., DBA TireChain.com v. Vulcan Sales, Inc., DBA Vulcan Tire Sales Case No. D2013-0199 with respect to "Identical or Confusingly Similar"

The respondent has submitted that although Respondent's registration of the Domain Names with a deliberate typographical error (<tirechian.com> instead of TIRECHAIN.COM, and <tirechians.com> instead of TIRECHAINS.COM) to attract the public to its competing website may suggest bad faith; Complainant has failed to establish on the record here the first element of the Policy -- rights in the alleged Marks In light of this determination, the Panel does not need to consider whether the Domain Names are identical or confusingly similar to Complainant's alleged Marks. Nor need the Panel consider whether Respondent has rights or legitimate interests in the Domain Names, nor whether Respondent's registration and use of the Domain Names were in bad faith.

The respondent has submitted that Complainant attempts to rely on its Pennsylvania state registrations to demonstrate rights in the alleged Marks: however the Pennsylvania registrations are insufficient to establish trademark rights for purposes of the Policy. Because state registrations are issued with no examination, a state registration does not give rise to the same presumptions of validity and ownership as does a federal registration.

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Mobile Communication Service Inc v. WebReg. RN, WIPO Case No. D2005-1304; The respondent has also referred to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), at paragraph 1.1 ("Panels have typically found trademark registrations that are automatic or unexamined (such as US state registrations as opposed to US federal registrations) are not owed the same deference under the UDRP as examined registrations.").

The respondent has submitted that another hurdle Complainant has not cleared on the record here is the descriptive and/or generic nature of the alleged Marks. The term "tire chain" is defined as follows: "Noun 1. tire chain - chain attached to wheels to increase traction on ice or snow" (see "[www.thefreedictionary.com/tire+chain](http://www.thefreedictionary.com/tire+chain)"); and "a chain designed to be fastened over the tread of a tire in order to give a firmer grip on a road and esp. to prevent skidding or slipping" (see "[www.merriam-webster.com/dictionary/tirechain](http://www.merriam-webster.com/dictionary/tirechain)"). Complainant has applied to register TIRECHAIN.COM with the U.S.P.T.O. for the very goods defined in these definitions, namely, "Anti-skid chains for vehicle tires; Anti-skid chains for vehicles; Chains for motor cars; Land vehicle parts, namely, tire chains; Land vehicle parts, namely, tire snow chains." And Complainant has applied to register TIRECHAINS.COM with the U.S.P.T.O. for providing online information concerning safety risks relating to driving in hazardous conditions, for which it includes information about "vehicle safety products". Complainant uses both of the alleged Marks to sell goods on its website as defined in the aforesaid definitions (e.g., ATV Tire Chains, Care Tire Chains, Farm Tractor Tire Chains, Fork Lift Tire Chains, Lawn Tractor Tire Chains, Snow Blower Tire Chains, Travel Trailer Tire Chains and Truck Tire Chains). And as the U.S.P.T.O. stated in its earlier rejection of Complainant's application for TIRECHAIN.COM, "[t]he TLD in the applied-for mark indicates an Internet address and, in general, adds no source-identifying significance." The respondent has also referred to Shopping.com v. Internet Action Consulting, WIPO Case No. D2000-0439. Thus, based on the record here, TIRECHAIN.COM and TIRECHAINS.COM appear generic, if not clearly descriptive, of the goods and/or services with which they are used.

The respondent has submitted that Complainant argues that the alleged Marks have acquired distinctiveness and a secondary meaning with customers. In this regard Complainant points to external signage for its business using Tirechain.com, and an article dating back to 2000 posted on the website of "Outdoor Life" at "[www.tirechain.com/outdoorexplorer.htm](http://www.tirechain.com/outdoorexplorer.htm)" entitled "How to Mount Tire Chains", which refers to a "chain expert" from "[tirechain.com](http://www.tirechain.com)" recommending two types of chains for cars and light trucks. Also Complainant provided the Panel with a printout of ratings logged by Internet users on "Epinions" allegedly reflecting customer's views about Complainant's business, namely: "overall rating", "ease of ordering", "customer service", "and

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selection'on" on-time delivery". Complainant argues that these consumer and client comments reflect consumer acknowledgement of Tirechain.com as a trade name for Complainant.

