



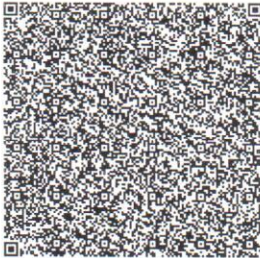
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Stamp Duty Amount(Rs.) : 100
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Before The Sole Arbitrator, Divya Balasundaram C/o National Internet Exchange Of India
Arbitration Award

In the matter of:

Mozilla Foundation, 331 E. Evelyn Ave, Mountain View, CA - 94041, USA

Versus

Mr. Chandan, 82 II Main, Bangalore - 560001, Karnataka, India

January 15, 2015

Divya Balasundaram

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**BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM
C/o NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

Mozilla Foundation,
331 E. Evelyn Ave,
Mountain View, CA - 94041, USA

Complainant

Versus

Mr. Chandan,
82 II Main,
Bangalore - 560001,
Karnataka, India

Respondent

1. The Parties

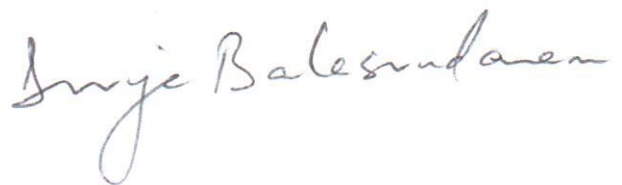
- 1.1 The Complainant is Mozilla Foundation of the address 331 E. Evelyn Ave, Mountain View, CA - 94041, USA, represented by its counsel DePenning & DePenning, 120 Velachery Main Road, Guindy, Chennai - 600 032.
- 1.2 The Respondent is Mr. Chandan, of the address 82 II Main, Bangalore, Karnataka, India.

2. The Domain Names and Registrar

- 2.1 The disputed domain name <Mozilla.in > is registered with Netlynx Technologies Pvt Ltd.

3. Procedural History

- 3.1 Complainant sent the Complaint to NIXI with a copy to Respondent on December 4, 2014.
- 3.2 The .IN Registry appointed Divya Balasundaram as the sole arbitrator on December 15, 2014 and arbitrator received copy of the Complaint along with Annexures on this date.
- 3.3 Arbitral proceedings were commenced by Arbitrator on December 16, 2014 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days.

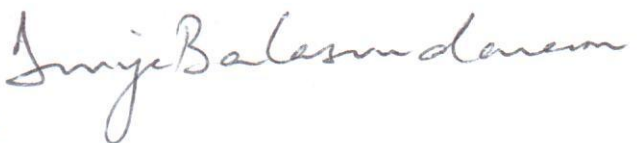


- 3.4 No response was received from the Respondent in the stipulated time frame.
- 3.5 Arbitrator sent email on January 13, 2015 to Respondent notifying it of its default.
- 3.6 The language of these proceedings is English.

4. **Background of the Complainant and its rights in the trademark MOZILLA**

The factual background of the Complainant is set out as follows in the Complaint:

- 4.1 The Complainant is a not - for - profit corporation dedicated to public benefit, established in the year 2003. The M/s Mozilla Corporation was established in the year 2005 as a wholly owned subsidiary and licensee of the Complainant. The main objective of the Mozilla Corporation is to coordinate and integrate the development of Internet related applications by a global community of open source software developers.
- 4.2 The Complainant through its subsidiary, Mozilla Corporation, develops well known software solutions such as the Firefox web browser, and the Firefox OS, an open source mobile operating system. The Complainant also develops and promotes Web maker, an open source education project featuring easy to use tools for learning and teaching the fundamentals of the Internet.
- 4.3 The Complainant also controls and regulates a software community of individuals throughout the globe that uses, develops, spreads and supports Mozilla products, thereby promoting exclusively free software and open standards, with only minor exceptions. The community is supported and overseen by the Complainant and its subsidiary, the Mozilla Corporation. The Complainant controls the source code repository and regulates the membership within the community on meritocracy.
- 4.4 In addition to the software offerings listed above, the Mozilla Corporation also manages the Mozilla Marketplace, an online marketplace of applications that work with computers running the desktop or Android versions of the Firefox browser as well as Firefox OS devices.
- 4.5 The Complainant has achieved in advancing a sustainable worldwide effort to promote innovation and choice on the Internet. The Complainant maintains the


