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C 185141

ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE
OF INDIA (NIXI)**

**.IN Domain Name Dispute Resolution Policy
INDRP Rules of Procedure**

Case No. L-2/2/R2@mcafee.co.in

McAfee, Inc.,
3965 Freedom Circle
Santa Clara,
California 95054
USA

.....Complainant

Vs.

Chen Shenglu,
1607, East,
Jinghuayuan, Xiangmei Road
Shenzhen,
Guangdong - 518000
CHINA

..... Respondent

1. The Parties

The Complainant is McAfee, Inc., represented by Mr. Vishal Ahuja and Mr. Ankush Mahajan of Saikrishna & Associates, Noida (U.P.), India

The Respondent is Chen Shenglu, China

2. The Domain Names and Registrar

The disputed domain name www.mcafee.co.in is registered with .IN Registry, National Internet Exchange of India/Direct Information Pvt. Ltd. dba Public domain Registry.com (R5-AFIN)

3. Procedural History

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI) on November 2, 2006, against Chen Shenglu, 1607, East, Jinghuayuan, Xiangmei Road, Shenzhen, Guangdong, 518000 CHINA on the basis of the WHOIS data base of NIXI showing the said Respondent as registrant of the disputed domain name. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the In Domain Name Dispute Resolution Policy (the "Policy") and the Rules of Procedure (the "Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed thereunder and .In Dispute Resolution Policy and Rules framed thereunder, on November 14, 2006. The parties were notified about the appointment of Arbitrator.

The Panel has submitted the Statement of Acceptance and Declaration of

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Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules (paragraph 6).

The arbitration proceedings commenced on November 16, 2006. In accordance with the Rules, paragraph 5(c), the Respondent was notified by me about the commencement of Arbitration proceedings and the due date for Response was November 26, 2006.

The Respondent filed his response on November 25, 2006 and a copy thereof was forwarded to the Complainant. The Complainant was given 10 days time to file rejoinder, if any and any further or additional documents in support of the complaint by my e-mail dated November 28, 2006. Rejoinder was filed on December 13, 2006 and a copy thereof was forwarded to the Respondent. The parties were granted time till January 7, 2007 to file any further documents or evidence and their respective depositions on affidavit. On January 7, 2007 a Sworn Affidavit of Mr. Vishal Ahuja was filed on behalf of the Complainant. On January 7, 2006, the Respondent filed his affidavit.

Copies of all communications, documents, replies and rejoinders were forwarded to parties and .IN Registry by e-mail for their records and for maintaining transparency in the proceedings.

The Panel considers that according to Paragraph 9 of the Rules the language of the proceedings be English.

In the facts and circumstances, in-person hearing was not considered necessary for deciding the complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

The award is required to be passed within 60 days from the date of commencement of arbitration proceedings. The present Award is passed

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within the prescribed period of sixty days from the date of commencement of Arbitration proceedings as per paragraph 5 of the Rules.

4. **Factual Background**

- 4.1 The Complainant in these administrative proceedings McAfee, Inc., is a company organized and existing under the laws of the State of Delaware, USA having its corporate headquarters located at 3965 Freedom Circle, Santa Clara, CA 95054, USA.
- 4.2 The Complainant adopted the trademark MCAFEE, in respect of software products of its manufacture and sale, since its inception. The Trademark MCAFEE also forms a part of the Complainant's corporate name/trading style and is a house mark appearing on all products manufactured, marketed and sold by the Complainant.
- 4.3 The Complainant is a registered proprietor of the trademark "McAfee" in India under Number 773243 in Class 9. In addition, the trademark McAfee is registered in or is pending registration in Australia, Austria, Belgium, Brazil, Canada, China, Chile, Costa Rica, El Salvador, Finland, France, Germany, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, New Zealand, Panama, Philippines, Poland, Portugal, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the United States.
- 4.4 The Complainant has a significant presence in India through its Indian subsidiary McAfee Software (India) Pvt. Ltd having its registered office at Embassy Golf Links Business Park, "Pine Valley" - 2nd Floor, Off Indiranagar-Koramartgala Ring Road,



Bangalore - 560071. The Complainant has its Representative Office in New Delhi, located at 617, International Trade Tower, Nehru Place, New Delhi - 110 019.

- 4.5 The Complainant operates a website using the domain name www.mcafee.com since 5th August 1992. The Complainant also possesses other domain name registrations, all of which involve the Complainant's trademark/trading style **McAfee**. Some of them are, www.mcafee.co.uk, www.mcafee.de, www.mcafee.com.cn.
- 4.6 The Respondent in the present dispute has registered the domain name <mcafee.co.in>.
- 4.7 Any person who types the domain name <mcafee.co.in> is directed to a web page where the Respondent is inter-alia offering various anti-virus software particularly of the Complainant thus giving an impression to the general public that the website www.mcafee.co.in is in some way associated with the Complainant.
- 4.8 Mr. Chen Shenglu (the Respondent) claims to have been authorized by the company MCAFEE LTD to have the Domain Name (Mcafee.co.in) registered on its behalf and the ownership of the Domain Name belongs to MCAFEE LTD., a general commercial company. The Domain Name www.mcafee.co.in is identical to the company name of MCAFEE LTD. So the Respondent/his client MCAFEE LTD had lights or legitimate interests in respect of the Domain Name.
- 4.9 The Respondent also claims to have been accepted as Reseller by the Registrar Direct Information Pvt. Ltd. so the Respondent is entitled to provide domain registration service on behalf of



his clients (include MCAFEE LTD) to register the Domain Name.

