

16829  
2 APR 2013  
D. SARAVANAN  
Advocate, Arbitrator & Mediator  
"Orient Chambers" No. 90 (Old No. 73)  
4th & 5th Floor, Armenian Street,  
Chennai - 600 001.

AL 527560  
R.S. SHANMUGA SUNDARAM,  
STAMP VENDOR,  
L No. B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <clarityxerox.in>

Xerox Corporation  
45, Glover Avenue,  
Norwalk, Connecticut 06856- 4505, USA

.. Complainant

Versus

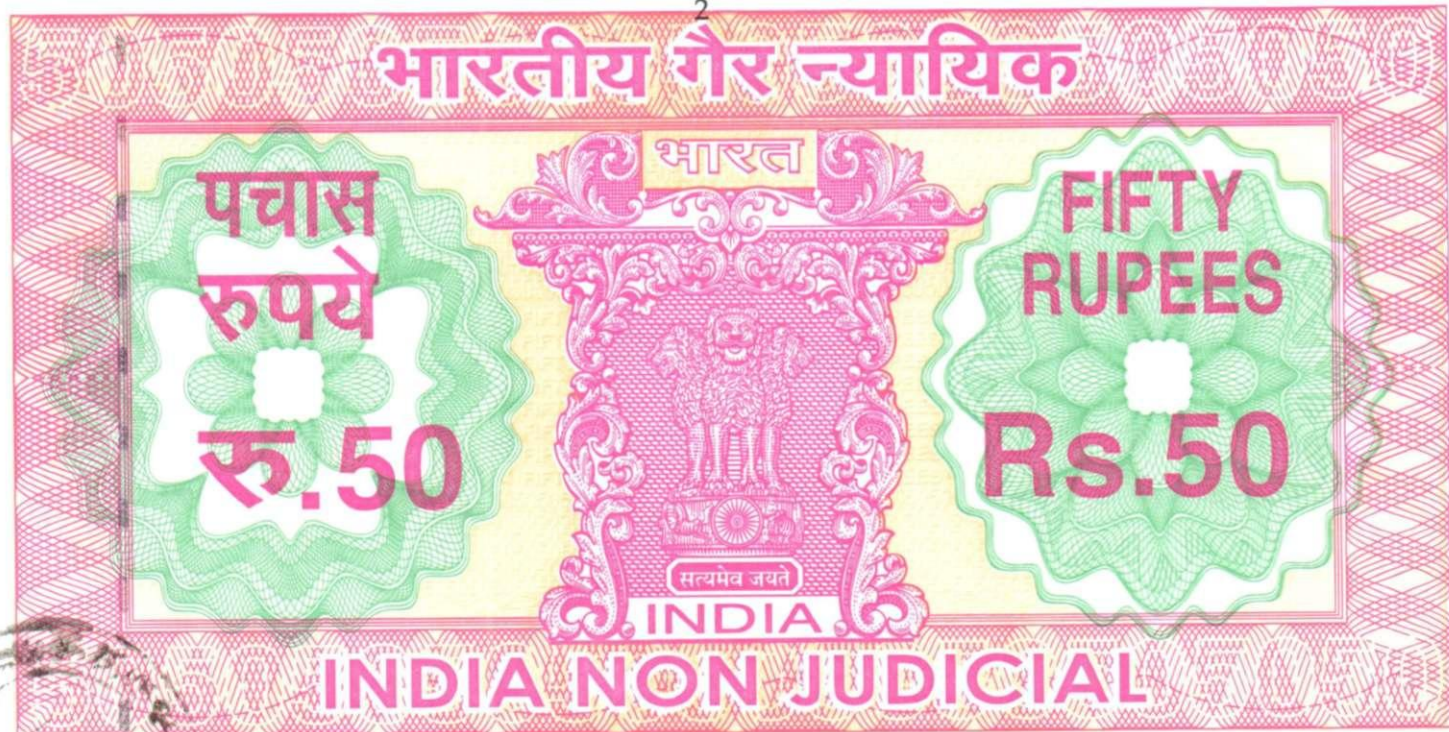
Mani Kannan  
Quick2soft Technologies  
Renga Road, Alwarpet,  
Chennai- 600 028  
Also at  
No.3, Bagavantham Street,  
Near Venkatanarayana (Tirupathi Devastana) Temple,  
T. Nagar, Chennai- 600 017

