INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No.	:	**IN-DL68191084827899L**
Certificate Issued Date	:	15-Jan-2013 04:26 PM
Account Reference	:	IMPACC (IV)/ dl732103/ DELHI/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL73210336116267640760L
Purchased by	:	V SHRIVASTAV
Description of Document	:	Article 12 Award
Property Description	:	NA
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	V SHRIVASTAV
Second Party	:	NA
Stamp Duty Paid By	:	V SHRIVASTAV
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"mindtreesolutions.in"

between

MIND TREE LIMITED ...COMPLAINANT

AND

BHEEMESWARA RAO P. & ORS. ...RESPONDENT

AWARD

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 28/12/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents hence vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier.

2. That compliance of the order was done by the Complainants vide their letter dated 31/12/2012 in which they sent a scanned copy of speed post receipt having number ET000079178IN dated 11/12/2012 which showed that the envelope had been returned back to the complainants citing incomplete address of the Respondent. Hence, this Tribunal vide order dated 01/01/2013 directed the Respondent to send their Response/

Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 07th January 2013.

3. That this Tribunal finds that the Complainants have tried their level best to serve the Respondents on the address provided by him in WHO IS. Be it that as it may this Tribunal notes that the copy(s) of the order(s) have also been emailed to the Respondent at his notified email id as well hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings.

4. In view of the above this Tribunal vide order dated 09/01/2013 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:

1. It is alleged that the impugned Domain Name mentioned in this Complaint is identical and confusingly similar to the Registered Trade Mark of the Complainant for the reasons as stated under:

A. The Complainant states that it holds the following Trade Marks in respect of "MindTree" as under:

COUNTRY	TRADEMARK	CLASS	APPLICATION No.	STATUS

INDIA	MIND TREE CONSULTING (DEVICE)	9	873291	Registered
INDIA	MIND TREE CONSULTING (DEVICE)	16	873292	Registered
INDIA	MINDTREE TECHNOLOGIES (word mark)	9	902226	Registered
INDIA	MIND TREE TECHNOLOGIES (word mark)	16	902227	Registered
INDIA	MINDTREE (word mark)	9	902228	Registered
INDIA	MINDTREE (word mark)	16	902229	Registered
INDIA	MindTree (Word Mark)	35	2197598	Pending registration
INDIA	MindTree (Word Mark)	38	2197601	Pending registration
INDIA	MindTree (Word Mark)	41	2197603	Pending registration
INDIA	MindTree (Word Mark)	42	2197604	Pending registration
INDIA	MindTree (Word Mark)	45	2197606	Pending registration
INDIA	MindTree (Logo)	35	2197599	Pending registration

INDIA	MindTree (LOGO)	38	2197600	Pending registration
INDIA	MindTree (LOGO)	41	2197602	Pending registration
INDIA	MindTree (LOGO)	42	2197605	Pending registration
INDIA	MindTree (LOGO)	45	2197607	Pending registration
INDIA	MINDTREE (LOGO)	36	2045881	Registered
INDIA	MINDTREE (LOGO)	37	2045882	Registered
AUSTRALIA	MIND TREE CONSULTING (Device)	9 & 16	818663	Registered
AUSTRALIA	MindTree (word mark)	9 & 16	822045	Registered
JAPAN	MindTree Consulting (Device)	9 & 16	4578698	Registered
JAPAN	MindTree (word mark)	9 & 16	4536202	Registered
EUROPEAN COMMUNITY	MindTree (word mark)	9 & 16	1499920	Registered
SINGAPORE	MindTree CONSULTING (Device)	9	T9915347Z	Registered
SINGAPORE	MindTree	16	T9915348H	Registered

	Consulting (Device)			
SINGAPORE	MindTree (word mark)	9	T0001528B	Registered
SINGAPORE	MindTree (word mark)	16	T0001529J	Registered
U.K.	MindTree Consulting (Device)	9 & 16	2209598	Registered
USA	MindTree Consulting (Device)	9 & 16	3051248	Registered
USA	MindTree (word mark)	9 & 16	3051253	Registered

Reliance is placed on **Annexure 2** and **Annexure 3.**

B. The Complainant also claims that it holds the following domain names:

S.NO.	DOMAIN NAME	DATE OF CREATION
1.	www.mindtree.com	10-06-1997
2.	www.mindtreeconsulting.com	20-07-1999
3.	www.mindtreefoundation.org	08-01-2008
4.	www.mindtree.in	16-02-2005
5.	www.mindtree.co.in	16-02-2005

6.	www.mindtree.net.in	16-02-2005
7.	www.mindtreeconsulting.in	16-02-2005
8.	www.mindtreeconsulting.co.in	16-02-2005
9.	www.mindtreeconsulting.net.in	16-02-2005
10.	www.mindtreefoundation.org.in	16-02-2005

C. The complainants claim that as per Paragraph 3(b) (vi) (1) of the Procedure, the impugned domain name is identical or confusingly similar to the above mentioned trademark and service mark in which the Complainant has rights. It is further stated that the domain name is confusingly similar to the Complainant's trade mark because the word "mindtree" as appearing in the domain name of the Respondents is a "blatant copy of the **well-known Trade Mark** of the Complainant and has been adopted by the Respondents merely to take a piggy back ride on the goodwill and reputation acquired by the Complainant in relation to the registered Mark **"MindTree".** It is alleged that the Respondent has no proprietary rights on the same.