The respondent has submitted that assuming that TIRECHAIN.COM and TIRECHAINS.COM are not generic. Complainant's evidence (i.e.. external business signage of Tirechain.com and reference in one article) at best shows trade name use of Tirechain.com. Indeed, Complainant acknowledges that the Epinion consumer ratings reflect trade name use. Evidence of trade name use, however, is not necessarily evidence of trademark rights, as is the case here Complainant's evidence falls far short of the kind and amount of evidence required to establish secondary meaning and distinctiveness such that the relevant purchasing public exclusively associates the terms with Complainant as a source of services. The respondent has also referred to *Pet Warehouse v Pets.Com, Inc.*, WIPO Case No. D2000-0105; the respondent has also contended that "The complainant must show that the name has become a distinctive identifier associated with the complainant or its goods or services. Relevant evidence of such "secondary meaning" includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys and media recognition."

For the foregoing reasons, the Complaint was denied.

8. The respondent has submitted that he has spent substantial time, effort, money for registration of the domain name and utilized the domain name for legal and rightful purpose.

9 It is not true and correct to state that the respondent has no rights or legitimate interest in the domain name.

**88 The respondent has referred the following case law:**

1. *Namet Food Industry & Trade Inc. v. Fabulous com. / Stanley Pace Case No. D2013-0316*

The Panel is of the opinion that the registration of the disputed domain name could not have been in bad faith because the Respondent could not have contemplated the Complainant's trademark rights. Therefore, the Complainant has failed to establish that the registration of the disputed domain name is in bad faith under the Policy. In these circumstances, the Panel finds no reasons to regard the use of the disputed domain name for posting PPC links unrelated to the Complainant and the public offer of the Respondent for sale of the disputed domain name as illegitimate either.

For these reasons, the Panel finds that the Complainant has failed to establish that the Respondent has registered and used the disputed domain name in bad faith.

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For the foregoing reasons the Complaint was denied

**The respondent has rights and legitimate interest in domain name as:**

- i) The respondent has legally registered the domain name,
- ii) The respondent has not misused the domain name.
- iii) The respondent had registered the domain name in 2005 itself and owns from past 8 years,
- iv) The complainant did not raise objection for such long duration.
- v) The respondent has registered domain name for legal bona fide purpose and not for misusing by e mail spamming or hoaxes, spyware, malware, viruses, dissemination of offensive material, money laundering, vandalism etc.

That the respondent clearly stated of registering the domain in good faith by null routing it

That respondent never asked any monetary compensation to complainant for surrendering the domain name.

The respondent has submitted that the complainant has time and again forced to transfer the domain name through its legal agency and have pressurized the respondent to do so; even after the domain was never used, the language of the Complainant has been very harsh right from their first email and they have used threatening language. The complainant through e mail conversation threatened that respondent should send a ceased or desist letter and transfer the said domain names in favour of the complainant which shows act of **"Reverse Domain Name Hijacking"** on part of complainant.

The complaint was brought in bad faith in manner to seize domain names abusing and misusing the UDRP process.

The respondent has submitted that as the domain name was easily available to acquire and own; the respondent paid for registration and owned it appropriately from domain registration site and paid appropriate charges for its registration and ownership for the said domain name.

The respondent has submitted that it seems clear about the **trademark bullying** on part of complainant. If the complainant has registered the name MICROSOFT under Trademarks Registry then it is sole responsibility of complainant to protect and secure it.

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The respondent has submitted that the complainant's under the name of trademark rights is trying to infringe the policies of legitimate owners: as there has been numerous cases regarding this who complainant himself has filed in the said matter. Even the matter is raised and is seriously considered at The United States Patent and Trademark Office (USPTO) of **trademark bullying** as "the practice of a trademark holder using litigation tactics in an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark holder". The respondent has submitted that this shows such trademark suits are filed against trademark holders in an attempt to forcefully dissuade that trademark holder from using their own trademark. These actions, called strike suits, typically begin with a cease and desist letter objecting to how the business is using their trademark in commerce. If a cease and desist letter is disregarded or if the business responds that it will not cease their use, a lawsuit typically results **Trademark bullying** is a problem because businesses are using their trademarks as a means to expand their market share without actually sometimes having meritorious claims enforcement of legitimate trademark rights by any party. This is what the complainant is trying to attempt.

