

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

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ONE
HUNDRED RUPEES



सत्यमेव जयते

भारत INDIA
INDIA NON JUDICIAL

தமிழ்நாடு தமிழ்நாடு TAMILNADU

39049

21.07.15

SRIDHARAN

CHENNAI

AV 847146
R. RAGUPATHI

STAMP VENDOR, L/No. C3/4839/83
No. 37, VILLAGE ROAD, NOW KNOWN AS
No. 79/91, VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM, CHENNAI-600 034

PHONE: 9445114347

BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 10th August 2015

BlackBerry Limited

Versus

...

Complainant

C Viswanathan of MMS Solutions

...

Respondent

Sridharan

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	Versus	
C Viswanathan of MMS Solutions	...	Respondent

1. The Parties

- 1.1 The Complainant, BlackBerry Limited, is an entity organized and existing under the laws of Canada, doing business at 2200 University Avenue East, Waterloo, Ontario, Canada N2K 0A7 represented by G. Roxanne Elings, Esq. of Davis Wright Tremaine LLP at 1633 Broadway, New York, New York, 10019.
- 1.2 Respondent is C Viswanathan of MMS Solutions at No21, 1st Cross Street, T T K Road, Alwarpet, Chennai - 600018.

The Domain Name and Registrar

- 1.3 The disputed domain name <blackberryservice.in> created on 03.08.2010 is registered with Webiq Domains Solutions Pvt Ltd (R131-AFIN).

2. Procedural History

- 2.1 On 14th July 2015, NIXI asked me about my availability and consent to take up the Complaint for arbitration.
- 2.2 On 15th July 2015, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.3 On 25th July 2015, I received hardcopy of the Complaint.
- 2.4 On 25th July 2015, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.5 On 04th August 2015, I received a soft copy of the Complaint.
- 2.6 Respondent has not filed any response to the Complaint.
- 2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.
- 2.8 I have sent NIXI all pleadings / documents that I received from the Parties.

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3. Factual Background

A Complainant

- 3.1 The Complainant, BlackBerry is a leading designer, manufacturer and marketer of innovative wireless solutions for the worldwide mobile communications market, best known for its high-quality wireless BlackBerry handheld device product line and related software, accessories, and services ("Complainant's Products"). Complainant operates an extensive website featuring information about its goods and activities throughout the world at <blackberry.com>.
- 3.2 Complainant has obtained numerous trademark registrations for BLACKBERRY in India, the United States, Canada, and throughout the world ("Complainant's Marks" or the "BLACKBERRY Marks"). Complainant also has registrations and/or applications for BLACKBERRY Marks in these other jurisdictions: Argentina, Australia, Bahrain, Brazil, Canada, Chile, China, Colombia, European Union, Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Hong Kong, Indonesia, Iran, Israel, Jamaica, Japan, Kenya, Kuwait, Lebanon, Malaysia, Mexico, Morocco, New Zealand, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, Uruguay, Venezuela and Vietnam.
- 3.3 A non-exhaustive list of Indian registrations for BLACKBERRY Marks along with Certificates of Registration for those Marks is at Exhibit D. The registrations include Trade Mark No. 1148491 for the mark BLACKBERRY, for use with electronic handheld units for the wireless receipt and/or transmission of data that enable the user to keep track of or manage personal information and which may also have the capacity to transmit and which may also have the capacity to transmit and receive voice communications; software for the redirection of messages, global computer network e-mail, and/or other data to one or more electronic handheld units from a data between remote station or unit and a fixed or remote station or a unit and software which enables and provides one way and/or two-way wireless connectivity to data, including corporate data. The date for this registration is October 28, 2002.
- 3.4 Exhibit E is a verified Notice of Opposition filed with the Registrar of Trade Marks, Office of the Trade Marks Registry, New Delhi, which alleges, among other things, at page 3, that Complainant and its predecessor have used the BLACKBERRY mark in the international market as early as 1999.
- 3.5 For over fifteen (15) years, Complainant has continuously and extensively used one or more of the BLACKBERRY Marks in connection with one or more of its Products. In addition, Complainant has spent millions of dollars in advertising containing BLACKBERRY Marks and promoting Complainant's Products. Complainant's marketing efforts, combined with its attention to the quality, design and construction of its products, generate hundreds of millions of dollars in sales each year. By virtue of their long history of use throughout the world and in the United States, as well as Complainant's sales and promotional activities, the BLACKBERRY Marks have generated valuable goodwill.
- 3.6 Due to the extensive registration, use and promotion of the BLACKBERRY Marks around the world, BLACKBERRY Marks have obtained the status of notorious marks and therefore enjoy liberal protection under the Paris Convention worldwide.
- 3.7 Respondent registered the Disputed Domain Name on August 3, 2010, more than seven years after the registration of one of the BLACKBERRY Marks in India and more than ten years after BlackBerry's first use of the BLACKBERRY Marks in the international market. The Disputed Domain Name entirely contains the BLACKBERRY mark with the addition of the generic term "service" and the top level domain ".com".
- 3.8 Respondent operates a website at the Disputed Domain Name (the "Website"). Complainant did not authorize Respondent to make use of Complainant's BLACKBERRY mark in the Disputed Domain Name. Screenshots of the Website are attached at Exhibit F.

