



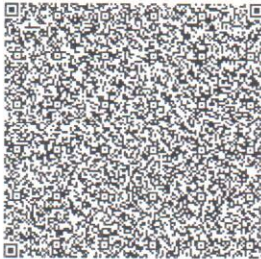
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL58232132999103M
Certificate Issued Date	: 20-May-2014 03:59 PM
Account Reference	: IMPACC (IV)/ dl839203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83920313428781945712M
Purchased by	: SANJAY KUMAR SINGH Arbitrator
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH Arbitrator
Second Party	: Not Applicable
Stamp Duty Paid By	: SANJAY KUMAR SINGH Arbitrator
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

BEFORE SANJAY KUMAR SINGH, ARBITRATOR

M/S M P Laxi's Limited --- Complainant

VS

Mr. Shiva Kumar

--- Respondent

Sanjay Kumar Singh

Statutory Alert:

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

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

M/s Mphasis Limited
(Formerly known as M/s Mphasis BFL Limited)
Bagmane Parin, 6th Floor, Bagmane Technology Park,
Byrasandra, C V Raman Nagar, Bangalore- 560093
India E-mail: anand.vj@mphasis.com,

Through its authorized representative

Mr. Arunava Mukherjee,
DePenning & DePenning,
Patents-TradeMarks-Designs-Copyright,
120 Velachery Main Road Guindy,
Chennai-600032, India
E-mail: domain@depenning.com

COMPLAINANT

Versus

Mr Shivakumar
39 siute, 2nd Phase,
City-London, Postal Code- E13 9pw, Great Britain
E-mail: shivakumaran.8.2@gmail.com

RESPONDENT

I. THE PARTIES

A. THE COMPLAINANT:

1. The Complainant in this administrative proceeding is M/s Mphasis Limited (formerly known as M/s Mphasis BFL Limited) Bagmane Parin, 6th Floor, Bagmane Technology Park, Byrasandra, C V Raman Nagar, Bangalore- 560093 India.
E-mail: anand.vj@mphasis.com.
2. Complainant's authorized representatives in this administrative proceeding are:
Mr. Arunava Mukherjee, DePenning & DePenning, Patents-TradeMarks-Designs-Copyright, 120 Velachery Main Road Guindy, Chennai-600032, India, E-mail: domain@depenning.com
4. The Complainant's preferred method of communications directed to the Complainant in the administrative proceedings is as follows:

Sanjay K Singh

B. THE RESPONDENT

The Respondent in this administrative proceeding is Mr Shivakumar, 39 siute, 2nd Phase, City-London, Postal Code- E13 9pw, Great Britain.

E-mail: shivakumaran.8.2@gmail.com

The Complainant has submitted that it is not aware of any other details as regards the legal status, place of incorporation, principal place of business etc. of the Respondent. From the search at the "who is" database of .In Registry the Complainant came to know that the disputed domain name is not available and only came to know that this website is registered by the Respondent.

II THE DOMAIN NAME AND REGISTRAR:

This dispute concerns the domain name is www.mphasis.in

The Registrar with which the domain name is registered is given below:

Webiq Domains Solutions Pvt. Ltd. (R131-AFIN)

III. SUBMISSION OF COMPLAINT:

The complainant has made the following submissions:-

- a) The domain name in question is identical to the Complainant's well known trade mark 'MPHASIS';
- b) The Respondent has no claims, rights or legitimate interests in respect of disputed domain name;
- c) The impugned domain name 'www.mphasis.in' has been registered in bad faith;
- d) 'MPHASIS' is the principal trade mark of the Complainant and also form the dominant part of corporate name of the Complainant;
- e) The Complainant has obtained registration and made applications for registration of the trade mark 'MPHASIS' in India and several other countries of the world;
- f) The Complainant also owns and controls domain names such as 'www.mphasis.com' and various others;
- g) The Complainant has generated good and valuable reputation and vast amount of goodwill has accrued to the Complainant in the name of 'MPHASIS' through internet over several years;
- h) The Respondent has adopted and registered the disputed domain name, which is identical to the trade mark and/or corporate name of the Complainant, thereby wrongfully, illegally

Signature for 3/3/16

and dishonestly trading upon the reputation of the Complainant.

The complainant has submitted that the disputed domain name is identical to the Complainant's trade mark 'MPHASIS', which on account of having acquired both statutory and common law rights in various jurisdictions all over the world including India has also obtained well-known status. It has been submitted by the complainant that the disputed domain name 'www.mphasis.in' has been registered by the Respondent without any authorization/approval from the Complainant. The disputed domain name is identical to the trade mark 'MPHASIS' and its other variants of the Complainant and is also identical to the Complainant's corporate name and domain name. The complainant has relied on the evidence relating to ownership and details of Complainant's trade mark and domain as Annexure - E' of the instant complaint. The complainant has provided a true and correct copy of the domain name dispute resolution policy that applies to the domain name in question as 'Annexure - C' to this complaint.