2 *Walk the Walk Worldwide v. Name Administration Inc. (BVI) Case No. D2013-0731*

The respondent has submitted that the Panel has found that the Respondent's use of the Domain Name for this purpose is legitimate, comprising the use of a generic term to link to goods and services which are reasonably to be associated with that term. The Panel finds no basis to conclude that the Respondent acquired or has used the Domain Name in an attempt to cause confusion with the Complainant's trademark or in any way to take unfair advantage of the Complainant's goodwill.

Accordingly, the Panel finds that Complainant has failed to establish that the Domain Name has been registered and is being used in bad faith.

For the foregoing reasons, the Complaint was denied.

The respondent has further submitted that the complainant is also trying to suppress the respondent for transferring the domain which is "**Reverse Domain Hijacking**" case. The complainant has a policy to redirect the domain to their main domain which shows that it wants to acquire business and is against Monopolistic and Restrictive Trade Practice under MRTP Act, 1969 Monopolistic trade practice is that which represents abuse of market power in the production and marketing of goods and services by eliminating

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potential competitors from market and taking advantage of the control over the market by charging unreasonably high prices, preventing or reducing competition, limiting technical development deteriorating product quality or by adopting unfair or deceptive trade practices.

The respondent has submitted that it shows bad faith of complainant for filing the suit against the respondent. Such mal practice of **Reverse Domain Name Hijacking** is carried on part of complainant from numerous years: suppressing the rights of legitimate owners of the domain name.

3. *The Honorable Ron Paul v. DN Capital Inc., Martha Roberts Case No. D2013-037*

Respondent has requested based on the evidence presented, that the Panel makes a finding of **Reverse Domain Name Hijacking**. In view of the unique facts of this case, in which the evidence demonstrates that Respondent offered to give the Domain Name <ronpaul.org> to Complainant for no charge, with no strings attached, the Panel is inclined to agree. Instead of accepting the Domain Name, Complainant brought this proceeding. A finding of **Reverse Domain Name Hijacking** seems to this Panel to be appropriate in the circumstances.

Decision: For the foregoing reasons, the Complaint was denied.

The respondent has referred the following case law:

4. *The Procter & Gamble Company v. Marchex Sales, Inc Case No. D2012-2179*

The respondent has submitted that in all of the circumstances present here, the Panel finds that the Complainant has abused the process in an attempt at **reverse domain name hijacking** in contravention of the UDRP Rules at paragraph 15(e). The Panel majority also finds the Complainant has attempted **reverse domain name hijacking** because it must have known that the Respondent did not know of (nor had any reason to be aware of) any relevant trade mark rights in the SWASH name when the Respondent registered the disputed domain name in 2004

For completeness, the Panel acknowledges the Respondent's contention as to the Complainant's true motivation behind this administrative proceeding (see paragraph 5D above), but does not regard it as necessary or appropriate that it should address the point.

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For the foregoing reasons, the Complaint is denied. The Panel also makes a finding of **reverse domain name hijacking** against the Complainant.

The respondent has submitted that the complainant has laid false allegations on grounds of typosquatting upon the respondent. The allegations are totally absurd and against the laws of UDRP. The complainant's only intention is to harass and get the domain names by threatening the respondent. If Microsoft Word was similar or confusing then this objection should have been raised at the time when the respondent registered the domain name, instead complainant did not bother to do so at that point of time and is trying to cease and desist it now and infringing rights of respondent.

The respondent has prayed the following:

- i) For the reason stated above the suit of the complainant be dismissed.
- ii) The respondent wishes to be legitimate owner of the domain name as it is rightfully registered in its name.
- iii) There must be stern and stringent action to be taken against the complainant and heavy penalty be imposed under the Uniform Domain Name Dispute Resolution Policy and Anticybersquatting Consumer Protection Act for "**Trademark Bullying**" and **Reverse Domain Name Hijacking**".
- iv) The respondent submits relevant case laws in annexure A to be considered along with the reply.
- v) Any other appropriate order in favour of respondent shall be passed.

**14. The arbitrator sent an e-mail dated 28<sup>th</sup> July 2013 whereby complainant was directed to submit rejoinder if any to the reply of the respondent.**

The complainant has submitted a rejoinder dated 01<sup>st</sup> August 2013 vide e-mail dated 02-08-2013 stating that for the purposes of this rejoinder the Complainant shall treat the document titled **Annexure-A-Microsoft.docx** emailed by the Respondent as the reply to the Complaint. The contents of the reply are a mere attempt to confuse and mislead the Panel.