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primary responsibility for managing the open source project, stewarding and distributing the source code, setting policies, and organizing the relationships between all participants in the project. The Complainant focuses on the project's governance, infrastructure, and source code, as well as on educating the public as to the virtues and importance of an open Internet.

- 4.6 The Mozilla Corporation focuses on the development, promotion, and delivery of end-user products, and coordinates marketing, sponsorships and a range of distribution-related activities. The various activities of Mozilla Corporation focus on the end-user experience and are consistent with the public benefit goals of the Complainant.
- 4.7 The Complainant has earned immense reputation and goodwill in the course of trade and has received several awards from different juries. Details of a few are mentioned below:

Mozilla Awards

- Biggest Social Impact finalist at The Crunchies: Mozilla's StopWatching.US 2013
- Digital Leaders 50, Digital Leaders from Industry, 1st Place: Mozilla 2013
- Digital Leaders 50, Digital Leader Overall, 4th Place: Mozilla 2013
- Most Trusted Internet Company for Privacy: Mozilla 2013
- The American Business Award Most Innovative Company of the Year: Mozilla 2010
- American Business Awards Most Innovative Company 2008

Firefox OS Awards

- Meffy's Innovation in Technology: Firefox OS 2013
- TechRadar Best of Mobile World Congress People's Choice: Firefox OS 2013
- PC Pro MWC Greatest Hits: Firefox OS 2013
- LAPTOP Magazine Best Innovation, Best of MWC: Firefox OS 2013

Firefox Awards

- CHIP Top-Download: Firefox 2013
- CHIP Top App: Firefox for Android 2013
- CNET Editor's Choice Award for Best Browser: Firefox 4 2011
- CeBIT Best Open Source App for a Mobile Device: Firefox for mobile 2011

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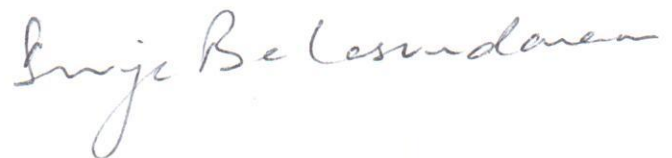
- CHIP Brand of the Year 2011: Mozilla Firefox 2011
- CNET Top 10 Mac Download of 2010 Firefox 2010
- PC Magazine Editors' Choice Award 2009
- CNET Webware 100 Winner 2009
- 2008 LinuxQuestions.org Members' Choice Awards Browser of the Year 2009
- InfoWorld Best of Open Source Software Awards 2008
- PC Magazine Editors' Choice 2008
- CNET Editors' Choice 2008
- Linux Journal Readers' Choice Favorite Web Browser 2008
- PC Pro Software of the Year 2007
- Abril Info Award, Software of the Year 2007
- Webware 100 Winner 2007
- PC World 100 Best Products of 2007
- PC Magazine Editors' Choice 2006
- CNET Editors' Choice 2006
- PC World's 100 Best Products 2006
- PC Magazine Technical Excellence, Software & Development Tools Award 2006
- PC Magazine Best of the Year Award 2005
- PC Pro Real World Award 2005
- CNET Editors' Choice 2005
- UK Usability Professionals' Association Award Best Software Application 2005
- Macworld Editor's Choice with a 4.5 Mice Rating 2005
- Softpedia User's Choice Award 2005
- TUX 2005 Readers' Choice Award 2005
- PC World Product of the Year 2005
- Forbes Best of the Web 2005
- PC Magazine Editors' Choice Award 2005
- SC Magazine Global Editor-in-Chief Award 2005
- LinuxQuestions.org Member's Choice Awards - Browser of the Year 2005
- PC Welt Editor's Choice Titan of the Year Best Open Source Project: Mozilla Firefox 2005
- Best Internet Tool, PC Welt Readers' Choice Award 2005
- PC Professionell Innovation of the Year, Software Award 2004/2005
- CNET Editors' Choice 2004
- LAPTOP Magazine Editors' Choice Award - Best Web Browser, 2004
- Linux World Fall Product Excellence Awards - Best in Show 2004
- Linux World Fall Product Excellence Awards - Best Open Source Solution 2004
- Linux Journal Editors' Choice Awards - Web Browser or Client 2004