.. Respondent

...2/







தமிழ்நாடு தமில்நாடு TAMILNADU

16-9-88  
2 APR 2010

D. SARAVANAN  
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AD 477560  
D. SARAVANAN CHANNADARA,  
STAMP VENDOR,  
E. No. 87, 100, 101,  
HIGH COURT CAMPUS,  
CHENNAI-600 001, TAMIL NADU

### 1. The Parties:

The complainant is a company registered under the laws of USA having its place of business at 45, Glover Avenue, Norwalk, Connecticut 06856- 4505, USA.

The respondent is Mani Kannan having place of business at Quick2soft Technologies, Renga Road, Alwarpet, Chennai- 600 028 and also at No.3, Bagavantham Street, Near Venkatanarayana (Tirupathi Devastana) Temple, T. Nagar, Chennai- 600 017

### 2. The Domain Name and Registrar:

The dispute domain name : < clarityxerox.in >

The disputed domain name is registered with National Internet Exchange of India (NIXI).



### 3. Procedural History:

11.03.2013	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
11.03.2013	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
26.03.2013	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
05.04.2013	Due date for filing response.
16.04.2013	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

### 4. Factual Background

The complainant is a company registered under the laws of USA having its place of business at 45, Glover Avenue, Norwalk, Connecticut 06856- 4505, USA.

#### 4.1 The Complainant:

#### 4.2 Complainant's Activities:

The complainant states that for more than half a century, they have been a leader in document technology and services. The complainant continues to build on this heritage of innovation. Through the acquisition of Affiliated Computer Services, the complainant now is the world's leading enterprise for business process and document management, offering global services from claims reimbursement and automated toll transaction to customer care centers and HR benefits management. The new Xerox is dedicated to innovation, service and giving the customers the freedom to focus on what matters most. The complainant is headquartered in





Norwalk, CT, and with 140,000 employees in 160 countries. As a company approaching \$23 billion, the complainant is the world's leading enterprise for business process and document management. The complainant provides true end-to-end solutions, from back-office support to the printed page, to help the customers operate their business and manage information. The complainant is a US\$22 billion technology and services Fortune 500 company. The complainant's services includes photocopiers, printers, digital presses, publishing systems, facsimile machines, multi function devices, toners, paper, ink, associated supplies, software and support specially designed for office and production printing environments.

#### 4.3 Complainant's Trading Name:

The complainant states that they have been using the trade name and trade mark since its origin. The complainant's business is globally carried out under its well-known and iconic trade mark and trade name "XEROX". The complainant's association with the trademark XEROX dates back to the year 1948 when no such word was known or was in use. The complainant has directly carried out its operations in India since 1983 through its Indian subsidiary Xerox India Limited. The complainant operated its website <http://www.xerox.com> from the United States and is accessible around the world since January 9, 1986. The complainant states that they are the registered proprietor of the following trade marks, viz.,

Trademark	Trademark Number	Class	Registration Certificate Number	Registration Dated
XEROX	155627	Class 01	47754	07.01.1954
XEROX	217824	Class 7	79172	19.09.1964
XEROX	217825	Class 9	81421	05.06.1965
XEROX THE DOCUMENT COMPANY	546220	Class 9	217963	26.02.1999



XEROX	1302851	Classes 35, 37, 42	Registration Pending	Registration Pending
XEROX & DEVICE	1648619	Classes 2,9, 16, 35, 37, 40, 42	Registration Pending	Registration Pending

#### 5. Respondent's Identity and activities:

According to DYNADOT WHOIS database, the respondent in this administrative proceeding is Mani Kannan having business at Quick2soft Technologies, Ranga Road, Alwarpet, Chennai- 600 028; also having communication at No.3, Bagavantham Street, Near Venkatanarayana ( Tirupati Devastana) Temple, T.Nagar, Chennai- 600 017.