2. As per the Complainants the Respondent has no rights or legitimate interests in respect of the domain name(s) for the reasons as mentioned below:

   i. It is stated that the complainant has not licensed or otherwise permitted the Respondents to use its trade mark or to apply for or use any domain name incorporating the trade mark and hence the Respondents have no rights in respect of the domain names.

   ii. It is alleged that the word "MindTree" is a coined word of the complainant and the sole purpose of the Respondent is to create an impression of an association with the Complainant when he has no relationship whatsoever with the Respondents.

   iii. The complainant state that there is no evidence to suggest that the Respondents are commonly known by the disputed domain name. Thus the domain names

complained hereunder are not being used for *bona fide* offering of goods or services.

iv. The Complainant further alleges that the Respondents had knowledge of its mark when registering the impugned domain name due to the Complainant's prior use of the mark (as early as 1997). The Complainant further allege that the mark, is being used by the Respondent in the disputed domain name in order to bait Internet users.

3. To buttress their contention that the complainant mark is well known globally the complainant has stated as under:

1. *"In 2009, the Complainant was ranked among the top 5 global R&D service providers by Zinnov Management Consulting Pvt. Ltd.*
2. *The Complainant is ranked 13th in the 2009-10 NASSCOM listing of the Top 20 IT Software and Services Exporters in India (excluding BPO).*
3. *The Complainant is ranked 19th among the IT Services companies by International Association of*

Outsourcing Professionals in their annual list of the Top 100 Global Outsourcing Companies for 2009.

4. *In 2007-08, the Complainant was declared the Number one Most Admired Knowledge Enterprise in India by Teleos, in association with the KNOW Network.*
5. *The Complainant is named among the top 100 global outsourcing companies by Global Services Media and Neo Advisory on the 2010 Global Services 100 list. Marking its fifth consecutive year on the list.*
6. *The Complainant is ranked among the top vendors in 4 categories including Application Development and Maintenance (ADM); Engineering Services; IT Outsourcing; and Specialty Product Engineering.*
7. *The Complainant became the first Indian company to receive the Texas Instruments (TI) 2008 Supplier Excellence Award.*
8. *The Complainant was ranked among the "Best Companies to Work for in 2005" in the Business Today-Mercer-TNS study. In 2006 and 2007, the Complainant finished in second place overall.*
9. *The Complainant has also been ranked in the Top 10 among "Great Places to Work" for in 2005-2007 in a study conducted by Grow Talent Company and Business world.*

10. *The Complainant was bestowed with the Institute of Company Secretaries of India (ICSI) National Award for Excellence in Corporate Governance 2008.*

11. *The Complainant was adjudged No.2 for Best Overall for Corporate Governance in Asia in the Corporate Governance Poll 2009 conducted by Asia money magazine.*

12. *The Complainant was ranked among the fastest growing technology companies in Asia Pacific by Deloitte Technology Fast 500 in 2009.*

13. *The Complainant won the 2009 CIO award instituted by IDG India's CIO magazine that recognizes organizations that exemplify the highest level of operational and strategic excellence in IT."*

a) The Complainant have given their turnover in a tabulated form as under:

FINANCIAL YEAR	**TURNOVER (INR) in Million**
2011-12	19152
2010-11	15090
2009-10	12332
2008-09	7484.52

For the above they rely upon **Annexure 5.**

b) The Complainant state that it has also promoted and incorporated a Company under Section 25 of the Companies Act, 1956 on 20th November 2007 as a Non-Profit Organisation in the name and style of **"MindTree Foundation"** to support primary education and the cause of physically challenged people by utilizing its leadership, values, and resources. The Complainant through this Non-profit Organisation has undertaken various educational and charitable initiatives for primary schools by contributing to the infrastructure, curriculum development, and employment of additional teaching staff and training of teachers apart from contributing to victims of natural calamities and thus it has established adequate goodwill and popularity attributable to its registered Trade Mark "MindTree". Reliance is placed on **Annexure 6 & 7**.

c) The Complainant has also placed reliance on a WIPO Domain Name Decision bearing number D2002-0438 given as **Annexure 8,9 & 10.**

d) The complainants allege that the usage of the impugned domain name by the Respondents will prejudicially affect their business and other interest of the Complainant as the only objective of the Respondents is to ride piggy back on the goodwill, reputation and the popularity of the registered Trade Mark **"MindTree"** of the Complainant which has been registered illegally and in bad faith.

ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his

Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.

8. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <mindtreesolutions.in> hence this Tribunal directs the Registry to transfer the domain name <mindtreesolutions.in > to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 19th day of January 2013.

NEW DELHI
19/01/2013

V. SHRIVASTAV
ARBITRATOR