IV. FACTUAL AND LEGAL GROUNDS:

The Complainant has submitted that M/s. Mphasis Limited is an Information Technology services company and is certified with ISO 9001 :2008, ISO/IEC 27001 :2005 and also assessed at CMMI v 1.2 Level 5. The Complainant has ranked no. 7 in India IT companies and overall no. 165 by Fortune India 500 in 2011 with more than 40,000 employees as of 2012. The Complainant has 29 offices in 14 countries with delivery centers in India, Sri Lanka, China, North America and Europe. Complainant's products' and services under the brand 'MPHASIS' have gained tremendous acceptance, wide reputation and marketability internationally.

The Complainant has submitted that it is engaged in providing information technology services to its customers around the world and also provides integrated solutions that include business process outsourcing, infrastructure technology, and application services. The application services offered by the Complainant include application development as well as applications maintenance and support services. The Complainant has submitted that it serves the markets such as financial services & insurance, healthcare, manufacturing, government, transportation, communications, and consumer & retail industries.

The Complainant has submitted that it is the prior adopter and user of the trade mark 'MPHASIS'. Since adoption the Complainant has been using the trade mark 'MPHASIS' in respect of its distinguished products and services and has been trading under the said name extensively across the world. It has been stated by the complainant that the word 'MPHASIS' is coined and

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a distinctive name having no dictionary meaning. The said products and services of the Complainant are identified and availed by the trader and consumers throughout the world under the well-known trade mark 'MPHASIS'.

The Complainant has submitted that due to global presence of the Complainant and availability of the Complainant's superior products and services under the trade mark 'MPHASIS' around the world, the brand 'MPHASIS' has become well-known throughout the world.

The Complainant has submitted that Complainant has been extensively advertising their products and services through various printed media including newspapers, magazines and trade journals, leaflets and other promotional literature depicting the said trade mark which have been extensively distributed through the Complainant's offices situated throughout the world; and also have been advertising through electronic media such as internet, satellite television; and due to the superior quality of the Complainant's, goods and services, the trade mark of the Complainant, has acquired immense reputation and goodwill amongst the trade and public. None except, the Complainant have any justification whatsoever to adopt and use the said well-known trade mark hence, there cannot be any possible explanation for an individual trader to adopt the similar trade mark in respect of any goods/services. The Complainant has further submitted that By virtue of the extensive use and advertisement of the said mark, the mark is solely associated with the Complainant and no one else. It has been stated by the complainant that the use of the keyword 'MPHASIS' in any leading search engine automatically throws the web pages of the Complainant among the leading hits. The Complainant has annexed printout of the search result procured from the famous search engine google.com as '**Annexure - D**'.

The Complainant has submitted that by reason of popularity, demand and extensive use, which has been acknowledged by the trade and public, the products and services under the trade mark 'MPHASIS' has become distinctive of the goods, services and business of the Complainant and trade and public associate the trade mark 'MPHASIS' particularly with. The Complainant and none else and the said mark of the Complainant has acquired a secondary meaning in the course of trade.

The Complainant has further submitted that on account of extensive usage of the trade mark 'MPHASIS', the said mark is identified solely and exclusively only with the Complainant and none other. Further, the 'MPHASIS' brand, has gained a huge customer base internationally and is

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identified, associated and recognized only with the Complainant. Therefore, adoption and/or usage of the mark 'MPHASIS' by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages of others. Such unauthorized usages of the Complainant's mark, 'MPHASIS', and domain names comprising of 'MPHASIS' by others would also amount to infringement and passing off actions and is liable to be prevented in Courts of Law. The activity of the disputed domain holder is nothing but an act of cybersquatting.

A. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADE MARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS:

(i) The Complainant has submitted that it is the lawful owner of the trade mark 'MPHASIS'. The said trade mark endures as a symbol of quality, dependability and reliability of the products in relation to which it is used and enjoys vast reputation and enviable goodwill associated with the Complainant in several countries. The Complainant has submitted that it has applied for and registered the trade mark 'MPHASIS' and its other variants in several countries including India. Particulars of few registered trade mark of the Complainant are given herein below:

<u>Country</u>	<u>Trade Mark</u>	<u>International Classes</u>	<u>Reg. No.</u>	<u>Status</u>
INDIA	MPHASIS	9	1048574	Registered
INDIA	MPHASIS	42	1446309	Registered
UK	MPHASIS	35 & 42	E5359088	Registered
USA	MPHASIS	35	3310309	Registered
AUSTRALIA	MPHASIS	9	1048574	Registered

The aforesaid registered trademarks of the Complainant are still valid and subsisting. The Complainant has relied on the Printout of the relevant pages taken from the website of the respective Trade Marks Registry and registration certificates and has annexed the same as 'Annexure - E'.