4.10 MCAFEE LTD is registered to carry on the business of a general commercial company. MCAFEE LTD has not infringed the Complainant's trademark by using its own name (using McAfee.co.in to provide portal service). So the Domain Name has not been registered and is not being used in bad faith.

4.11 The Respondent admit the Complainant to be the owner of the trade mark McAfee but denies the charge of having registered the domain name mcafee.co.in in bad faith.

5. Parties' Contentions

A. Complainant

5A.1 The Complainant McAfee Inc. is one of the market leaders in Intrusion Prevention and Risk Management solutions. Founded in 1989, the Complainant delivers innovative and proven solutions and services that secure computer systems and networks around the world. With McAfee's unmatched security expertise, home, business, government, and service provider customers block attacks, prevent disruptions, and continuously track and improve PC security. McAfee provides best-of-breed security offerings that are designed to prevent intrusions on networks and protect computer systems from the next generation of blended attacks and threats. Its products include anti-virus and intrusion-prevention offerings. McAfee's two product families are McAfee System Protection Solutions and McAfee Network Protection Solutions, which caters to the requirements of enterprise, small and midsize business (SMB), and Home Office consumers.



5A.2 The Complainant is a technology-centric company focused on developing the next generation of Internet services. It also delivers online applications through its website www.mcafee.com/, eliminating the need to install, configure and manage the technology on a consumer's local computer system. By providing sophisticated applications online, the Complainant is changing the way software is developed and experienced. Complainant has attracted millions of users in over 230 countries and territories to become one of the largest and most targeted communities for PC users on the Internet. McAfee's Web site, www.mcafee.com, is one of the most highly trafficked sites on the Web for software downloads with a recent average of approximately 250,000 downloads per day. Complainant regularly has more than 350,000 unique visitors each day and has signed up more than 200,000 paid subscribers to date.

5A.3 Complainant's product line also includes McAfee VirusScan and Internet Security Suite for multi-layered PC defence. It safeguard the hard drives, emails, attachments and downloads from known and unknown viruses, mass mailing worms, Trojans and potentially unwanted programs like spyware and also protects PC from hackers, spam and identify thieves. McAfee Wireless Home Network Security safeguards date and financial transactions with strong encryption from with auto-rotating security keys that allow only trusted friends and family access to private network. McAfee Personal Firewall Plus, McAfee AntiSpyware, SpamKiller, McAfee QuickClean, McAfee VirusScan Pro. Etc, are other software's developed by the Complainant. Combined with a range of content, shopping and personalization services, The Complainant has invested enormous sums of money in its promotional activities and in the process has created a global reputation for its products, under the Trade name McAfee.



- 5A.4 The Complainant adopted the mark McAfee, in respect of services, management solutions and products since its inception. The mark McAfee also forms a part of the Complainant's corporate name/trading style and is a house mark appearing on all computer programmes, products and solution manufactured, marketed and sold by the Complainant. The Complainant submits that "McAfee" is a coined and fanciful term, which has no denotative meaning, and the Complainant accordingly is universally recognized as the worldwide provider of proactive and integrated protection with security on networks and systems that provides a comprehensive and complete protection not just against viruses, but also against Spam, spyware, encryption, host intrusion etc under the mark McAfee. The "McAfee" trademark/trading style, apart from being inherently distinctive, has acquired substantial goodwill and is as an extremely valuable commercial asset of the Complainant Company.
- 5A. 5 The Complainant is a registered proprietor of the trademark "McAfee" in India under Number 773243 in Class 9. In addition, the trademark McAfee is registered in or is pending registration in Australia, Austria, Belgium, Brazil, Canada, China, Chile, Costa Rica, El Salvador, Finland, France, Germany, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, New Zealand, Panama, Philippines, Poland, Portugal, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the United States.
- 5A. 6 The Complainant has a significant presence in India through its Indian subsidiary McAfee Software (India) Pvt. Ltd having its registered office at Embassy Golf Links Business Park, "Pine Valley" - 2nd Floor, Off Indiranagar-Koramangala Ring Road,



Bangalore - 560071. It is also pertinent to note that the Complainant's Trademark McAfee has featured in articles and advertisements various Indian publications and foreign publications having a circulation and reach in India. The Complainant has its Representative Office in New Delhi, located at 617, International Trade Tower, Nehru Place, New Delhi - 110 019.

5A.7 For promoting, advertising and popularizing its product under the trademark/trading style **McAfee**, the Complainant maintains a formidable presence on the Internet. It may be noted that the trademark/trading style McAfee features prominently on the Complainant's website www.mcafee.com. The said website, contains extensive information about the products marketed and sold by the Complainant under its trademark/trading style McAfee. In fact the website has hundreds of thousands of visits from people looking for information on the Complainant's products and network solution.

5A. 8 The Complainant has operated a website using the domain name www.mcafee.com since 5th August 1992. It may be noted that the Complainant also possesses other domain name registrations, all of which involve the Complainant's trademark/trading style **McAfee**. Some of them are, www.mcafee.co.uk, www.mcafee.de and so on and so forth. These are only a few of the domain name registrations secured by the Complainant. These reflect the considerable value that the trademark/trading style **McAfee** holds for the Complainant, as well as the extent of care it has taken in ensuring that no entity other than the Complainant seeks to make use of the said mark, as a domain name.