The complainant at the outset has submitted that the case law relied on by the Respondent has no bearing on the matter at hand and the facts and circumstances surrounding the present disputes are clearly distinguishable. The complainant has contended that the facts of **Johnson & Johnson v. Chad Wright, WebQuest.com, Inc; Case No. D2012-0010** With regard to this case are clearly distinguishable. In that matter, the panel was faced with a

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situation where the respondent was in the business of registering dictionary words' as domain names. There the question was whether the Respondent had adopted and used the disputed domain name because of its trademark value or because of its descriptive value and that would determine the extent to which Respondent has a legitimate interest. In that context the Complainant had failed to establish that while registering the domain the Respondent was "willfully blind" to the complainants trademark and hence his claim failed.

The complainant has submitted the following:

**Firstly**, in the present matter the disputed domain is not a dictionary word, but a registered trademark **MICROSOFT** under which the Complainant has been doing business since 1975 and by which it well-known throughout the world.

**Secondly**, the Respondent cannot legitimately claim to have no knowledge of the Complainant's mark. The Complainant is worldwide leader in computer software and allied services. Microsoft operating systems and other software are used on millions of computers across the world and it is impossible for a company which is involved in providing web hosting services to be unaware of the complainants mark. According to the profile of the registrant, he has a degree in Electronics engineering and started working at Software Company in 2003. The complainant has contended that if such is the case, there is no plausible explanation as to his claim that he was unaware of the complainants claim that he was unaware of the complainants' trademark at the time of registering the disputed domain name, the complainant has placed the reliance on *Venue Clicquot Ponsardin, Maison Fondee en 1772 v. The Polygenix Group Co* wherein the panel found wherein the panel found *"Bad faith may be found where a domain name is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith."*

The Complainant has further submitted that this being a clear case of typo squatting, they have established bad faith at the time of registration *and* subsequently The complaint has contended that the facts of **Audi AG v. Stratofex; Case No. D2012-1894** are clearly distinguishable from the matter at hand. In the referred case the Respondent was using the domain for his personal email The panel found no evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

On the contrary, the Respondent herein is clearly typosquatting and redirecting visitors to another website. By his own admission he was using the impugned domain name to get more traffic to his site. There is clear evidence of intentionally using for commercial gain the confusion caused by misspelling the Complainants trademark **MICROSOFT-**

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Further, in that case there was no evidence that the Respondent was engaged in a pattern of conduct of registering domain names to prevent trade mark owners from registering a corresponding domain name. This is clearly not the case here as there is another proceeding currently underway for the disputed domain [www.microsoft.co.in](http://www.microsoft.co.in) against the same Respondent.

In reference to **Ticket Software, LLC v. Domains By Proxy, LLC / Stephen Troy; Case No. D2013-0215** the Complainant has submitted that the context in which this decision was made was completely different. The Complainant therein had failed in his burden of proof as they did not submit any evidence to reflect redirection of customers *via* the disputed Domain Names to a website at [www.vez-shoplink.com](http://www.vez-shoplink.com) or any evidence of the Domain Names directing or redirecting to any website at the time of the panel proceedings or in the past. The panel found that "Without any supporting evidence, the Complainant's limited assertions are not sufficient to support a finding that the Respondent has intentionally attempted to attract for commercial gain Internet users to a website by creating a likelihood of confusion with the Complainant's mark."

The Complainant has further submitted that here, the respondent has admittedly used the disputed domain get more traffic to his website as is clear from the correspondence between the Complainant and Respondent which has been dealt with in Para (w) of the Factual and Legal grounds in the Complaint. The Complainant has also produced sufficient proof of the redirection to the Respondents commercial website when users enter the disputed domain name.

In reference to **Cosmetic Research Group v. John Miller; Case No. D2012-0014** the Complainant has submitted that this is another case that has been relied on by the Respondent outside of the context in which the decision was given. The Complainant has submitted that in that matter, the panel agreed that bad faith must be demonstrated at the time of registration *and* subsequently. There the disputed domain name was registered at a time when the Respondent, acting as the CEO of Aesthetimed (France) Ltd, was the licensee of the Complainant, at a time when the parties intended to develop a concept of "institute" around the SOSKIN trademarks. As a result, the panel did not consider such a registration to have taken place in bad faith and the Complainant did not raise any factual circumstance that might help the Panel to consider that such a registration occurred in bad faith.

