

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.hpcomputers.in

between

**HEWLETT-PACKARD DEVELOPMENT
COMPANY,L.P.**

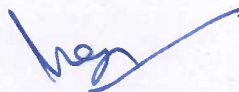
...COMPLAINANT

AND

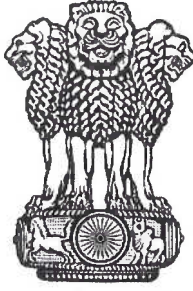
MR. CHINTAN GUPTA

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



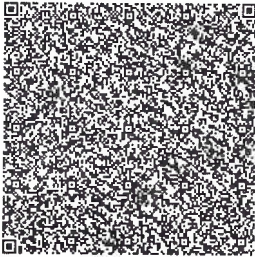
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL90077815313445Q
Certificate Issued Date	: 19-Feb-2018 10:59 AM
Account Reference	: IMPACC (IV)/ dl845303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL84530383455568972254Q
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
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

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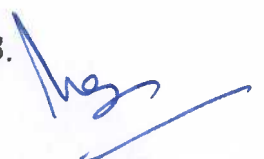
AWARD

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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 14/01/2018. It was also noticed that the Complainants had not filed their Power of Attorney/ Vakalatnama. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to file their Vakalatnama and 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 NIXI vide their email dated 15/01/2018 stated that they have already sent the complaint by courier giving dispatch receipts of the same.
3. This Tribunal had seen the tracking of the Courier slip supplied by NIXI and the delivery of the hard copy of the complaint and also notified by NIXI that the complaint has been duly received by the Respondents on 14/01/2018.

4. That vide its order dated 20/01/2018 this Tribunal directed the Respondent to send their Statement of Defense to the Complaint by soft as well as hard copy to the Tribunal by 30/01/2018 as the Respondent was in receipt of the hard copy of the complaint.
5. This Tribunal vide the same order also directed the Complainants to comply with the earlier order dated 14/01/2018 and gave them 3 days time for the same.
6. This Tribunal observed vide its order dated 31/01/2018 that the Respondents had not complied its earlier order dated 20/01/2018 to send their SOD within the time frame. The Complainants had also sought time till 30/01/2018 for filing their Power of Attorney and the soft copy was sent to this Tribunal stating that the hard copy is in transit. In view of the above the Complainants were directed to file their Evidence by way of Affidavit as soft copy by email and hard copy by courier in 7 days so that it reaches this Tribunal by 07/02/2018.



7. The Complainants on 08/02/2018 sent the soft copy of their Evidence by way of Affidavit seeking condonation of delay of one day. Hence, this Tribunal vide its order dated 09/02/2018 gave the Last and Final Opportunity to the Complainants to file the hard copy of the Affidavit of Evidence and the Power of Attorney of the complainants which was finally received on 15/02/2018.
8. The award was reserved vide order dated 19/02/ 2018. This Arbitral Tribunal notices that till 19/02/2018 there is no communication from the side of the Respondent and hence, it proceeds to examine the claim statement of the Complainant and the Evidence including documentary evidence filed in the present proceeding.

CLAIM

9. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant is **Hewlett-Packard Development Company, L.P**, purportedly a Texas limited

partnership with a principal place of business at 11445 Compaq Center Drive West, Houston, TX 77077, United States.

- B. Further, the complainant is the exclusive licensee/permitted user of the HP mark and the HP logo for goods falling in Classes 02, 09 and 16 in India of which HP Hewlett Packard Group LLC is the current proprietor for the purpose of the present complaint Hewlett-Packard Development Company LP and HP Hewlett Packard Group LLC, are collectively Complainants in this matter.
- C. It is claimed that the Complainant is one of the leading personal computer and accessories manufacturers in the world with offices in more than 170 countries and it manufactures and markets a wide range of products under the HP brand.
- D. It is claimed that earlier in 1939 the complainant company was formed by one Mr. Bill Hewlett and Dave Packard as Hewlett-Packard Company which was incorporated as a company in California in the year 1947. It is claimed that the Complainant is

employing approximately 287,000 employees worldwide and the net revenue for the financial year 2015 is US\$ 103 billion.


- E. It is claimed that in India, the Complainant commenced operations in the late 1980's and have earned extensive goodwill and reputation in the marks HP and HP logo internationally as well as in India.
- F. It is claimed, by relying on **Annexure-2**, that the Complainant owns several registrations for the mark HP worldwide. It is further claimed that the mark/name HP is not only used as a trademark but is also distinctively a prominent part of the corporate identity of the Complainant.
- G. It is claimed that the Complainant has operations in several countries of the world including for example in Australia, China, Indonesia, Taiwan, Malaysia, Singapore, Austria, Germany, Hungary, Denmark, Italy, Ireland, Spain, Sweden, United Kingdom, Canada, United States of America, Peru, Chile, Argentina, Colombia, Brazil, Mexico, Israel, etc., as well as in India, and their products under the HP marks/names and HP

logo are extensively manufactured and/or sold in these and many other countries around the world.