5A.9 The Respondent in the present dispute has registered the domain name <mcafee.co.in>. The Complainant submits that Respondent is seeking to capitalize on the goodwill associated with the trademark



of Complainant and has registered it in bad faith and without authorization, the domain name in issue <mcafee.co.in>

- i. Wholly incorporates the word **McAfee**
- ii. Is identical to the Complainant's trademark **McAfee**.

The domain name <mcafee.co.in> is identical to the trademark/trading style/domain name of the Complainant, thereby making confusion and deception inevitable.

5A.10 The Respondent has no legitimate justification for having registered a domain name incorporating the word McAfee and has no apparent use for the domain name other than to profit from squatting on the same. The Complainant came across various domain name registrations in favour of the Respondent herein and most pertinently all these domain names incorporate famous trademarks belonging to Fortune 500 Companies.

5A.11 The registration and use of the domain name <mcafee.co.in> is clearly in bad faith and reeks of *mala fides*. Bad faith registration is writ large from the fact that the Respondent could have no justification for seeking registration of a domain name of which the word McAfee is a part. McAfee is a well-known trademark and one of the most written about brands in the recent times, which is evident from the voluminous material filed along with the present complaint. The domain name <mcafee.co.in>, registered in the name of the Respondent is an instrument of fraud and deception, which is causing considerable damage to the Complainant's business interests, apart from prejudicing substantial public interest. The *mala fides* of the Respondent are further evident from the fact that the Respondent has registered several domain names featuring the famous Trademarks of the Fortune 500 companies. The Respondent, therefore, is a professional squatter,



and has registered www.mcafee.co.in only for the purpose of trafficking.

5 A. 12 The unlawful registration of the domain name by the Respondent is resulting in the dilution of the Complainant's trademark/trading style McAfee. The illegal registration of the above-mentioned domain name is causing irreparable damage and injury to the Complainant's reputation and goodwill, which is unascertainable due to the intangible nature of the goodwill. As explained hereinabove, the Complainant has a significant presence in India and the impugned domain name registration, namely <mcafee.co.in> in the name of the Respondent, is precluding the Complainant from obtaining a domain name registration that is India-specific, which is invaluable in the marketing and sale of its products and services in the territories of India.

5 A. 13 The registration of the Domain Name is likely to lead the public to believe that the Registrant and the website to which the Domain Name directs is sponsored by or affiliated to or associated with the Complainant, and will lead to confusion in the minds of the public.

5A.14 The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

5A.15 The Respondent has no rights or legitimate interest in the Domain Name, for the following reasons:

- (i) the Domain Name was registered by the Respondent on 20th February, 2005. At this time the Complainant had a very considerable reputation in the MCAFEE name in India and



elsewhere. The Complainant has common law trade mark rights in the name which it has acquiring on account of priority in adoption and use.

(ii) The Domain Name was registered, has been used and continues to be used in bad faith. The Complainant relies upon the following:

(a) at the time of the registration of the Domain Name by the Respondent, the mark MCAFEE was well-known in India and worldwide. The Complainant has created substantial goodwill in the mark since the Complainant was formed in 1989;

(b) the Complainant has not authorized, licensed or otherwise consented to the Respondent's use of the trade mark MCAFEE.

(c) the Respondent have, no doubt, been aware that prior to its registration of the Domain Name, that there was substantial reputation and goodwill associated with the mark MCAFEE, which inures and continues to inure to the Complainant. This is evidenced by the fact that the majority of the links on the registrant's website specifically refer to the Complainant or its products;

(d) the registration of the Domain Name and its subsequent use by the Respondent is for the purpose of defrauding the public. The Domain Name resolves to a website which does not offer the services of the Complainant.

5 A. 16 The registration of the Domain Name and its subsequent use by the Respondent is a deliberate attempt by the Respondent to attract, for



commercial gain, Internet users to another online location by creating a likelihood of confusion with the Complainant's MCAFEE mark such as the public is likely to falsely believe that the site to which the Domain Name resolves is sponsored, endorsed or authorized by or in association with the Complainant. The Complainant believes this has been done for fraudulent purposes.

B. Respondent

5B.1 McAfee Ltd is a company incorporated and existing under the Companies Act 1985 of United Kingdom, having its registered office at 204 Woolwich Road, London, SE7 7QY, United Kingdom. McAfee Ltd is registered to carry on the business of a general commercial company.

5B.2 Chen Shenglu (the Respondent) claim has been authorized by the company McAfee Ltd to have the Domain Name (McAfee.co.in) registered on behalf of McAfee Ltd and the ownership of the Domain Name belongs to McAfee Ltd. The Domain Name is identical to the company name of McAfee Ltd. So the Respondent/his client McAfee Ltd clearly has rights or legitimate interests in respect of the Domain Name.

The Respondent has been accepted as Reseller by the Registrar Direct Information Pvt. Ltd., so the Respondent can provide domain registration service on behalf of his clients (including MCAFEE LTD) to register the Domain Name.

5B.3 According to paragraph 11(2) of The Trade Marks Act 1994 of United Kingdom, "A registered trademark is not infringed by (a)the use by a person of his own name or address, ..." MCAFEE LTD is registered to carry on the business of a general commercial company. MCAFEE LTD has not infringed the



Complainant's trademark by using its own name (using Mcafee.co.in to provide portal service). So the Domain Name has not been registered and is not being used in bad faith.

5B.4 This case is highly similar to the case No. DBIZ2002-00264 (ABB Asea Brown Boveri Limited v. OZBCOZ). As the ADMINISTRATIVE PANEL DECISION on the Case No. DBIZ2002-00264 (ABB Asea Brown Boveri Limited v. OZBCOZ) shows, the PANEL has decided to dismiss it. So the present Complaint shall be dismissed too.