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- MAXIMUM PC Softy, 1st Place 2004

Copies of a few brochures and annual report of the Complainant are provided as '**Annexure - D**' to this Complaint.

- 4.8 The global MOZILLA community (the members of which are referred to as Mozillians) comprising of technologists, thinkers and builders work together to keep the internet alive and accessible. The Mozilla Community has over 10,000 active Mozillians worldwide and the community conducts hundreds of events to encourage human collaboration across an open platform.
- 4.9 Mozilla India is a community driven initiative to raise awareness of Complainant's mission, and introduce Complainant to educational institutions, government organizations and corporate companies in India. On account of extensive promotion of the trade mark 'MOZILLA' by way of events, localization of products, offering assistance, knowledge and resources, the MOZILLA community has grown in India and the said mark has garnered extensive reputation and goodwill. Further, the 'MOZILLA' trademark has gained extensive visibility both nationally as well as internationally on account of co-branding with the community members and marketing collaboration with other like-minded brands governed by strict co-branding policy. The use of the keyword 'MOZILLA' in any leading search engine automatically throws the web pages of the Complainant among the leading hits. A printout of the search result from google.com is provided as '**Annexure - F**'.
- 4.10 The Complainant adopted the trade mark 'MOZILLA' in the year 1998. The word MOZILLA is an invented word and is the principal trademark of the Complainant. It also forms the dominant part of corporate name of the Complainant. Since adoption, the Complainant has been using the trade mark 'MOZILLA' in respect of its products / services.
- 4.11 The Complainant has taken effective steps to prevent third parties from jeopardizing and diluting the brand value associated with 'MOZILLA'. The use of the Complainant's trademarks is governed by a trade mark policy with a goal to (1) ensure that the Mozilla Marks remain reliable indicators of quality, source, and security; (2) to permit community members, software distributors, and others with whom the Complainant works to discuss Mozilla's products and to accurately describe their affiliation with the Complainant. A copy of the trade mark policy is provided as '**Annexure-E**'.



- 4.12 The Complainant is the registered owner of the trademark MOZILLA (as well as other marks bearing suffixes and prefixes to the word 'MOZILLA') in many countries throughout the world including India, and also has pending applications for such marks. Particulars of the MOZILLA trade mark registrations of the Complainant in a few jurisdictions is given herein below, these trademarks are valid and subsisting -

COUNTRY	TRADE MARK	NUMBER	CLASS	REGISTERED & RENEWED UP TO
INDIA	MOZILLA	1698244	9, 38	12-JUNE-2018
USA	MOZILLA	3187334	9,21,23,26,36,38	10-DEC-2016
USA	MOZILLA	2815227	9,21,23,26,36,38	11-FEB-2025
USA	MOZILLA	3011658	25,22,39	1-NOV-2015
UK	MOZILLA	EU000182899	9,38, 42	1-APR-2016

Print outs of the relevant pages taken from the website of the respective Trade Marks Registry and registration certificates are annexed hereto and collectively marked as '**Annexure - G**'.