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- 3.9 Respondent displays on the Website Complainant's BLACKBERRY Marks in a commercial manner—to offer purported repair services of Complainant's Products. (Exhibit F). Respondent does not disclose anywhere on the Website its lack of authorization by Complainant. To the contrary, Respondent provides individual web pages detailing the features of models of Complainant's Products. (Exhibit F).
- 3.10 In light of Respondent's unauthorized and bad faith use of the BLACKBERRY Marks in the Disputed Domain Name, Complainant requests transfer of the Disputed Domain Name to the Complainant.

B Respondent

- 3.11 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

4. Parties Contentions

A Complainant

- 4.1 Complainant's trademark registrations are prima facie evidence of the validity of the BLACKBERRY Marks, which creates a rebuttable presumption that Complainant's Marks are inherently distinctive. *Janus Int'l Holding Co. v. Rademacher*, WIPO Case No. D2002-0201 (March 5, 2002); see also *Research in Motion Limited v. Roy*, INDRP Case No. 431 (Dec. 30 2012) (discussing registrations of BLACKBERRY Marks).
- 4.2 The Disputed Domain Name is identical to and confusingly similar to several of Complainant's BLACKBERRY Marks. The Disputed Domain Name entirely contains the BLACKBERRY mark and adds the generic, descriptive term "service".
- 4.3 The addition of the generic, descriptive term "service" does not diminish and in fact only strengthens the confusing similarity between the Disputed Domain Names and the BLACKBERRY Marks. See *Dell Inc. v. World Trade Key In*, INDRP Case No. 586 (Apr. 30, 2014) ("[T]he generic term 'service' . . . can be ignored for the purpose of determining similarity between the disputed domain name and Complainant trademark as has been held in *Morgan Stanley vs. Bhurat Jain*, INDRP Case No. 156 dated 27.09.2010. It is a well-established principle that where a domain name incorporates a Complainant's well known and distinctive trademark in its entirety, it is confusingly similar to that mark despite the addition of a descriptive word or words"); *QNX Software Systems Limited v. Jing Rung*, WIPO Case No. D2012-1597 (Oct. 23, 2012) ("The addition of the generic term 'phone' does not dispel confusion but strengthens it to the contrary as it exactly suggests the product manufactured by RIM, parent company of the Complainant."). The addition of the generic top-level domain ".com" is irrelevant in determining whether the Disputed Domain Name is confusingly similar to Complainant's famous BLACKBERRY Marks. See *Research in Motion Limited v. Roy*, INDRP Case No. 431 (Dec. 30 2012) ("The suffixes .org and .in are descriptive and are not distinguishing part of the domain name."); *Research in Motion Limited v. Banay*, WIPO Case No. D2009-0151 (Mar. 20, 2009) ("Equally well established is the fact that the TLD is irrelevant to the consideration of whether there is confusing similarity."); *Pomellato S.p.A. v. Tonetti*, WIPO Case No. D2000-0493 (Jul. 12, 2000), *Sony Kabushiki Kaisha v. Inja, Kil*, WIPO Case No. D2000-1409 (Dec. 9, 2000).
- 4.4 The Disputed Domain Name is confusingly similar to the BLACKBERRY mark.
- 4.5 Because Complainant has made a prima facie showing of its rights in the BLACKBERRY Marks, Respondent must come forward with evidence demonstrating that it has rights in the Disputed Domain Name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, D2003-0455 (WIPO Aug. 21, 2003). Respondent cannot demonstrate any legitimate interest in the Disputed Domain Name.