5C.1 In rejoinder, the complainant submit that MCAFEE LTD was incorporated on 9th November 2006 by the Respondent with an intention to create a legal friction to create legal rights and interests to legitimize the bad faith registration. It is submitted that the registration of the aforesaid company is illegal and without the consent of the Complainant. The Complainant has filed trademark certificates of various jurisdictions ascertaining its ownership over the trademark MCAFEE. The Complainant was incorporated in the year 1989 and the registration of its trademark MCAFEE in Great Britain and Northern Ireland in favour of the Complainant dates back to the year 1994.

5C.2 It is also submitted that the Respondent has no legitimate interest or right in the domain name under dispute as the Respondent itself acknowledges the Complaint's ownership over the trademark "MCAFEE".

6. Discussion and Findings

6.1 The Complainant, while filing the complaint, submitted to arbitration in accordance with the Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph 3(b) of the



Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the Policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearings by teleconference video conference, and web conference) unless the Arbitrator, in his sole discretion and as an exceptional matter, otherwise determines that such a hearing is necessary for deciding the complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Under Section 19 of the Arbitration & Conciliation Act, 1996, the Arbitral Tribunal is not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. Sub-Section 3 of Section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence. It is therefore appropriate to examine the issues in the light of the statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act. The Complainant has filed evidence by way of Annexure A to Annexure H consisting of (A) Printout of WHOIS Search Result (B) Screen shots of Complainant website (C) Printout of disputed website www.mcafee.co.in (D) Copies of WHOIS search indicating registration of various famous trade marks as domain names by Respondent. (E) Copies of Complainants registration certificates (F) Copies of advertisement and award reflecting goodwill of McAfee (G) Copies of previous orders against the Respondent and (H) Power of Attorney of Mr. Vishal Ahuja, with the complaint. The Respondent has also filed documentary evidence consisting of certificate of incorporation of MCAFEE LTD as a company in



U.K. on 9th November, 2006, agreement dated November 9, 2006 between Respondent and MCAFEE LTD and copy of WIPO decision in caseNo.DBIZ2002-00264 along with its Response.

- 6.3 Affidavit of Mr. Vishal Ahuja has been filed as evidence to support the claims made in the complaint and Rejoinder by the Complainant. Respondent filed his affidavit by way of evidence in support of his case.
- 6.4 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name McAfee and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has also not denied the correctness or genuineness of any of the Annexures A to H to the Complaint. The Respondent admits in paragraph B.1 of his reply that Complainant has the trade mark McAfee while making general denial of the case set up by complaint in paragraph 1 to 10 of the complaint.
- 6.5 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure the material facts as are not specifically dealt with and denied are deemed to be admitted. The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof, (see Section 58 of The Indian Evidence Act, 1872). The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with Law. The material fact that Complainant has the trade mark McAfee is admitted by the Respondent and need no



formal proof.

6.6 The Respondent claims to have registered the domain name on behalf of MCAFEE LTD., a company incorporated in U.K. to carry on the business as a general commercial company. The Respondent also claim to have obtained registration of domain name in good faith as he has a legitimate right to use his own name as a domain in view of the provisions of Section 11(2) of U.K. Trade Mark Act, 1994

6.7 The database address of the Respondent mentioned in the complaint in the title and paragraph 4 of the complaint is:

Address: Chen Shenglu
1607, East,
Jinghuayuan, Xiangmei Road,
Shenzhen
Guangdong, 518000
CHINA

6.8 The WHOIS record filed as Annexure A to the complaint show that the domain name www.mcafee.co.in was created on 20th February, 2005 in the name of Respondent Mr. Chen Shenglu as the registrant.

6.9 The present complaint was filed with .In Registry (NIXI) on November 2, 2006 and on receipt of the complaint Registry lock was put on the disputed domain name on the same date.

6.10 After the initiation of proceedings in terms of In Domain Name Dispute Resolution Policy and INDRP Rules of Procedure, the Respondent as a Sole Director incorporated a company on November 9, 2006 and entered into an agreement of Domain transfer to the company w.e.f. 10th November, 2006. The agreement for transfer is signed by Respondent, Mr. Chen Shenglu



as a transferer and also on behalf of transferee on November 9, 2006. The Registrant of disputed domain name as per WHOIS record continues to be the Respondent and no changes were allowed to be made therein subsequent to November 2, 2006.

6.11 The Panel will examine the contentions raised by the parties and deal with the same in accordance with law, despite there being no specific denial of the material averments made in the complaint as noticed above.

6.12 Paragraph 10 of the Policy provides that the remedies available to a Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.13 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent be transferred to the Complainant or cancelled:

- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
- (iii) the domain names have been registered and are being used in bad faith.

That being so, the Panel will now proceed to examine if the Complaint has discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

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A. Identical or Confusingly Similar

6A.1 The Complainant is a company incorporated with the name McAfee, forming as a key, leading and essential portion of its corporate name. The incorporation of the Complainant Company in 1989 under the law of Delaware USA is not in dispute.

6A.2 It is also not disputed that the Complainant is the registrant of Domain name www.mcafee.com since 5th August, 1992.