- 4.13 The Complainant is also the registrant and proprietor of various 'MOZILLA' domain name registrations at international level such as Mozilla.com, Mozilla.net, Mozilla. Org, Mozilla.ca, Mozilla-uruguay.org.
- 4.14 The Complainant has granted trademark license to its wholly owned subsidiary M/s. Mozilla Corporation for the use of the trade mark 'MOZILLA'.
- 4.15 The Complainant has actively protected and enforced the rights associated with the mark 'MOZILLA'. The word 'MOZILLA' connotes the distinctiveness, reputation, quality, and goodwill acquired over several years and is understood as connoting association with the Complainant, it has evolved as a well-known mark solely associated with the Complainant.

5. **Respondent and its registration and use of the disputed domain name**

As per the Complainant, according to the search conducted on 21st October 2014 in the official website of the .In Registry i.e. www.registry.in/whois, the Respondent has created the disputed domain name on 26th June 2012. The Respondent is the current registrant of the disputed domain name. Copy of the search report is annexed to the Complaint as 'Annexure - A'. Printout of the web pages pertaining to the disputed domain are annexed as 'Annexure - B'. When the Complainant accessed the site of the Respondent, the page was directed to an advertising link.

6. **Contentions of the Complainant in establishing the 3 elements required under the INDRP**

Element 1 - In support of this element, i.e., the disputed domain name is identical or confusingly similar to Complainant's trademark, the Complainant has submitted that:

- It is the lawful owner of the trade mark 'MOZILLA' which is a coined word and hence inherently distinctive. The disputed domain name is identical to this mark. The Respondent is making calculated approach which is bound to result in conflict and confusion and will lead to dilution of the reputation associated with the Complainant. As a result, the Complainant's search engine ranking would be adversely impacted thereby directly resulting in quantifiable drop of reputation. The very existence of the Respondent's domain name would cause the public to believe that the Respondent and their domain name is sponsored by or affiliated to the Complainant;
- Further, the Respondent's domain name is registered without any due cause and would take unfair advantage of and /or be detrimental to the distinctive character and repute of the Complainant's mark, corporate name and domain names;
- The Respondent's domain name is liable to be prevented by Courts of Law by way of an injunction or appropriate order, thereby protecting the Complainant's IP rights;
- The Respondent has created and registered the disputed domain name subsequent to the Complainant's conception, adoption and usage of the trade mark and domain name 'MOZILLA';
- Further, the Respondent's domain name has been created subsequent to the launch of 'www.mozilla.com' and 'www.mozilla.org' by the Complainant;

Surje Balasundaram

- The Respondent is not the bona-fide owner, honest adopter or true/actual user of the disputed domain name and created it being fully aware of the Complainant's trade mark 'MOZILLA' and their domain names, so as to trade and benefit from the Complainant's repute and goodwill;
- If the Respondent is allowed to proceed to operate the website under the disputed domain name, the potential customers would be induced to subscribe to the services of the impugned website and deal with Respondent believing it to be licensed or authorized by the Complainant; or that the Respondent is carrying on activities that have been endorsed by the Complainant; or that the Respondent is a part of the Mozilla Community.

Element 2 - In support of this element, i.e., the Respondent has no rights, claims, or legitimate interests in respect of the disputed domain name, the Complainant has submitted that:

- It had adopted and registered the domains 'www.mozilla.com' and 'www.mozilla.org' in the year 1998 to promote innovation on the Internet. The domain name acts as a fulcrum in providing information to its potential customers around the world wanting to join the Mozilla community. The website in which the www.mozilla.com resolves is available in 46 languages and dialects. The disputed domain name has been registered by the Respondent on 26th June 2012, which is almost after 14 years of the adoption and use of the domains 'www.mozilla.com' and 'www.mozilla.org' by the Complainant;
- The disputed domain name incorporates the trade mark 'MOZILLA' of the Complainant in its entirety without any addition and deletion. Therefore it is beyond doubt that the disputed domain name is identical to the trade mark of the Complainant. The Complainant has relied on the decision of this Hon'ble Registry passed in the case of Indian Hotels Company Limited Vs. Mr. Sanjay Jha (disputed domain name - gingerhotels.co.in) in this regard;
- The Respondent is not or has never been known by the name 'MOZILLA' or by any similar name. Even assuming so, any such rights would be significantly predated by the Complainant's rights;
- The Respondent's registration and use of the disputed 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, divert business, tarnish the repute and goodwill of the Complainant and unduly gain in all aspects to the detriment of the Complainant. The Respondent has no legitimate interest in the Complainant's

Sanjay Belesundaran

trade mark 'MOZILLA' and has created the disputed domain name with the purpose to derive profit from Pay-Per-Click links.

