



दिल्ली DELHI

L 620595

**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"microsoftstore.in"**

MICROSOFT CORPORATION

...COMPLAINANT

AND

YAN WEI

...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 14.06.2010. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents and also there is no PoA in favour of M/s Anand & Anand. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier and also supply a copy of their authority to act on behalf of the complainants.

2. That compliance of the order was done by the Complainants vide their letter dated 16.06.10 and the DHL Courier sent was received by the Respondent, hence this Tribunal vide order dated 19.06.10 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 30th June 2010.



3. That this Tribunal is in receipt of an email dated 24/06/2010 from the Complainants in response to the order of this Tribunal dated 19/06/2010 and this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried level best to serve the Respondents on the address provided and on which the earlier courier had been received but the Respondents are avoiding to take service of the Courier when the earlier courier dated 15/06/10 No. 657 6852 041 had been duly received by the Respondent on 18/06/2010. Moreover, the copy of the order has been emailed as well hence it cannot be said that the Respondents are unaware of the proceedings.
4. That despite the date of 30.06.10 being notified to the Respondents they chose not to send any communication or file any Statement of Defense.
5. It is seen that the Complainants have tried to serve the copy of the complaint on specific directions of this Tribunal they sent a hard copy of their complaint on the respondents by DHL courier



which shows delivery thereto on 18.06.10 and thereafter on specific directions on the complainant a copy of the order dated 19.06.10 was also sent by DHL courier which was not taken by the Respondent. It is seen despite specific directions dated 19.06.10 this Tribunal has not received any communication from the Respondents let alone a statement of defense.

6. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal is to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

7. The claim as put forward by the complainant is briefly as under:
8. The dispute relates to domain name <microsoftstore.in>. The complainants are aggrieved by the same being registered by Directi Web Services Pvt. Ltd. who are the Registrar in favour of



the Respondent Yan Wei # 800, Dongchuan Road, Shanghai 200240, CHINA.

9. The Complainants have alleged that the domain name is identical and is confusingly similar to the name, trademark, service mark in which the Complainant has rights as they are claiming to be biggest software publisher for personal and business computing in the world.

10. The Complainant's have claimed that they are in business and are owners of popular software products including 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). The Complainants claim that their softwares are today installed and used on millions of computers all over the world, including India. Besides they also own other popular software products which includes Microsoft Windows Server System, Microsoft Publisher, Microsoft Visio, Microsoft Project



and other stand-alone desktop applications. To buttress their claim the claimants rely upon **"Annexure-A" filed with their complaint.**

11. The complainants claim that apart from computer software programs, they also manufacture a large range of computer peripherals (hardware) which as per their claim is called the Microsoft Hardware Group which was established in 1982 and has been an integral part of the Complainants growth for 27 years and in this period, the Complainant has built its reputation for technological expertise in hardware by developing and launching a series of successful devices including the ergonomically designed Mouse and Keyboard.

12. That the claim of the complainants is that since 1975 the Complainants have adopted the trademark **"MICROSOFT"** and has used the said trademark continuously and extensively, not only as a trademark but also as a prominent, key, and leading

portion of its corporate name and that the said trademark **"MICROSOFT"** is one of the most famous and well known trademarks in the world and is exclusively identified and recognized by the purchasing public as relating to the goods and services of the Complainants.

13. Besides it is further claimed that the Complainant is also the registered proprietor, in India of the trademark **"MICROSOFT"** in Classes 9 and 16 and bear the registration numbers **430449** and **430450** respectively. Reliance is placed on **"Annexure-B"**.

14. The Complainant have claimed that Microsoft Corporation has a current market capitalization of \$ **269.97B** as on 29th April 2010 for this they place reliance on **"Annexure-C"**.

15. The Complainant through its website www.microsoft.com have claimed that they provide information of products or services offered by the Complainant and its affiliates. It is stated that the



Complainant debuted as an online service and Internet service provider on August 24, 1995 when it launched the Windows 95 operating system. Further 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, which as per their claim still offers a wealth of content and is currently the 6th most visited domain name on the Internet.

16. Besides the Complainant in their "**Annexure-D**" (Colly) have **relied upon some of the decisions of** the Board of the World Intellectual Property Organisation (WIPO)

17. The complainants are aggrieved by registration of the domain <microsoftstore.in> by the respondents who it is alleged are misappropriating illegally and without authority the trademark MICROSOFT which is the exclusive property of the Complainant

to support their contentions the complainants rely upon the Whois
"Annexure- E".

18. The complainants allege that the disputed domain name <microsoftstore.in> includes the word Microsoft, which is identical and confusingly similar as a whole to the well-known and registered trademark <microsoft.com> in which the Complainant has statutory rights as well as rights in common law, by virtue of being a long-time and continuous user and a registered proprietor thereof. The complainant rely upon the decision reported as *K F C Corporation v. Webmaster Casinos Ltd.*(L-2/6/R4) **"Annexure-F"**.

19. The Complainant have stated that they have spent substantial time, effort and money advertising in promoting the MICROSOFT mark throughout the world. As a result, the MICROSOFT mark has become famous and well-known, and the complainant has



developed an enormous amount of goodwill in the mark, and the same has been recognized by UDRP panels.

20. Further it is alleged that the Respondent has no rights or legitimate interest in the domain name since the disputed domain name comprises the well-known and famous trademark MICROSOFT, it is evident that the Respondent can have no right or legitimate interest in the domain name. Further, it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's famous trademark MICROSOFT, to encash on the goodwill attached to the Complainant's trademark/ name by selling the domain name for profit or, in the alternative, preventing the Complainant from registering a domain name in which it has full legal rights.

21. Further, it is alleged that the Respondent is not commonly known by the domain name nor has he made any demonstrable



preparation to use the disputed domain name <microsoftstore.in> in connection with a bona fide purpose.

22. It is thus the Complainant's contention is that the 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** in any manner or to incorporate the same in a domain name. Besides the Respondent has not shown any demonstrable preparation to use the domain name in connection with a bona fide offering of goods and services.

23. The complainants allege that 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 which is typically the strategy of such cybersquatters. Further the Respondent has not engaged in any activity of its



own to show it has legitimate rights or interest in the impugned domain name and on the contrary has provided sponsored links on its website which diverts traffic.

24. It is also alleged that that Respondent has no bonafide intention to use the impugned domain name and the same has been registered only for the purpose of trafficking. To strengthen their allegations the complainants allege that the disputed domain name resolves to a pay-per-click advertising website whose sole purpose is to collect click-through revenues from advertising links. The screenshots of the Respondent's website depicting the same is annexed as **Annexure G with the complaint**. The Complainants rely upon the decisions of WIPO as detailed in **Annexure H**. It is also alleged that the respondents registered the domain name in bad faith. For this they rely upon **Annexure I (Colly) of their complaint**.



ORDER

25. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give its Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.

26. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <microsoftstore.in> hence this Tribunal directs the Registry to transfer the domain name <microsoftstore.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet



Exchange of India (NIXI) for their record and a copy of the Award
is being sent to both the parties for their records

Signed this 16th day of July 2010.

NEW DELHI
16/07/2010

A handwritten signature in blue ink, appearing to be 'V. Shrivastav', written in a cursive style.

V. SHRIVASTAV
ARBITRATOR