6A.3 It is also not in dispute that the Complainant is the registrant of trade mark **McAfee** under no. 1554705 dated 24th November, 1993 in U.K. in respect of Computer programs falling in class 9 of the international specification of goods. The Complainant is also the registrant of trade mark **McAfee** under No.773243 in class 9 in India, under No. 1818780 in USA, under No.4278694, 4278695 and 4507572 in Japan. MCAFEE.com is also registered as a service mark in the name of Complainant under No.2601,537 as of 30th July, 2002 by United States Patent & Trade Marks Office for the goods and services falling in International Classes 9, 16, 35, 37 and 42.

6A.4 The Respondent, in his response dated November 25, 2006 admitted the rights of the Complainant to the trade mark **McAfee**.

6A.5 The averments made in the complaint and the evidence produced on record by the Complainant sufficiently establishes the prior adoption and registration of the trade mark / domain name McAfee, as aforesaid, by the Complainant.

6A. 6 The proprietary rights in a trade mark / service mark are not acquired merely on account of Registration in India but on account of priority in adoption, use and even on account of transborder reputation spilling over to India. Reference be made to the matter of Century Traders Vs.



Roshan Lal AIR 1978 Delhi 250 (DHC) and N.R Dongra Vs. Whirlpools Corporation - 1996 PTC 476 (DHC) and 1996 PTC 583 (Supreme Court of India). There is sufficient material on record to establish proprietary rights of the Complainant in the mark McAfee.

6A.7 The copies of registration of trade mark McAfee and print outs of the Complainant's website has also been placed on record and are not disputed by the Respondent.

6A.8 The Complainant has thus discharged its onus in establishing its proprietary rights in the mark / name McAfee on account of priority in adoption, use and registrations. The Complainant has also succeeded in establishing his right to the domain name consisting of the mark www.mcafee.com on account of their prior use and registrations.

6A.9 As mentioned above, when one accesses the website at the domain name <www.mcafee.com>, the site shows the official site hosted by the Complainant and has all the text and other information, data and material of the Complainant. The website of the Complainant has the relevant inputs and artistic designs, logos and trademarks of the Complainant company. Further, when one types in the browser the domain name <www.mcafee>, it automatically takes you to the official website of the Complainant at <www.mcafee.com>.

6A.10 The domain name www.mcafee.co.in registered by the Respondent in India is identical to the trademark / trade name and domain name of the Complainant. The panel therefore, hold that the domain name registered by the Respondent is identical and confusingly similar to the trade mark, trade name, service mark and domain name of the Complainant.

B.

Rights or Legitimate Interests



6B.1 Paragraph 7 of the Policy lists the following three non-exclusive methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- (ii) the Registrant (as an individual, business, or other organization) have been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) the Registrant is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

6B.2 As to the circumstances under paragraph 4 of the Policy, the Complainant has not consented to the Respondent's use of the domain name, which incorporates the Complainant's trademark / trade name / domain name McAfee or the marks as are identical or deceptively similar thereto. The domain name <www.mcafee.co.in> bear no relationship to the business of the Respondent. The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization, of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do remotely with the business of Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name. The



Respondent is, on the contrary, making commercial use by using the same to promote its business of general commerce.

- 6B.3 An entity desirous of trading or providing its services through the medium of the internet invariably uses its existing trademark/trading style or service mark as its domain name so as to avoid confusion between what is advertised upon the Internet and the mark as used in the physical world. Further, the use of the real-world trademark serves as the most visible, identifiable and verifiable indicator of the existence of the entity in question upon the Internet. In view of this, the Complainant's domain name, located at the URL www.mcafee.com, functions as a trademark in the Internet world, as the Complainant provides exhaustive information, advertisements and sales of its products through its said website. No entity other than the Complainant, therefore, has any right or justification to use the word "McAfee" or any deceptively similar mark, in respect of its domain name.
- 6B.4 Once a Complainant makes a *prima facie* showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.
- 6B.5 The Respondent claims right or legitimate interest in the domain name in question on the ground that the disputed domain name is derived from the corporate name of his company MCAFEE LTD. and that under Section 11(2) of the Trade Marks Act, 1994 of United Kingdom a registered trade mark is not infringed by the use of a person of his name or address. This panel finds that the claims made by the Respondent are devoid of any merit and are not sustainable in law. The registration of the disputed domain name, as is apparent from the



record maintained by WHOIS Registry, was made in the name of the Respondent, Mr. Chen Shenglu in his own name on 20th February, 2005. At the time of registering the disputed domain name, the company MCAFEE LTD. had not even been incorporated.

Section 35 of The Trade Marks Act, 1999 as is in force in India also provides that nothing in the Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any *bonafide* use by a person of his own name or that of his place of business

The question which arises for consideration is as to whether the Respondent's use of the disputed domain name is in fact use of his own name at the first instance and whether such use is bonafide. McAfee is admittedly the registered trade mark of the Complainant and the earliest registration produced on record is as of 24th November, 1993 in the United Kingdom. The domain name www.mcafee.com is registered in the name of the Complainant as of August 1992 and million of users in many countries in the world are attracted to the said site. The Complainant is also the registered proprietor of the trade mark **McAfee** in India under No.773243 in class 9. The company MCAFEE LTD. was incorporated by the Respondent as a Sole Director on November 9, 2006 i.e. subsequent to the filing of the above complaint with .IN Registry. It is a matter of record that the above complaint was filed with .IN Registry on November 2, 2006 and on the same date, the Registrar's lock was put on the disputed website. The incorporation of a company with an identical name McAfee Ltd. in U.K., on the part of the Respondent is merely an attempt to set up a defense under Section 11(2) of the U.K. Trade Mark Act, 1994 irrespective of the fact if such defence is at all available to the Respondent in law. The Respondent has not given any justification or explanation as to how he came about to adopt and register www.mcafee.co.in as his domain name, which is admittedly not his



own name. The incorporation of a company with an identical name on November 9, 2006 and the agreement dated November 9, 2006 for transfer of the domain name by the Respondent to his own company, by no stretch of imagination be treated as a bonafide registration or use.