It is submitted that in the matter at hand, the respondent has never been authorized or licensed to use the Complainant's registered trademark **MICROSOFT** in any manner. Here, there is bad faith at the time of registration as it is a clear case of typosquatting. The bad

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faith continues post the registration as the respondent intends to use the domain to get more traffic to his other website.

In reference to the **T. Rowe Price Associates, Inc. v. J A Rich; Case No. D2001-1044** the complainant has submitted that this is another case which has been quoted out of context by the Respondent. There the panel found that *Based on the evidence presented, it seems more likely than not that Respondent has registered and used the Domain Name to attract Internet traffic based solely on the appeal of a commonly used descriptive phrase, as suggested by the evidence of third party use of "Invest With Confidence." Although the mark is registered, it does not appear to be famous or highly distinctive.* It is due to that reason that the panel did not find bad faith at the time of registration.

The complainant in view of above stated submissions has reiterated that the Complainant's trademark **MICROSOFT** is registered all over the world and is an extremely well known mark. The Respondent herein cannot legitimately claim that while registering the disputed domain name he was unaware of the existence of the Complainant's mark, or that he did not anticipate confusion to be caused in the eyes of users. It is again submitted that the Respondent by his own admission was using the disputed domain to increase traffic to his own commercial page by luring unsuspecting users through his typosquatting and redirection methods.

1 The complainant has submitted that the Respondent's contention that the present complaint is barred by limitation is completely false and misleading. The complainant has submitted as hereunder:

- a) With respect to the defence of limitation, it is submitted that existence of the disputed domain name came to the knowledge of the Complainant only sometime in April, 2013. As soon as the same came to the Complainant's knowledge, they addressed a Cease and Desist letter to the Respondents. The complainant has submitted that a copy of the correspondence shared between the Complainant and the Respondent has been attached along with the complaint as **Annexure-G (Colly)** and the same may kindly referred to.
- b) The complainant has further contended that it has been held by the Bombay High Court in *M/s Lupin Laboratories Ltd. v. M/s Jain Products - AIR 1998 Bombay 312'* that for delay or acquiescence to be considered, it must be shown that "the inaction has continued after the knowledge of infringement of the rights, for which the action is initiated by the plaintiffs." Therefore, in view of the same, there is no bar of limitation on the part of the Complainant to institute the present Complaint.
- c) The complainant has submitted that there is no delay on the part of the Complainant in the present matter, since the activities of the Respondent came to the knowledge

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of the Complainant only very recently. Nonetheless various Forums including the Supreme Court and Delhi High Court have held that *"inordinate delay does not affect the grant of relief when the adoption of a mark itself is fraudulent by the infringing party"* - *'Midas Hygiene Industries P. Ltd. & Anr. v. Sudhir Bhatia & Ors.'* - 2004 (28) PTC 121 and also in *"M/s Hindustan Pencils Private Limited v. M/s India Stationery Products Co. & Anr"*-AIR 1990 Delhi 19

d) The complainant has submitted that in Public Service Electric & Gas Company Vanguard Resolutions LLC the panel found that," It is now reasonably well settled that that a delay in bringing the complaint, standing alone, does not provide ground for a defense in a policy proceeding. As recently stated by the three member panel in *Mile, Inc v Michael Berg WIPO Case No. D2010-2011*, *"the Policy offers a limited remedy to avoid future confusion in the marketplace, and it does not contemplate that such a remedy would be unavailable because of delay in instituting a Policy proceeding."* The complainant has also referred to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 4.10: *"Panels have recognized that the doctrine or defense of laches as such does not generally apply under the UDRP, and that delay (by reference to the time of the relevant registration of the disputed domain name) in bringing a complaint does not of itself prevent a complainant from filing under the UDRP, or from being able to succeed under the UDRP, where a complainant can establish a case on the merits under the requisite three elements."*

The complainant has submitted that In light of the above, the contentions of the Respondent are completely baseless and false. They have been put forth to merely confuse and mislead this panel as the Respondent is well aware that his case has no legs to stand on

#### **15. OPINION/FINDING:**

#### **The Para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-**

It must be noted that the Para no.4 of the INDRP policy starts with following words, "Any person who considers that a registered domain name conflicts with his legitimate rights or interest may files complaint to the in registry on follow premises." This is a positive assertion and sentence.