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- 4.6 Registration of a domain name incorporating another's well-known mark does not confer any rights or legitimate interests in the domain name, but rather constitutes infringement, passing off and bad faith. See *Research in Motion Limited v. Roy*, INDRP Case No. 431 (Dec. 30 2012) ("The illegality in the registration of the disputed domain name <blackberry.org.in> arises from the fact that domain names today are a part and parcel of the corporate identity of a large business enterprise. A domain name acts as the address of the company on the Internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the Internet address of a company and/or its mark(s) and/or its goods/services. The mere act of registration by the Respondent of the disputed domain name <blackberry.org.in> containing the mark of the Complainant in it constitutes infringement and passing off."); *PRL USA Holdings, Inc. v. vivienne westwood / Contact Privacy Inc. Customer 0126347680*, WIPO Case No. D2011-1292 (Sep. 14, 2011) ("The unauthorized appropriation of another's trademark in a domain name and the commercial use of the corresponding website cannot confer rights or legitimate interests upon Respondent . . . [S]uch use is not a bona fide offering of products or services.") (citation omitted); *Telstra Corp. Ltd v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (Feb. 18, 2000), *Medisite S.A.R.L. v. Intellisolve Ltd*, WIPO Case No. D2000-0179 (May 19, 2000); *V&S Vin & Sprit Aktiebolag v. Tyler Kownacki*, NAF Case No. 95079.
- 4.7 Where, as here, Complainant's Marks and name are so well-known and so widely recognized, there can be no legitimate use by Respondent. See e.g., *PRL USA Holdings, Inc. v. Philip Chang*, WIPO Case No. D2006-0093 (Apr. 20, 2006). As the UDRP panel in *Research in Motion Limited v. Elias* held, "Complainant's BLACKBERRY mark has been the subject of a significant number of prior proceedings under the Policy, in which other panels have found that the Complainant's mark is distinctive and famous. . . . On the basis of all this evidence, the Panel therefore concludes on the provided record that the Complainant's BLACKBERRY marks are famous and indeed at the stronger end of the spectrum." WIPO Case No. D2009-0218 (April 17, 2009) (internal citations omitted; citing *Research In Motion Limited v. Alon Banay*, WIPO Case No. D2009-0151, *Research In Motion Limited v. Blackberry World*, WIPO Case No. D2006-1099); see also *Research in Motion Limited v. Roy*, INDRP Case No. 431 (Dec. 30 2012) ("The Complainant's Blackberry marks are famous and well known throughout the world including India.")
- 4.8 Given the fame of Complainant's BLACKBERRY Marks, the dates on which Complainant registered those Marks, and the date on which Respondent registered the Disputed Domain Name, "[o]bviously, the Complainant is the prior adopter of the Blackberry marks." *Research in Motion Limited v. Roy*, INDRP Case No. 431 (Dec. 30 2012). Respondent had knowledge of Complainant's BLACKBERRY Marks when it registered the Disputed Domain Name, and Respondent's choice in registering the name "cannot be explained but as a misappropriation of the Complainant's trademarks." *PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. D2006-0189 (Mar. 22, 2006).
- 4.9 The use of the trademark in connection with the purported sale of service to the Complainant's products on the Respondent's website does not confer any proprietary rights in the Complainant's trademark on the Respondent. See *Raymond Weil SA v. Watchesplanet (M) Sdn Bhd*, WIPO Case No. D2001-0601 (June 30, 2001) (reseller sold grey-market Raymond Weil watches; citing *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. D2000-0113 (Apr. 13, 2000)). Indeed, the facts that (1) that the Website displays Complainant's BLACKBERRY Marks in a commercial manner suggesting, contrary to fact, that Respondent is an authorized servicer of Complainant's products and (2) Respondent's failure to disclose its lack of authorization by Complainant leads "to the conclusion that the Respondent was seeking to create an impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name." *Alpargatas S.A v. Mizuno Brasil / PrivacyProtect.org*, WIPO Case No. D2013-1457 (Oct. 3, 2013).