6B.6 The Policy prohibits the transfer of a domain name registration to another holder during a pending administrative proceeding brought pursuant to Paragraph 4 of the Policy. The policy is susceptible to an interpretation that would permit transfer of registration after notice of the complaint to the Respondent but before official commencement of the proceedings by way of notification from the provider. Prior Panel decisions have refused to embrace this interpretation, noting that to do so would cause an injustice on Complainant's who have initiated complaints in accordance with the Policy and the Rules. See, e.g., *Kirkbi AG v. Company Require / Karlina Konggidinata and Pool, com, Inc.*, WIPO Case No. D2004-0359; *British Broadcasting Corporation v. Data Art Corporation /Stoneybrook*, WIPO Case No. D2000-0683. Indeed, the distinguished panelists in these decisions aptly observed that such an interpretation would appear to permit, if not actually encourage, the phenomenon of "cyberflying", where a registrant of a domain name, when named as the Respondent in a domain name dispute case, systematically transfers the domain name to a different registrant to disrupt the proceeding.

6B.7 This Panel is in agreement with the prior decisions of these distinguished panelists. Further, even if Paragraph 8(a) were to be narrowly read to provide that a proceeding is pending only upon commencement of the proceeding in a formal sense, the Panel concludes from the circumstances of this case that the named Respondent in the original Complaint Mr. Chen Shenglu has been the beneficial holder of the disputed domain names on November 2, 2006 on which date Registrar's lock was put on the; domain. The

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Respondent Mr. Chen Shenglu still controls the domain names and is therefore the proper Respondent in this proceeding, notwithstanding the ostensible transfer of the registrations to the company MCAFEE LTD. following the filing of the Complaint. See *British Broadcasting Corporation v. Data Art Corporation / Stoneybrook*, WIPO Case No. D2000-0683. In the said case the Panel decided that a change in the registrant of the disputed domain name after notice to the Respondent of the complaint but before formal commencement did not affect the proceedings. In the present case, the registrant of disputed domain name continues to be the Respondent.

- 6B.8 The evidence on record shows that the Respondent, having full knowledge of its obligation under Paragraph 8(a) of the Policy, proceeded to incorporate a company with Complainant's trade mark as part of his corporate name and enter into a sham transaction between himself as transferer and also on behalf of transferee without the knowledge, consent or information of the Complainant. The Respondent did not furnish any plausible explanation as to in which circumstances the name of MCAFEE LTD was registered as domain names. Respondent is fully aware about the implications, rights and liabilities of the registered holder of domain names and also the powers of the person in control of such domain names. The Respondent, for all material times, has been in control of the disputed domain names. The object of such attempt to transfer could not be other than to create a defence under Section 11(2) of U.K. Trade Marks Act and to have commercial gain, to prevent the owner of a trademark to reflect the mark in corresponding domain names and thereby create confusion in the mind of internet users.
- 6B.9 This Panel finds that this a typical case of "cyberflying" in an attempt to circumvent the Policy.

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6B.10 The defense of bonafide use of his own name by the Respondent in an action for infringement and passing off in the light of provisions of Section 35 of the Indian Trade Marks Act, 1999 (which is similar to Section 11(2) of the U.K. Trade Marks Act 1994) was considered by the Indian Courts in numerous cases, some of which are as follows:

(i) **In the case of K.G. Khosla Compressor Limited v/s Khosla Extraktions Ltd (1986 PTC 211), the High Court of Delhi held as under:-**

"I cannot accept the argument of Mr. Sanghi that a person is entitled to carry on his business in his own name and that there could not be any restraint on that. This is in fact too general a proposition. Even S. 34 of the Trade and Merchandise Marks Act referred to by Mr. Sanghi protects a person of the bonafide use of his own name. However, this is not the case before me and I would say no more on the this submission of Mr. Sanghi. The point that is at issue is if a person is entitled as of right to have a company registered in a name which happened to be his own name. I would say he has no such right. The right to incorporate a company in a particular name is a statutory right. S. 20 of the Act prescribes that no company shall be registered by a name, which in the opinion of the Central Govt., is undesirable. Sub-s. (2) of S. 20 says that if a name which is identical with or too nearly resembles the name by which a company in existence has been previously registered it may be deemed to be undesirable. I cannot read into S. 20 of the Act that whenever a person applies for registration of a company in his name or in the name of his family members it must be registered. This is not the law and could not be the law. "

(ii) **The Division Bench of Delhi High Court in B.K. Engineering Company v/s Ubhi Enterprises (1985 PTC 1) held as under:-**



"Even if a man uses his own name as to be likely to deceive and so to divert business from the plaintiffs to the defendants he will be restrained."

In paragraph 16 of the judgment the Court held as under:-

"The defendants say that they are entitled to use 'B.K.-81' as B.K. is an abbreviation of their deceased mother's name, Balwant Kaur. I cannot accept this argument. That the defendants use their mother's name with no intention to deceive anybody does not mean that such likelihood has been created. "

(iii) In the case of Anil Food Industries v/s Alka Food Industries (1989 PTC 129), the plea of the defendant that Anil was the name of his son and was thus bona fide used was rejected by the Court and an injunction was granted.

