



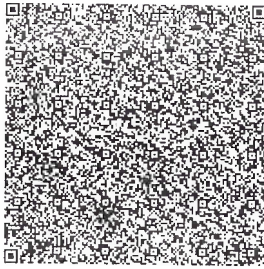
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No. : IN-DL70504909424456P
Certificate Issued Date : 13-Apr-2017 02:12 PM
Account Reference : IMPACC (IV)/ dl876903/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL87690341677603066722P
Purchased by : JAYANT KUMAR
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : JAYANT KUMAR
Second Party : Not Applicable
Stamp Duty Paid By : JAYANT KUMAR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
IN THE MATTER BETWEEN

Hewlett-Packard Development Company, L.P.

Complainant

v.

Raj Kumar

Respondent

AS


Statutory Alert:

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ARBITRATION AWARD

1. The Complainant in this complaint is Hewlett-Packard Development, L.P, a Texas based limited partnership with its principal place of business at 11445 Compaq Drive West, Houston, TX 77077, United States. The Respondent in this complaint is Raj Kumar, with his address at Intel Computer Solutions, 1, 3D, Vantage Plaza, LB Road, Adayar, Chennai, Tamil Nadu – 600041.
2. The Arbitration pertains to the disputed domain name <hpindiaa.in> registered on November 22, 2016 by the Respondent. The Registrar of the disputed domain name is Good Domain Registry Pvt. Ltd.
3. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on April 25, 2017.
4. NIXI served a copy of the complaint along with annexures on the Respondent through courier as well as email on April 28, 2017. The Respondent was then granted time to file its Reply to the complaint by May 25, 2017. The Respondent did not file its Reply. The Respondent was then granted another and final opportunity to file its Reply by June 5, 2017 but no Reply was filed. The Respondent's right to file was closed on June 19, 2017.

Complainant's Submissions

5. The Complainant states that it is one of the leading personal computer and accessories manufacturers in the world with its offices in more than 170 countries. The Complainant is the exclusive licensee/permitted user of the mark 'HP' for goods falling in class 2, 9 and 16 in India of which Hewlett-Packard Group LLC is the current proprietor. The earliest registration of the mark HP viz. trademark Registration No. 661581 in class 2 dates back to 1967. 
6. The Complainant states that it commenced operations in India in the late 1980's and by virtue of its extensive operations, the Complainant has earned extensive goodwill and reputation in the mark HP internationally as

well as India. The Complainant has become one of the largest sellers of computers and their related accessories with revenues exceeding US\$103 billion for their products worldwide for the Complainant's fiscal year ending 2015.

7. The Complainant further states that it owns several registrations for the mark HP worldwide. The Complainant adopted the mark HP at least as early as in 1941 in relation to their business.
8. The Complaint also owns the domain name <hp.com> and hosting a website thereat which is accessible throughout the world since March 3, 1986.
9. The Complainant states that the mark HP has a high degree of distinctiveness, has been used extensively over a long period of time all over the world, and have been extensively promoted resulting in the brand attaining immense popularity globally, and the mark HP has therefore become a well-known mark as per Section 2(1)(zg) of the Trade Marks Act, 1999.
10. The Complainant further states that it has earlier filed a complaint (No. 836/2016) against the Respondent for the wrongful adoption/registration of the domain name <hpindia.in>. The complaint was decided in favour of the Complainant and the domain name <hpindia.in> was directed to be transferred in favour of the Complainant. The Respondent, during the pendency of the aforesaid arbitration proceedings, registered the present disputed domain name viz. <hpindiaa.in>. The Complainant also sent a Legal Notice dated February 14, 2017 demanding the Respondent to transfer the disputed domain name to the Complainant. The Respondent, however, did not respond to the aforesaid Legal Notice but started redirecting the disputed domain name to <laptopindia.in>.
11. The Complainant has further submitted that the disputed domain name is identical or confusingly similar to the mark HP in which Complainant has rights, the Respondent has no rights or legitimate interests in respect of the dispute domain name and that the domain name was registered and is being used in bad faith. Orz

Respondent's Submissions

12. The Respondent did not file any Reply.

Discussion and Finding


13. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c. The Respondent's domain name has been registered and is being used in bad faith.
14. The Arbitrator finds that the Complainant has submitted sufficient documentary evidence to establish its rights in the mark HP, particularly trademark registration certificate for trademark registration no. 187561 dated March 15, 1993 in class 10 and trademark registration no. 661583 dated May 2, 2005 in class 2. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark HP. The addition of the word India with an additional 'a' is insufficient to render dissimilarity to the disputed domain name. The users of the disputed domain name are likely to be confused and deceived by the disputed domain name as the same is likely to convey a message that the Respondent is a part of the Complainant's Indian entity. The Arbitrator therefore finds that the Complainant has rights in the mark HP and that the disputed domain name is confusingly or deceptively similar thereto.
15. Paragraph 7 of the Policy states that a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Complainant has established its sole and exclusive rights in the mark HP and therefore any use of the mark HP by the Respondent, other than leave and license by the Complainant, amounts to trademark infringement and passing-off. The Complainant has established a strong *prima facie* case that the Respondent does not have legitimate rights and interests in the disputed domain name,

and therefore the onus shifts on the Respondent to establish its rights and legitimate interests in the dispute domain name. The Respondent has however not filed any Reply. There is no evidence to establish that the Respondent is commonly known by the disputed domain name or that it makes legitimate non-commercial fair use of the website linked to the disputed domain name. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

16. The fact that the Respondent has already suffered an adverse award with respect to the domain name <hpindia.in> and that it registered the dispute domain name during the pendency of the arbitration proceedings for the domain name <hpindia.in> is sufficient to establish that the disputed domain name was registered and is being used in bad faith.

Decision

17. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <hpindiaa.in> be transferred to the Complainant. Furthermore, given the conduct of the Respondent, it is directed to pay cost of the proceedings, which is quantified at Rs. 50,000, to the Complainant.


Jayant Kumar
(Sole Arbitrator)

Dated: June 20, 2017