INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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सत्यमेव जयते

Certificate No.	:	**IN-DL68191237909576L**
Certificate Issued Date	:	15-Jan-2013 04:26 PM
Account Reference	:	IMPACC (IV)/ dl732103/ DELHI/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL73210336116641058776L
Purchased by	:	V SHRIVASTAV
Description of Document	:	Article 12 Award
Property Description	:	NA
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	V SHRIVASTAV
Second Party	:	NA
Stamp Duty Paid By	:	V SHRIVASTAV
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

Please write or type below this line

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"blackberrymobile.in"

between

RESEARCH IN MOTION LIMITED ...COMPLAINANT

AND

AMIT JAIN ...RESPONDENT

AWARD

1

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 11/12/2012. 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 Kochhar & Co. the Counsels for the Complainants. Accordingly 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 12/12/2012 sent a copy of a courier receipt of M/s Blue Dart waybill No. 13708782813. Hence, this Tribunal vide order dated 15/12/2012 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 22/12/2012.

3. That in this duration Tribunal found that the Complainants have not complied with the directions regarding their PoA hence vide order dated 22/12/2012 this Tribunal gave 7 days time to the Complainant to get their POA. On 28/12/2012 the complainant's Counsel sent a notarized copy of the PoA to which this Tribunal took objection and asked them to file the original. In the mean while the Respondent vide email dated 03/01/2013 stated that the website blackberrymobile.in has been taken down post notification but did not care to file his Statement of Defense for which this Tribunal gave him time till 10/01/2013. This Tribunal then received by email as well as by courier on 05/01/2013 an affidavit from the Ld. Counsel Mr. Anshuman Sharma of Kochhar & Co. pertaining to the Original PoA giving on oath reasons for not filing the original PoA as the same is a GPA and is required for other cases also. This Tribunal noted that the Respondent again sent an email on 06/01/2013 without

Statement of Defense hence on 11/01/2013 the Tribunal reserved the order.

4. In view of this, this Tribunal holds that the Respondents are fully aware of the present proceedings and are deliberately not joining the same.

5. In view of these peculiar facts and circumstances of the present matter and also in view of INDRP 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) The Complainant claim that they are a leading designer, manufacturer and marketer of innovative wireless solutions for the mobile communications market having a history of developing breakthrough wireless solutions. The Complainant claims that it has several subsidiaries and associate

companies, which are collectively referred to as RIM Group of Companies.

b) The Complainant state that it was founded in the year 1984 and is amongst the first wireless data technology developers in North America. That the complainant through development of integrated hardware, software and services that support multiple types of wireless networks including giving individuals the ability to remotely access time-sensitive information including email, telephone, short message service (SMS) messaging, instant messaging, Internet, global positioning (GPS) as well as software and intranet based applications all from a device no larger than the palm of a hand. It is also claimed that the Complainant's technology also enables a broad array of third party developers and manufacturers to enhance the productivity levels of their products and services.

c) The Complainant state that they had coined and adopted the '**BlackBerry**' in the international market as early as the year 1999 with respect to its goods/services and are having *prima*

facie distinctive trade marks. It is also claimed that the Complainant filed trade mark applications for the registration of the '**BlackBerry'** mark in India as early as the year 2002. The Complainant also claims to be the owner of the mark **BlackBerry** and various other marks containing the word **BlackBerry** *(hereinafter referred to as the **"BlackBerry Family of Marks".**)*

d) It is also claimed that the Complainant's portfolio of award-winning products, services and embedded technologies are used by tens of thousands of organizations around the world and include the **BlackBerry** wireless platform, software development tools, radio-modems and software/hardware licensing agreements. Besides the Complainant's sales and marketing efforts include collaboration with strategic partners and distribution channel relationships to promote the sales of its products and services as well as its own supporting sales and marketing teams.

e) It is claimed that the main products, among several others, developed, manufactured and sold by the Complainant are the **BlackBerry** wireless handheld devices along with accessories, software and services associated therewith.

f) It is stated that the **BlackBerry** wireless solution allows users to stay connected with wireless access to email, corporate data, phone, web, instant messaging, global positioning system (GPS), social networking and organizer features and further the **BlackBerry** devices are revolutionary communication tools that allow professionals to send and receive emails wherever they go.

g) It is claimed that the goods/services under the **BlackBerry** mark are extremely popular among the members of the trade and public and are available in many countries including India.

h) It is claimed that owing to the huge and instantaneous success of **BlackBerry** products and services, the Complainant expanded its **BlackBerry** business by launching a variety of

mobile handsets under the **BlackBerry Family of Marks**. Some are given as under:

(i) **BlackBerry Torch Series**

BlackBerry Torch 9800

BlackBerry Torch 9810

BlackBerry Torch 9860

(ii) **BlackBerry Tour**

BlackBerry Tour 9630

(iii) **BlackBerry Storm Series**

BlackBerry Storm 9500

BlackBerry Storm 9550

(iv) **BlackBerry Bold Series**

BlackBerry Bold 9000

BlackBerry Bold 9700

BlackBerry Bold 9650

BlackBerry Bold 9780

BlackBerry Bold 9790

BlackBerry Bold 9900

(v) **BlackBerry Curve Series**

BlackBerry Curve 8300

BlackBerry Curve 8310

BlackBerry Curve 8320

BlackBerry Curve 8520

BlackBerry Curve 8530

BlackBerry Curve 8900

BlackBerry Curve 8500

BlackBerry Curve 9300

BlackBerry Curve 9320

BlackBerry Curve 9360

BlackBerry Curve 9380

(vi) **BlackBerry 8800 Series**

BlackBerry 8800

BlackBerry 8820

BlackBerry 8830

(vii) **BlackBerry Pearl**

BlackBerry Pearl 8100

BlackBerry Pearl 8110

BlackBerry Pearl 8120

BlackBerry Pearl 8130

BlackBerry Pearl Flip 8220

BlackBerry Pearl 9100

(viii) **BlackBerry 8700 Series**

BlackBerry 8700c

BlackBerry 8700g

BlackBerry 8700r

BlackBerry 8703e

BlackBerry 8705g

BlackBerry 8707g

(ix) **BlackBerry 7130 Series**

BlackBerry 7130c

BlackBerry 7130e

BlackBerry 7130g

(x) **BlackBerry 7100 Series**

BlackBerry 7100g

BlackBerry 7100i

(xi) **BlackBerry 7200 Series**

BlackBerry 7250

BlackBerry 7290

(x) **BlackBerry 7520**

i) It is claimed that the Complainant has been spending several hundreds of millions of dollars each year towards its research and development efforts and to this effect has been employing a large team of experts in its research facilities from various technical disciplines with specialized skills in the areas of hardware and software engineering. Reliance is placed on **Exhibit 3**.

j) It is claimed that there has been a tremendous global sales for its products under the **BlackBerry Family of Marks** of trade marks right from the year of its adoption and to buttress the above they have given the following tabulation

***Fiscal Year**	**Global Sales Revenue in USD (Millions)**
2011	19,907
2010	14,953
2009	11,065
2008	6,009
2007	3,037
2006	2,066
2005	1,350
2004	595
2003	307
2002	294
2001	221
2000	85
1999	47

Reliance are on **Exhibit 4 & 5**.

k) Besides it is claimed that the Complainant has also entered into strategic and research alliances with major network

operators and channel partners, wireless networks infrastructure suppliers, manufacturers and wireless technology innovators including Aircel, Bharti Airtel, BSNL, Idea, Loop Mobil, MTNL, Vodafone Essar, Reliance GSM, TATA DoCoMo, and TATA Indicome.

l) It is further claimed that the Complainant spends significant resources in promotion and advertisement worldwide, including in India, and has established significant Internet presence over the years. Reliance is placed on **Exhibit 7,8,9,10 & 11.**

m) The Complainant claims that it is the registered proprietor of a global portfolio of **BlackBerry Family of Marks,** having secured more than 2,800 registrations of the same in 155 (this includes AIPO and OHIM-CTM) jurisdictions around the world which *inter alia* include Singapore, Mexico, Norway, Australia, New Zealand, Chile, Switzerland, Hong Kong, Republic of Korea, Venezuela, China, Argentina, USA, Taiwan, Indonesia, Japan, Canada, Macao, Brazil, **India**, Thailand, Saint Kitts &

Nevis, Jamaica, Philippines, Germany, Spain, UK, Bermuda, Israel, Czech Republic, Barbados, Kuwait, Denmark, Turkey, Greece, Poland, Austria, Finland, France, Benelux, Panama, Colombia, Malaysia, Sweden, Hungary, Netherlands, Serbia, Portugal, Russian Federation, Slovakia, Saint Lucia, Peru, Mauritius, Iceland, Guatemala, Venezuela, Poland, and many other nations in various international classes. Reliance is placed on **Exhibit 12 & 13**.

n) The complainants alleged that the use of the disputed domain name by the Respondent amounts to misrepresentation and the Respondent by doing so is indulging in unfair competition.

o) The Complainant claim that it has also registered/acquired a number of domain names containing the word "**BlackBerry**" such as www.blackberrystore.com, www.discoverblackberry.com, www.blackberrycurve.com, and www.shopblackberry.com, www.blackberryappworld.com and, www.in.blackberry.com for the sale of its own authentic products, and has an authorized distributor network, of which

the Respondent is not a member. The complainants submits that their impeccable reputation, goodwill and notoriety in its trade/service mark **BlackBerry** the world over including in India. It is stated that the Complainant has been extremely vigilant and, wherever geographically possible, has been taking stringent actions. Reliance is placed on **Exhibit 14**, which is elucidated in the tabulation given below.