6B.11 In the absence of any relevant submission by the Respondent, this Panel is inclined to accept all reasonable inferences and allegations included in the Complaint as true. See *Talk City, Inc. v. Robertson*, WIPO Case No. D2000-0009. The Respondent makes no claim to have been authorized by the Complainant to use the Complainant's mark. Similarly, the Respondent makes no claim that it has been commonly known by the disputed domain name, or that it has attempted to make any legitimate noncommercial or fair use of the domain name.

6B.12 The Panel therefore holds that none of the circumstances listed under 7(i) of the Policy, possibly demonstrating rights or legitimate interests of the Respondent, are present.

C. Registered and Used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a

domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of our documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location."

6C.3 The overriding objective of the Policy is to prevent abusive domain name registration and use for the benefit of legitimate trademark owners, and the Panel notes that the examples of bad faith registration and use set forth in the policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra*

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Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. The Panel in the *Telstra* case interpreted the third element of paragraph 4 of the Uniform Domain Name Policy, which is para-meteria to the INDRP Policy in the following manner:

"It is less clear cut whether the Complainant has proved the third element in paragraph 4(a) of the Uniform Policy, namely that the domain name "has been registered and is being used in bad faith" by Respondent. The Administrative Panel notes two things about this provision. First, the provision contains the conjunction "and" rather than "or". Secondly, the provision refers to both the past tense ("has been registered") and the present tense ("is being used").

The significance of the use of the conjunction "and" is that paragraph 4(a)(iii) requires the Complainant to prove use in bad faith as well as registration in bad faith. That is to say, bad faith registration alone is an insufficient ground for obtaining a remedy under the Uniform Policy. This point is acknowledged in the Administrative Panel Decision in the WIPO Case No. D99-0001, the first case decided under the Uniform Policy. In paragraph 6 of that Decision, the Administrative Panel refers to the legislative history of the Uniform Policy, and in particular to the Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy submitted to the ICANN Board at its meeting on October 24, 1999. That Report, at paragraph 4.5, contains the following relevant statement and recommendation:

Several comments (submitted by INTA and various trademark owners) advocated various expansions to the scope of the definition of abusive registration. For example:

These comments suggested that the definition should be expanded to include cases of either registration or use in bad faith, rather than both registration and use in bad faith. These comments point out that



cybersquatters often register names in bulk, but do not use them, yet without use the streamlined dispute-resolution procedure is not available. While that argument appears to have merit on initial impression, it would involve a change in the policy adopted by the Board. The WIPO report, the DNSO recommendation, and the registrars-group recommendation all required both registration and use in bad faith before the streamlined procedure would be invoked. Staff recommends that this requirement not be changed without study and recommendation by the DNSO.

From the fact that the ICANN Board accepted the approach recommended in the Second Staff Report, and thus adopted the Uniform Policy in the form originally proposed, it is clear that ICANN intended that bad faith registration alone not give rise to a remedy under the Uniform Policy. For a remedy to be available, the Complainant must prove both that the domain was registered in bad faith and that it is being used in bad faith.

This interpretation is confirmed, and clarified, by the use of both the past and present tenses in paragraph 4 (a)(iii) of the Uniform Policy. The use of both tenses draws attention to the fact that, in determining whether there is bad faith on the part of the Respondent, consideration must be given to the circumstances applying both at the time of registration and thereafter. So understood, it can be seen that the requirement in paragraph 4(a)(iii) that the domain name "has been registered and is being used in bad faith" will be satisfied only if the Complainant proves that the registration was undertaken in bad faith *and* that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Has the Complainant proved that the domain name "has been registered in bad faith" by the Respondent? In light of the facts established in paragraphs 4.6 to 4.8, the Administrative Panel finds that the Respondent does not conduct any legitimate commercial or non-



commercial business activity in Australia. In Light of the facts established in paragraphs 4.6 to 4.8, the Administrative Panel further finds that the Respondent has taken deliberate steps to ensure that its true identity cannot be determined and communication with it cannot be made. Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. These findings, together with the finding in paragraph 7.2 that the Respondent has no rights or interests in the domain name, lead the Administrative Panel to conclude that the domain name <telstra.org> has been registered by the Respondent in bad faith.

Has the Complainant proved the additional requirement that the domain name "is being used in bad faith" by the Respondent? The domain name <telstra.org> does not resolve to a web site or other on-line presence. There is no evidence that a web site or other on-line presence is in the process of being established which will use the domain name. There is no evidence of advertising, promotion or display to the public of the domain name. Finally, there is no evidence that the Respondent has offered to sell, rent or otherwise transfer the domain name to the Complainant, a competitor of the Complainant, or any other person. In short, there is no positive action being undertaken by the Respondent in relation to the domain name.