Element 3 – in support of this element, that the disputed domain name was registered and is being used in bad faith, the Complainant contends that:

- At the time of creation and registration of the disputed domain name by the Respondent, the Complainant has already a well-established business presence globally. The Respondent has not been authorized, licensed or otherwise consented by the Complainant to use the trade mark 'MOZILLA' or to seek any registration incorporating the said mark;
- No doubt being aware of the Complainant's aforesaid trademarks, domain names, the repute, recognition and goodwill that the Complainant has achieved worldwide, the Respondent has subsequently in all mala-fide intention adopted the disputed domain name incorporating the said trade mark of the Complainant;
- The registration of the disputed domain name and its subsequent use by the Respondent has a purpose of defrauding the public. It 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 'MOZILLA' mark, such that the public would in all likelihood falsely believe that the disputed domain name is sponsored, endorsed or authorized by or in association with the Complainant.

7. Discussions

At the outset, it is to be mentioned that the Arbitral Tribunal has been properly constituted. Under paragraph 4 of the INDRP, the Complainant must prove each of the following three elements of its case - the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. From a detailed reading of the Complaint and supporting annexures, the Arbitrator finds that the Complainant has established all the three elements. The finding is made keeping in mind these specific aspects:

- a) 'MOZILLA' is an invented word and is the principal trademark of the Complainant which also forms the dominant part of corporate name of the Complainant;

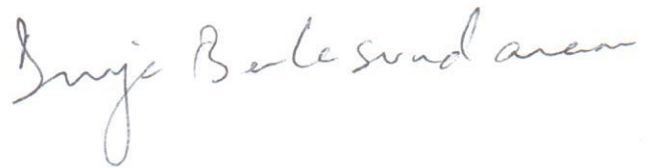
Sanjay Balasubramanian

- b) the Complainant adopted the mark in 1998 and has obtained registration and made applications for registration of the trademark 'MOZILLA' in India and several other countries of the world;
- c) the Complainant owns and controls domain names such as 'www.mozilla.org' and various others;
- d) the Complainant has generated good and valuable reputation in its mark 'MOZILLA' over several years;
- e) The mark MOZILLA is well-known as originating from the Complainant and denoting the goods/services of the Complainant;
- f) Respondent has adopted and registered an identical domain name much subsequent to the Complainant's adoption and use without any authorization/approval from the Complainant;
- g) Respondent is not known by MOZILLA or any other similar name and there appears to be no legitimate reason for the Respondent to have adopted the word MOZILLA for his domain or as a part of his email address which is a coined word and not a dictionary word;
- h) Given the wide spread prior use of MOZILLA by the Complainant, the inference is that Respondent was aware of Complainant's mark and has adopted the same based on the mark of the Complainant;
- i) Use of an identical domain name by the Respondent is bound to result in confusion in the minds of the public as to as association or affiliation with the Complainant, or for the members of the public to believe that the Respondent is a part of the Mozilla Community, which is not the case;
- j) The disputed domain name appears to have been registered with the purpose to derive profit from advertising revenue, and/or to trade upon the reputation of the Complainant in its mark MOZILLA;
- k) The Respondent was served notice of the Complaint by email on December 4, 2014 as also by BLUE DART courier service under Airway Bill Number 13645152636 and also subsequently by the .in Registry and the Arbitrator by their emails. Sufficient time was provided to the Respondent to reply to the Complaint, however, Respondent has chosen not to submit any response.

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8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name 'Mozilla.in' be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM

ARBITRATOR

Dated - January 15, 2015 at New Delhi, India