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- 4.10 There exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the Disputed Domain Name that incorporate Complainant's BLACKBERRY Marks. Respondent is not commonly known by the Disputed Domain Name (rather, the WHOIS registration information for the Disputed Domain Name and screenshots of the Website reflect that Respondent does business as "MMS Solutions") and is not making a legitimate noncommercial or fair use of Complainant's BLACKBERRY Marks.
- 4.11 Accordingly, Respondent lacks any rights or legitimate interest in the Disputed Domain Name.
- 4.12 Respondent registered and is using the Disputed Domain Name in bad faith. Registration of a domain name "obviously connected with well-known trademarks by someone without any connection to these trademarks suggests opportunistic bad faith." PRL USA Holdings, Inc. v. Spiral Matrix, WIPO Case No. D2006-0189 (Mar. 22, 2006) (citing Veuve Cliquot Ponsardin, Maison Fondee en 1772 v. The Polygenix Group Co, WIPO Case No. D2000-0163 (May 9, 2000)).
- 4.13 "By using a domain name which is confusingly similar to a well-known trademark it is likely that Internet users hold the proprietor of the trademark responsible for the website the domain name is used for or, alternatively, assume that some kind of legal or economic affiliation exists between the operator of the website and the proprietor of the trademark. Since the Respondent was well aware of the Complainant's trademark at the time of registration and use of the Domain Name and considering the obvious similarity of the Domain Name with the trademark, . . . the Respondent, by using the Domain Name, intended to provoke confusion with the Complainant's trademark and to take advantage of such confusion as to the source of its website or its affiliation in order to attract, for commercial gain, internet users to its website. It is the Respondent's burden to demonstrate that the registration and use of the Domain Name was intended for other purposes." Raymond Weil SA v. Watchesplanet (M) Sdn Bhd, WIPO Case No. D2001-0601 (June 30, 2001).
- 4.14 "Respondent stands to gain financially . . . from the use it makes of the disputed domain name," and "[i]t is thus profiting or intending to profit from the adoption of a famous mark in which it has no rights, by generating a misleading impression of some legitimate connection between the disputed domain name . . . and the Complainant." "[B]oth the registration and use of the disputed domain name in bad faith can be found in view of the reproduction of the [BLACKBERRY] trademark and products . . . on the website that resolved to the disputed domain name." Alpargatas S.A v. Mizuno Brasil / PrivacyProtect.org, WIPO Case No. D2013-1457 (Oct. 3, 2013).

B. Respondent

- 4.15 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

- 5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.
- 5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
 - (III) Respondent's domain name has been registered or is being used in bad faith.
- 5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

- 5.4 The Complainant is the proprietor of the mark BlackBerry. Complainant has been using BlackBerry mark continuously since 1999 internationally. The goods/services under the Blackberry mark have been continuously and extensively available in India. The Complainant has secured registrations for Blackberry marks around the world including India, in various international classes. The first registration in Canada under Application No.1022752 dates back to 19.07.1999. The first registration in India under Application No.1148491 dates back to 28.10.2002. The Complainant registered www.blackberry.com on 20.01.1995. The disputed domain name blackberryservice.in was created on 03.08.2010. Obviously, the Complainant is the prior adopter of Blackberry marks. The above facts have established that the Complainant has both common law and statutory rights in respect of its Blackberry marks.
- 5.5 The Complainant's Blackberry marks are famous and well known throughout the world including India. It is clearly seen that the disputed domain name blackberryservice.in wholly incorporates the prior registered Blackberry marks of the Complainant. The suffixes, services and .in are descriptive and are not distinguishing part of the domain name and they will not be considered while determining the similarity or identity with the Complainant's Blackberry marks. The disputed domain name blackberryservice.in is similar to the Complainant's domain name www.blackberry.com.
- 5.6 I, therefore, find that:
- (a) The Complaint has both common law and statutory rights in respect of its Blackberry marks.
 - (b) The disputed domain name blackberryservice.in is:
 - (i) Similar to the Complainant's prior registered Blackberry marks, and
 - (ii) Similar to the Complainant's domain name www.blackberry.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

- 5.7 It is already seen that:
- (a) The Complainant is the prior adopter and user of the Blackberry marks. The Complainant's Blackberry marks are well known in many countries across the globe including India.
 - (b) The Complainant's Blackberry mark was adopted in the year 1999. It was registered in India in 2002. The disputed domain name blackberryservice.in was registered by the Respondent only on 03.08.2010.
- 5.8 Respondent did not register the disputed domain name blackberryservice.in until 2010. Complainant has registered and used domain names consisting of its mark Blackberry before Respondent registered the disputed domain name blackberryservice.in. It is unlikely that the Respondent was unaware of Complainant's existence of trademark rights before registering the disputed domain name blackberryservice.in.
- 5.9 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's Blackberry marks.
- 5.10 I visited the web site of the Respondent under the disputed domain name blackberryservice.in. The web site lists out several products of the Complainant and offers repair services to the consumers of the Complainant's products. Respondent has no right to use the Blackberry mark for offering its repair services. It is significant to note that the Respondent is running its business under the trading style "MMS Solutions".
- 5.11 In the absence of response from the Respondent, I accept the arguments of the Complainant that:
- (a) Registration of a domain name incorporating another's well-known mark does not confer any rights or legitimate interests in the domain name, but rather constitutes infringement, passing off and bad faith.
 - (b) The use of the trademark in connection with the purported sale of service to the Complainant's products on the Respondent's website does not confer any proprietary rights in the Complainant's trademark on the Respondent.