Further paragraph 4(i) also constitutes a positive assertion and sentence. Paragraph 4(iii) and Para no.6, which is supplementary/explanation to it; also have positive assertions/sentences.

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Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to IN Registry on following premises

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."

**The Para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:**

**16. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH :**

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- "i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- ii) By using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

**The Para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-**

**17. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME:**

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate

*Sanjay Singh*  
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the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (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."

#### **18. OPINION AND FINDINGS ON MERITS:**

##### **A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.**

It has been held in Indian decision **M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

The other fact, which is to be dealt with, is, as to whether, the cases decided by WIPO Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

The conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

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Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many Indian cases referred herein above. The complainant has made submission that he has legitimate trademark.

**Thus the conclusion is that the domain name www.micorsoft.co.in' is identical and confusingly similar to the trademark of complainant 'MICROSOFT' and the complainant has established that the complainant has right in the trademark**

**B) Whether the respondent has no right or legitimate interest in the domain name got registered by him**

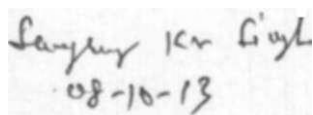
It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no 7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras are prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4 (ii) and 7 of INDRP.

The respondent on other hand has not provided any positive, cogent and specific evidence in support of his contentions. The respondent has failed to show that it is known or recognized by the impugned domain name in the present complaint. The respondent has neither put forth the reply/counter to the complaint nor has provided any evidence in its support.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

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Sanjay K. Goyal  
08-10-13

**C. Whether the respondent's domain name has been registered or is being used in bad faith:**

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant.

Keeping in view the above facts and circumstances and Indian cases referred herein above it is thus clear that the respondent has registered the disputed domain name and has not provided any substantial evidence in his support.

**Thus, the conclusion is that the respondent has got registered his domain name "www.micorsoft.co.in" in bad faith.**

**The respondent has contended that the complaint is not maintainable on the ground of being barred by limitation and has placed reliance on Raj Bahadur Singh & Another v. D.J. & Others (Civil Misc. Writ Petition No. 12718 of 2002.**

It is held that the facts of the case referred by the respondent are not similar to the facts of the present complaint and as such the judgment referred by the respondent does not support his contentions.

The complainant has on the other hand relied on M/s Lupin Laboratories Ltd. v. M/s Jain Products - AIR 1998 Bombay 312' wherein it was held that **for delay or acquiescence to be considered, it must be shown that "the inaction has continued after the knowledge of infringement of the rights, for which the action is initiated by the plaintiffs."** Therefore, in view of the same, there is no bar of limitation on the part of the Complainant to institute the present Complaint.

The complainant has submitted that there is no delay on the part of the Complainant in the present matter, since the activities of the Respondent came to the knowledge of the Complainant only very recently. Nonetheless, various Forums including the Supreme Court and Delhi High Court have held that **"inordinate delay does not affect the grant of relief when the adoption of a mark itself is fraudulent by the infringing party"** the complainant has relied on 'Midas Hygiene Industries P. Ltd. & Anr. v. Sudhir Bhatia & Ors.' - 2004 (28) PTC 121 and also 'M/s Hindustan Pencils Private Limited v. M/s India Stationery Products Co. & Anr.'- AIR 1990 Delhi 19.

*Jangam Kar Singh*  
08-10-13




In view of above submission herein above and in view of the cases referred by the complainant it is thus concluded that the complaint of the complainant is not barred by time

#### **RELIEF**

In view of the above facts and circumstances it is held that the disputed domain name www micorsoft.co in registered by the Respondent incorporates the complainant's trademark MICROSOFT and is typographical and phonetic misspelling. The respondent has no right and legitimate interest in the domain name www micorsoft.co.in' and that the registration of the disputed domain name 'www.micorsoft.co.in' by the respondent was with the sole intention to create an impression of an association with the complainant. The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "www.micorsoft.co.in" to him, as he has established his bonafide rights in trademark in view of facts of the case and as per laws discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs

**Date: 08-10-2013**

  
**(Sanjay Kumar Singh)**  
**Arbitrator**