

ARBITRATION PROCEEDINGS OF DOMAIN NAME  
“FHTMClassAction.in”  
between

FORTUNE HI-TECH MARKETING , INC.	...COMPLAINANT
AND	
DELL WANN	...RESPONDENT

**AWARD**

**VISHESHWAR SHRIVASTAV**  
SOLE ARBITRATOR  
NEW DELHI



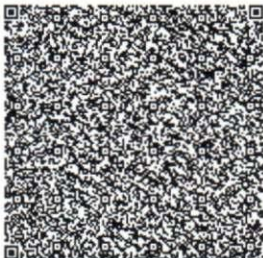
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL45766720237464K
Certificate Issued Date	: 19-Nov-2012 12:11 PM
Account Reference	: IMPACC (IV)/ dl719703/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71970391530078816223K
Purchased by	: V SRIVASTAV
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SRIVASTAV
Second Party	: NA
Stamp Duty Paid By	: V SRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



ORIGINAL ORIGINAL ORIGINAL ORIGINAL  
ORIGINAL ORIGINAL ORIGINAL ORIGINAL  
ORIGINAL ORIGINAL ORIGINAL ORIGINAL

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

**VISHESHWAR SHRIVASTAV**  
**SOLE ARBITRATOR**

IN  
ARBITRATION PROCEEDINGS OF DOMAIN NAME  
"FHTMClassAction.in"

FORTUNE HI-TECH MARKETING , INC.

between

...COMPLAINANT

DELL WANN

AND

...RESPONDENT

**AWARD**

1

#### Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

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 27/10/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents hence vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That compliance of the order was done by the Complainants vide their letter dated 03/11/2012 in which they sent a scanned copy of envelope which showed that the envelope had been returned back to the complainants citing incomplete address of the Respondent. Hence, this Tribunal vide order dated 03/11/2012 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 13<sup>th</sup> November 2012.

3. That this Tribunal finds that the Complainants have tried their level best to serve the Respondents on the address provided by him in WHO IS. This Tribunal notes that the tracking records of the courier sent by the complainant showed "Return, address incomplete" meaning thereby that the Respondents posted an incomplete address in the WHO IS. Be it that as it may this Tribunal notes that the copy(s) of the order(s) have also been emailed to the Respondent at his notified email id as well hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings.
4. In view of the above this Tribunal vide order dated 17/11/2012 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of

Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

### **CLAIM**

6. The claim as put forward by the complainant is briefly as under:
  - A. It is claimed that the complainants i.e. Fortune Hitech Marketing , Inc. herein after referred to as FHTM is a multi-level marketing company which connects independent sales representatives to a network of companies which produce or provide a variety of goods and services ranging from personal care products, nutritional supplements and organic pet supplies to DISH Network satellite television,

cellular phone service from national carriers and security services. It is claimed that since its inception in 2001, FHTM has provided various services under the name and mark "FHTM" including, among others, training courses in the fields of business opportunity, business ownership, business management, as well as related training services in the fields of multi-level marketing, direct sales and small business development.

B. It is claimed that FHTM is the owner of the trade and service mark "**FHTM**", as well as various derivative "FHTM" trademarks and logos used in connection with its services and it has ownership of various federal registrations for its FHTM marks including U.S. Reg. No. 3,864,801, U.S. Reg. No. 3,825,526, U.S. Reg. No. 3,811,304, U.S. Reg. No. 3,811,303, U.S. Reg. No. 3,807,483, U.S. Reg. No. 3,825,525, U.S. Reg. No. 3,803,574, and U.S. Reg. No. 3,803,573. Reliance is placed on **EXHIBIT B** and **EXHIBIT C**

C. It is also claimed that the Complainant's rights in its FHTM Marks have been recognized by previous Panels (under the UDRP). See e.g., *Fortune Hi-Tech Marketing, Inc. v. Phuket Wekib/Phuket Wekib Services*, FA 1110001412581 (December 2, 2011) and *Fortune Hi-Tech Marketing, Inc. v. Lime Maids Inc.*, FA 1111001417036 (January 10, 2012).

D. It is alleged that the domain name under dispute is identical or confusingly similar to Complainant's FHTM Marks.

E. It is alleged that consumers searching the internet for information on FHTM are likely to be confused when encountering Respondent's domain name and associated website and creates a false impression among the consumers interested in FHTM's services that Respondent's website is somehow affiliated or sponsored by FHTM when the fact is that the Respondent, Dell Wann, does not have rights or legitimate interests in the domain



name in question and is a cyber squatter and rely upon **EXHIBIT E** to support their contention.

F. It is also alleged that the Respondent name Dell Wann is alias of an individual by the name of Joseph M. Isaac ("Isaacs") who is a former independent sales representative of FHTM and using the domain name for criticizing the complainant.

G. It is alleged that in case the Respondent wishes to criticize the Complainant he can achieve his objective of criticism by adopting a domain name that is not identical or substantially similar to Complainants marks. Reliance is placed on *Royal Bank of Scotland Group and National Westminster Bank v. Pedro Lopez and A&A System Solutions and Alberto Rodriguez*, WIPO Case No. D2002-0823 (2002).





H. It is alleged that the Respondent has not been authorized to use the FHTM Marks, and he has no trade or service mark rights in "FHTM," "FHTMClassAction.IN," or any other derivative of "FHTM" and thus it has no rights or a legitimate interests in a domain name when he has no affiliation with the corresponding mark. It is further alleged that there is nothing on Respondent's website or in the WHOIS domain name registration information which suggests that Respondent is commonly known by these terms.

I. Thus the Respondent's use of the domain name does not constitute a "bona fide" offering of goods or services pursuant to Policy 4(c) and is aimed only to misleadingly divert internet consumers.

J. It is alleged that Respondent has engaged in a long-standing campaign designed to discredit and defame the business of Complainant and to confuse consumers and is

thus an unlawful conduct showing bad faith. Reliance is placed on **EXHIBIT F** and **EXHIBIT H**.

K. It is alleged that Complainant is currently engaged in various legal proceedings involving Isaac and his unlawful activities, including an arbitration proceeding before the American Arbitration Association (Fortune Hi-Tech Marketing, Inc. v. Joseph M. Isaacs, et al., AAA Case No. 52-147-00308 10).

### **ORDER**

7. 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 his Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.



8. 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 <FHTMClassAction.in> hence this Tribunal directs the Registry to transfer the domain name < FHTMClassAction.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 20<sup>th</sup> day of November 2012.

NEW DELHI  
20/11/2012



V. SHRIVASTAV  
ARBITRATOR