- .4 The Respondent, in his response and evidence has placed reliance on Case No. DBIZ2002-00264 (ABB Asea Brown Boveri Limited v. OZBCOZ) in which the administrative panel dismissed the complaint as the Respondent was able to establish his legitimate interest in respect of the disputed domain name. The decision relied upon by the Respondent is all no assistance and is not applicable to the facts of the



present case. The Respondent, in the said case registered the domain name on behalf of ABB Grain Limited of Adelaide, South Australia (ABB Australia). ABB Australia was incorporated in Australia in October, 1998. ABB Australia and its predecessor in title, the Australian Barley Board has been known as ABB and, on the evidence of one of the witnesses whose declaration was exhibited to the response, since at least 1979. The complaint was filed by ABB Switzerland claiming to be the proprietor of the trade mark ABB on account of its use as a trade mark and as part of its name since 1988. The complaint with WIPO Arbitration and Mediation Center was filed on May 31, 2002. In the said case, the panel found that the disputed domain name was registered by the Respondent on behalf of ABB Australia and that ABB Australia had substantial right in the trade mark ABB as a trade mark and/or service mark. The panel came to the conclusion that the Respondent registered the domain name on behalf of ABB Australia and that the Respondent clearly had a legitimate interest in respect of the disputed domain name.

- 6C.5 In the present case the domain name www.mcafee.co.in was registered by the Respondent in his name on February 20, 2005 and not on behalf of McAfee Ltd. As a matter of fact, MCAFEE LTD. was not even incorporated company, on the date of registration of the disputed domain name by the Respondent. It cannot be argued that the Respondent registered the disputed domain name on behalf of MCAFEE LTD. The domain name consisting of the trade mark/service mark/domain name of Complainant was made in bad faith to take advantage of the reputation of Complainant established therein much prior thereto. The Complainant legitimate right and interest to the exclusive use of the trade/service mark McAfee on account of priority in adoption, use and registration is well established on record. The Respondent has furnished no explanation about the adoption of an identical mark McAfee or registration thereof in February, 2005. In the cited case of abb.biz, the Complainant adoption and use was



subsequent to the adoption and use of the mark on the part of Respondent who had obtained registration of domain name on behalf of ABB Australia bonafidely at the initial stage itself. In the present case, the company MCAFEE LTD. has been incorporated and an agreement for the transfer of the disputed domain name has been executed on November 9, 2006 to circumvent the arbitration proceedings and to set up a defense under Section 11(2) of the U.K. Trade Marks Act.

- 6C.6 The Respondent in his response claimed to have obtained registration of the disputed domain name bonafidely on behalf of his client (including MCAFEE LTD.) on account of having been accepted as reseller by the Registrar Director Information Pvt. Ltd. The documents reflecting the appointment of the Respondent as reseller show that the Respondent became active reseller on 15th February, 2005, on which date MCAFEE LTD. had not even been incorporated. The Complainant has furnished details of the registrations made by the respondent on 16th February, 2005 of various domain names in his own name. The registrations made by the Respondent on 16th February, 2005 are illustrated below:-

Domain Name	Registrant Details	Created On
FIAT.CO.IN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1: 1607,East Building,Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country:CN Registrant Phone:+86.13823233030 Registrant Email: shenalu.chena@gmail, com	16-Feb-2005 13:22:27 UTC
CNN.COIN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Streetl :1607,East	16-Feb-2005 06:46:07 UTC

	Buildmg,Jmghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country:CN Registrant Phone:+86.13823233030 Registrant Email: shenglu.chen@gmail.com	
BBC.CO.IN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1: 1607,East Building,Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country:CN Registrant Phone:+86.13823233030 Registrant Email:shenglu.chen@gmail.com	16-Feb-2005 06:46:13 UTC
FOX.CO.IN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1: 1607,East Building,Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country: CN Registrant Phone:+86.13823233030 Registrant Email: shenglu.chen@gmail. corn	16-Feb-2005 06:45:49 UTC
ESPN.CO.IN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1: 1607,East Building,Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country:CN Registrant Phone:+86.13823223030 Registrant Email:shenglu.chen@gmail.com	16-Feb-2005 06:45:54 UTC



<u>SANDISK.CO.IN</u>	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1: 1607,East Building,Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province:Guangdong Registrant Postal Code:518034 Registrant Country: CN Registrant Phone:+86.13823233030 Registrant Email:shenglu.chen@gmail.com	16-Feb-2005 06:44:40 UTC
SINA.CO.IN	Registrant Name: Chen Shenglu Registrant Organization:N/A Registrant Street1:1607,East Building, Jinghuayuan,Xiangmei Rd. Registrant Street2:Futian Registrant City: Shenzhen Registrant State/Province.Guangdong Registrant Postal Code:518034 Registrant Country:CN Registrant Phone:+86.1382323 3030 Registrant Email: shenglu.chen@gmail.com	16-Feb-2005 06:44:35 UT

It is apparent that none of the registrations obtained by the Respondent on 16th February, 2005 or of the disputed domain name on 20th February, 2005 were on behalf of any client. The Respondent himself is the registrant as well as the client. It appears from the records that the Respondent has registered various domains consisting of well-known trade marks in bad faith and to earn profits from squatting on the same. The conduct of the Respondent also establishes the elements of bad faith.

The disputed domain name is also being used by respondent in bad faith in respect of general commercial business activities including dealing with the products, software of Complainant under the trade mark McAfee.



6C.8 This panel is in full agreement with the view taken in Telstra Case. In the present case both elements of bad faith registration as well as bad faith use are established. The Respondent, as aforesaid, has no relationship with the business of McAfee but misrepresentation is made in the course of trade to unwary Internet users.

6C.9 There is evidence to conclude that the Respondent has registered the domain in bad faith and has made active use of the domain name on account of bad faith registration and under the circumstances of this case.

7. Decision

In accordance with Paragraph 10 of the Policy and for the reasons stated above, the Panel directs that the domain name <www.mcafee.co.in> be transferred to the Complainant.



Amarjit Singh
Sole Arbitrator

Dated: January 12, 2007