#### 6. Dispute

The complainant states that the dispute arose when the respondent registered and used the domain name **clarityxerox.in**. When the complainant came to know about the existence of such a domain name, upon visiting the domain name, the complainant found that the domain name redirects to <http://www.xeroxpoint.in>. This website advertises "Xeroxworld", which appears to be a brand name or trade name of photocopiers/ printers/ multifunction devices and related services. The said web page also contains list of other websites which redirects to several other links. However, none of the links are accessible and appears to be dead links. On discovering the activities of the respondent, the complainant, through its Indian subsidiary Xerox India Limited, sent a legal notice dated August 24, 2012 to the respondent, outlining the legal rights of the complainant over the trademark XEROX and calling the respondent to cease and desist from using the trade mark Xerox. Upon receiving no response from the respondent, the complainant sent another legal notice to the respondent at its alternative address on September 25, 2012. The complainant has not received response to any of its notices.



## **7. Parties contentions:**

### **A. Complainant:**

- (i) The impugned domain name used by the respondent directly uses the trade name of the complainant XEROX as one of its operative words.
- (ii) The impugned domain name is identical to the trade name of the complainant XEROX.
- (iii) The complainant states that the ordinary users are likely to be confused by the presence of the impugned domain name on the internet by offering goods and services which are similar to that of the complainant and are likely to cause loss of reputation to the complainant.
- (iv) The complainant is the registered proprietor of the trade name Xerox and the respondent by registering the domain name is trying to seek to cash in on the brand name and value and reputation of the complainant's trade name Xerox.
- (v) The complainant states that the respondent has no affiliation with the complainant or its trade name and business. Hence, the respondent has no legitimate interests or rights in respect of the domain name.
- (vi) The respondent has created this domain name purely for the purpose of promoting respondents own business and for causing loss of business and reputation of the complainant. Therefore, the registration of the domain name is clearly bad in faith.

### **B. Respondent:**

The respondent did not submit any response.





## 8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 16.04.2013.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The respondent's domain name clarityxerox.in is identical and confusingly similar with the trademark XEROX;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name clarityxerox.in; and
- (iii) The registration and usage of domain name clarityxerox.in by the respondent is in bad faith.

### (a) Identical or confusing similarity:

- i) The Arbitral Tribunal finds that the trade marks XEROX and the disputed domain name **clarityxerox.in** are Complainant's famous and distinctive trade mark. The sole intention of the Respondent is to derive benefit from the good will and reputation of the Complainant's brand and mislead members of public.
- ii) The respondent's unwarranted registration of the impugned domain name with NIXI identical to Complainant's trade mark is clearly an offence under laws of India.



iii) The adoption of impugned domain name by the Respondent is dishonest, fraudulent and bad faith.

The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy

**(b) Respondent's Rights or Legitimate Interests:**

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.





iii. The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.

iv. The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.

v. The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the complainant in the domain name and holds that the respondent has infringed the rights of the complainant by registering the trademarks of the complainant.

vi. The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

i. Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered **clarityxerox.in** mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

ii. The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has



no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii. In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

iv. It is also evident from the fact that the trade name "Xerox" has been in existent since 1948 and is well-known throughout the world. The disputed domain was registered somewhere around during 2012. In spite of the knowledge of existence such a reputed trade name "Xerox", the respondent still moved ahead with registration of its disputed domain clarityxerox.in which uses the trade name "Xerox" as its suffix. Hence, this itself is sufficient to prove the malafide intention of the respondent.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.





**9.Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <clarityxerox.in> be transferred to the Complainant.

Dated at Chennai (India) on this 29<sup>th</sup> April, 2013.

  
(D.SARAVANAN)  
Sole Arbitrator