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- (c) The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of the corporate identity of a large business enterprise. A domain name acts as the address of the company on the Internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the Internet address of a company and/or its mark(s) and/or its goods/services. The mere act of registration by the Respondent of the disputed domain name containing the mark of the Complainant in it constitutes infringement and passing off.
 - (d) The facts that (1) that the Website displays Complainant's BLACKBERRY Marks in a commercial manner suggesting, contrary to fact, that Respondent is an authorized servicer of Complainant's products and (2) Respondent's failure to disclose its lack of authorization by Complainant leads "to the conclusion that the Respondent was seeking to create an impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.
 - (e) There exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the Disputed Domain Name that incorporate Complainant's BLACKBERRY Marks. Respondent is not commonly known by the Disputed Domain Name (rather, the WHOIS registration information for the Disputed Domain Name and screenshots of the Website reflect that Respondent does business as "MMS Solutions") and is not making a legitimate noncommercial or fair use of Complainant's BLACKBERRY Marks.
- 5.12 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name blackberryservice.in.

Respondent's domain name has been registered or is being used in bad faith.

- 5.13 The Complainant is the proprietor of the Blackberry marks. Complainant has been using Blackberry marks continuously since 1999. The Complainant's products and services are available in India. Complainant owns numerous trademark registrations for Blackberry marks throughout the world. The first registration in India under Application No.1148491 dates back to 28.10.2002. The Complainant registered www.blackberry.com on 20.01.1995. The disputed domain name blackberryservice.in was registered by the Respondent only on 03.08.2010. Obviously, Complainant's rights in the Blackberry marks pre-date Respondent's registration of the disputed domain name blackberryservice.in. The Respondent could not have ignored, rather actually influenced by, the well-known blackberry marks of the Complainant at the time he acquired the disputed domain name blackberryservice.in.
- 5.14 As seen above, Respondent is currently holding the disputed domain name blackberryservice.in primarily for offers repair services to the consumers of the Complainant's products. Respondent has no right to use the Blackberry mark for offering its repair services. The Respondent is no way connected with the Complainant. Complainant has not authorized the Respondent to use the trade mark BLACKBERRY. Respondent's adoption of the disputed domain name blackberryservice.in is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered blackberry marks.
- 5.15 In the absence of response from the Respondent, I accept the contents of the Complainant that:
- (a) Respondent registered and is using the Disputed Domain Name in bad faith. Registration of a domain name "obviously connected with well-known trademarks by someone without any connection to these trademarks suggests opportunistic bad faith.
 - (b) By using a domain name which is confusingly similar to a well-known trademark it is likely that Internet users hold the proprietor of the trademark responsible for the website the domain name is used for or, alternatively, assume that some kind of legal or economic affiliation exists between the operator of the website and the proprietor of the trademark. Since the Respondent was well aware of the Complainant's trademark at the time of registration and use

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of the Domain Name and considering the obvious similarity of the Domain Name with the trademark, . . . the Respondent, by using the Domain Name, intended to provoke confusion with the Complainant's trademark and to take advantage of such confusion as to the source of its website or its affiliation in order to attract, for commercial gain, internet users to its website. It is the Respondent's burden to demonstrate that the registration and use of the Domain Name was intended for other purposes.

- (c) "Respondent stands to gain financially . . . from the use it makes of the disputed domain name," and "[i]t is thus profiting or intending to profit from the adoption of a famous mark in which it has no rights, by generating a misleading impression of some legitimate connection between the disputed domain name . . . and the Complainant." "[B]oth the registration and use of the disputed domain name in bad faith can be found in view of the reproduction of the [BLACKBERRY] trademark and products . . . on the website that resolved to the disputed domain name."

5.16 Thus it is clearly established that Respondent registered the disputed the disputed domain name <blackberryservice.in> in bad faith.

6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as below.

6.2 It is hereby ordered that the disputed domain name <blackberryservice.in> be transferred to the Complainant.

6.3 There will be no order as to costs.

S.Sridharan
Arbitrator