Title	**Case No.**	**Date**
Research In Motion Limited vs. Pacific Rim Systems	D2001-0408	June 13, 2001
Research In Motion Limited vs. Dustin Picov	D2001-0492	June 25, 2001
Research In Motion Limited vs. Blackberry World	D2006-1099	January 18, 2007
Research In Motion Limited vs. Domains by Proxy, Inc. and Kafiint	D2008-0164	April 8, 2008
Research In Motion Limited vs. WG/Shahbaz Khan	D2008-0165	April 1, 2008
Research In Motion Limited vs. Nicholas Stewart	D2008-0262	April 11, 2008
Research In Motion Limited vs. Jumpline.com	D2008-0758	July 9, 2008

Research In Motion Limited vs. Louis Espinoza	D2008-0759	July 23, 2008
Research In Motion Limited vs. John	D2008-0763	August 4, 2008
Research In Motion Limited vs. Int'l Domain Names Inc./Moniker Privacy Services	D2008-0780	July 10, 2008
Research In Motion Limited vs. Zag Media Corp.	D2008-0848	October 22, 2008
Research In Motion Limited vs. Thomas J Buck / CSMJBS Enterprises - Private Registration	D2008-1065	September 15, 2008
Research In Motion Limited vs. One Star Global LLC	D2008-1752	January 12, 2009
Research In Motion Limited vs. Mark Norris, Solutrix LLC	D2008-1932	January 30, 2009
Research In Motion Limited vs. Whois Privacy Protection Service, Inc. / Animesh Srivastava	D2008-1943	February 27, 2009
Research In Motion Limited vs. Peter Ballantine	D2008-1975	February 20, 2009
Research In Motion Limited vs. Alon Banay	D2009-0151	March 20, 2009
Research In Motion Limited	D2009-0227	April 9, 2009

vs. One Star Global LLC		
Research In Motion Limited vs. G.H. Wagenaars	D2009-0319	May 5, 2009
Research In Motion Limited vs. Privacy Locked LLC	D2009-0320	May 8, 2009
Research In Motion Limited vs. DomainDoorman LLC, Pertshire Marketing, Ltd	D2009-0321	May 14, 2009
Research In Motion Limited vs. MumbaiDomains	D2009-0322	May 5, 2009
Research In Motion Limited vs. PrivacyProtect.org/ Pluto Domain Services Private Ltd	D2009-0324	May 11, 2009
Research In Motion Limited vs. Fred Potter / Berrystore / Mill River Labs	D2009-0370	June 5, 2009
Research In Motion Limited vs. PrivacyProtect.org / berry store, hery santosa	D2009-0469	June 9, 2009
Montego Diversified Media	D2009-0558	June 19, 2009
Research In Motion Limited vs. Nigel Hull	D2009-1126	October 8, 2009
Research In Motion Limited vs. Jesse Kaye of Bethesda	D2009-1140	October 12, 2009
Research In Motion Limited vs. You Xia	D2009-1141	October 15, 2009
Research In Motion Limited	D2009-1581	January 28, 2010

vs. John Heck		
Research In Motion Limited vs. hosting@infinityteknoloji.com	D2010-1860	January 21, 2011
Research In Motion Limited vs. Domain Administrator, PRC	D2011-0042	March 4, 2011
Research In Motion Limited vs. Bao Zheng	DCO2011-0024	July 1, 2011
Research In Motion Limited vs. PrivacyProtect.org	D2011-2197	March 13, 2012
Research In Motion vs. Russel Donato	D2012-0726	May 22, 2012
Research In Motion vs. Thamer Ahmed Alfarshooti	D2012-1146	July 8, 2012

p) The Complainant are aggrieved by the Respondent obtaining the domain **www.blackberrymobile.in** through the registrar M/s **GoDaddy.com Inc** and allege that the Respondent has no rights or legitimate interests in respect of the domain name and is using the same in bad faith. It is also alleged that the Respondent's website at "www.blackberrymobile.in" displays

sponsored links to competitors of the Complainant and thus it does not constitute *bona fide* use of the disputed domain name.

q) It is also alleged that the impugned domain name was registered and is being used in bad faith as it also offers pay-per-click links to various websites. It is alleged that the Respondent has been earning pay-per-click revenue from the sponsored links on the Respondent's website and in so doing, the Respondent has been attempting to attract Internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's trade/service mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. It is further alleged that the sponsored links on the Respondent's website belong to the businesses that offer goods and services that compete with, or rival, those goods and services offered by the Complainant. Reliance is placed on **Exhibit 15.**

r) It is also alleged that the Respondent's website carries advertisements for Nokia who are competitors of the

Complainant besides consisting of links related to products from Complainant's competitors like Samsung and Nokia. Reliance is placed on **Exhibit 16 / 17.**

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/ admitted.

8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <blackberrymobile.in> hence this Tribunal directs the Registry to transfer the domain name <blackberrymobile.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. No order as to the cost. 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 18th day of January 2013.

NEW DELHI
18/01/2013

V. SHRIVASTAV
ARBITRATOR