- H. It is claimed that the Complainant has become one of the largest sellers of computers and their related accessories with revenues exceeding US\$103 billion for their products worldwide for the Complainants' fiscal year ending 2015.
- I. By relying on **Annexure – 3, 4, 5 & 6** it is claimed that the earliest registration of the mark HP in India dates back to as early as 1967 with the claim of use of several decades by the Complainants and thereafter several registration of HP mark have been applied by the Complainants and further they have widely advertised their products in print media. It is also claimed that the products of the complainants have acquired a large goodwill.
- J. It is further claimed by relying on **Annexure -7 & 8** that the Complainant uses medium of the Internet to render and advertise its products and services and it owns the domain name www.hp.com which is accessible throughout the world.

The said domain name www.hp.com was registered by the Complainant on March 03, 1986.

- K. It is alleged that the disputed domain name www.hpcomputers.in as shown in Annexure-1 was registered by the Registrant on July 15, 2016 which is subsequent to the adoption and use of the mark/name HP by the Complainant.
- L. It is further alleged that the Complainant's have not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademark HP in any manner.
- M. It is further alleged that the disputed domain name www.hpcomputers.in incorporates the Complainant's famous mark/ name HP and has been registered in bad faith and the Respondent is misusing and misappropriating the Complainant's HP mark/name as a part of their disputed domain name www.hpcomputers.in which in all probability will only cause confusion and deception as the trade and public who will think that the disputed domain is connected to the Complainant.

- N. It is further alleged by relying on **Annexure – 9** that the Respondent is using the Complainant's registered HP logo on the disputed domain www.hpcomputers.in and has registered the domain name www.hpcomputers.in wherein the Complainant's registered mark HP is contained in its entirety to show an association or affiliation with the Complainant when none exists. Further, on clicking the website www.hpcomputers.in it to the website https://www.payumoney.com/webfronts/#!/index/HP_COMPUTER it is seen that the Respondent is requesting customers to make payment and register for HP Winter Internship program thus is misusing the goodwill and reputation of the Complainants.
- O. It is alleged by relying on **Annexure – 10 & 11** that the Complainant on becoming aware of the registration of the infringing domain www.hpcomputers.in by the Respondent had taken up the issue with them to bring down the website www.hpcomputers.in for an amicable settlement of the matter. However, the Respondent did not bring down the website.
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P. It is claimed that the disputed domain name www.hpcomputers.in is identical or confusingly similar to a name, trademark in which the Complainant has rights. Reliance is placed on

Uniroyal Engineered Products Vs Nauga Network Services D 2000-0503 (WIPO July 18, 2000);

SAP AG v. Domain Admin [WIPO Case No. D2006-1526, February 2, 2007],

Yahoo! Inc. v. Chan, FA162050 (Nat. Arb. Forum July 16, 2003)

PepsiCo., FA466022

SAP AG vs. PrivacyProtect.org/ John Harvard, John Havard [WIPO Case No. D2013-1097, August 9, 2013],

Q. It is claimed that the Respondents does not have any legitimate right or interest in the disputed domain name . The Claimants are buttressing their stand by relying on

Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT

YOUR TIX, [WIPO Case No. D2005-0179](#) (Apr. 20, 2005)

Accord Young Genius Software AB v. MWD, James Vargas,

WIPO Case No. D2000-0591 (Aug. 7, 2000)

Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO

Case No. D2003-0455

Clerical Medical Investment Group Limited v.

Clericalmedical.com (Clerical & Medical Services

Agency), WIPO Case No. D2000-1228.

Popular Enterprises, LLC v. Sung-a Jang,

FA0610000811921 (Nat. Arb. Forum Nov. 16, 2006)

SAP Systeme/ SAP India Systems v. Davinder Pal Singh

Bhatia [WIPO Case No. D2001-0504, June 8, 2001],

- R. To establish that the disputed Domain Name was registered and is being used in bad faith the Claimants are relying on the following judgments:

The J. Jill Group, Inc. v. John Zuccarini d/b/a RaveClub Berlin,

FA0205000112627 (Nat. Arb. Forum July 1, 2002)

SAP AG v. Peifang Huang [WIPO Case No. D2014-0928, July 28, 2014],

Google v. Abercrombie 1, FA0111000101579 (Nat. Arb. Forum Dec. 10, 2001)

- S. It is further alleged that the Respondent's registration of disputed domain name is not accidental and has clearly been made to derive unfair monetary advantage by using the goodwill of the complainant and its products. Accordingly, the Complainant submits that the disputed domain name was registered and has been used in bad faith.

ORDER


10. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been rebutted by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name

www.hpcomputers.in hence this Tribunal directs the Registry to transfer the domain name www.hpcomputers.in to the complainants.

11. The Complainants too are free to approach the Registry and get the same transferred in their name.
12. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint nor have the complainants disclosed their revenue figures.
13. The original copy of the Award is being sent along with the records of these 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 21st day of February, 2018.

NEW DELHI
21/02/2018



V. SHRIVASTAV
ARBITRATOR