(ii) The Complainant has submitted that it is the registrant and proprietor of various 'MPHASIS' domain name registrations at International level and domestic level. Details of the said domains are as follows:

Sl. No.	Domain Name	ctld/tld	Registrant
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1.	mphasis	.com	Mls. MphasiS Limited
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(iii) The Complainant has submitted that the Respondent's domain name is nothing but a blatant imitation of the Complainant's trade mark and trade name. The Respondent is making calculated approach and bound to result in conflict and confusion will lead to dilution of the reputation associated with the Complainant's business. As a result the Complainant's search engine ranking would be adversely impacted thereby directly resulting in quantifiable drop of reputation and revenue.

(iv) The Complainant has submitted that respondent's domain name is identical to that of the Complainant. 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.

(v) The Complainant has submitted that it the respondent's domain name without any due cause is taking and would take unfair advantage of and for be detrimental to the distinctive character and repute of the Complainant's mark, corporate name and domain names.

(vi) The Complainant has submitted that 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 Intellectual Property Rights.

(vii) The Complainant has submitted that 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 'MPHASIS'. Further, the Respondent's domain name has been created subsequent to the launch of 'www.mphasis.com' by the Complainant.

(viii) The Complainant has submitted that 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 'MPHASIS' and their domain names, so as to trade and benefit from the Complainant's repute and goodwill.

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(ix) The Complainant has submitted that the corporate name, trademarks and domain names of the Complainant are highly distinctive on account of their extensive use which has qualified 'MPHASIS' into a well-known mark under Trade Marks Law. The Complainant has submitted that under the circumstance, if the respondent is allowed to proceed to operate the web site under the disputed domain name, the potential customers would be induced to:

- a) Subscribe to the services of the impugned web site and deal with Respondent believing it to be licensed or authorized by the Complainant;
- b) Believe that the Respondent is carrying on activities that have been endorsed by the Complainant;
- c) Believe that the Respondent is another business entity of the Complainant;

B. THE RESPONDENT HAS NO RIGHTS CLAIMS, OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

(i) The Complainant has submitted that it had adopted and registered the domain 'www.mphasis.com' way back in the year 1998 for the purpose of its business and also for providing information to its potential customers around the world. The Complainant has submitted that the disputed domain name has been registered by the Respondent on 9th November 2013, which is almost after 15 years of the adoption and use of the domain 'www.mphasis.com' by the Complainant. At this time, the Complainant had already established considerable reputation in the trade mark 'MPHASIS' and had been actively using the web site 'www.mphasis.com'.

(ii) The Complainant has submitted that on account of the long and consistent use of the trade mark 'MPHASIS', it is stated that it has attained certain distinctiveness and has become famous to be associated solely and exclusively with the Complainant worldwide including in India. So far as use of the trade mark 'MPHASIS' is concerned, the Complainant has been continuously using their said well-known trade mark for more than fifteen years. Whereas the disputed domain name was created by the Respondent on 9th November 2013 which is almost after 15 years of the adoption and use of the trade mark 'MPHASIS' by the Complainant.

(iii) The Complainant has submitted that the information available in the Respondent's disputed domain name 'www.mphasis.in' is related and/or cognate and allied to the goods and services offered by the Complainant. This clearly shows that this is a cybersquatting activity, which is a menace to the society as a whole and stringent curbing measures should be adopted to

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eradicate the same. The Complainant has further submitted that the Respondent is also currently using the disputed domain name for placing sponsored links to other third party sites indicates the Respondent's intention to exploit the Complainant's mark. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard the Complainant has relied on the decision of this Hon'ble Registry passed in the case of *AB Electrolux Vs. Ruo Chang, (electrolux-professional.co.in) INDRP case No. 333 of 2nd April 2012*.

(iv) The Complainant has submitted that the disputed domain name clearly incorporates the well-known trade mark 'MPHASIS' 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 said well-known trademark of the Complainant. In this regard the Complainant has relied on the on the decision of this Hon'ble Registry passed in the case of *Indian Hotels Company Limited Vs. Mr Sanjay (gingerhotels.co.in) Jha, INDRP case No. 148 of 27th September 2010*. Where it was held that a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark).

(v) As per Complainant it believes that the Respondent is not or has never been known by the name 'MPHASIS' or by any confusingly similar name and assuming but not admitting that even if the Respondent has accrued any rights in the disputed domain name 'www.mphasis.in' since its registration, any such rights would be significantly predated by the Complainant's rights.

(vi) The Complainant has submitted that 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 by offering similar goods and services as that of the Complainant, divert business, tarnish the repute and goodwill of the Complainant and the said mark and unduly gain in all aspects to the detriment of the Complainant. The Respondent has no legitimate interest in the Complainant's trade mark 'MPHASIS' and has created the disputed domain name also with the purpose to derive profit from Pay-Per-Click links.

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH.

(i) The Complainant has stated 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 Respondents have not been authorized, licensed or otherwise consented by the Complainant to use the trade mark 'MPHASIS' or to seek any sort of registration incorporating the said marks and domain name of the Complainant.

Sanjay K. Jha

(ii) The Complainant has also submitted that no doubt being aware of the Complainant's aforesaid trademarks, domain names, the repute, recognition and goodwill that the Complainant has achieved worldwide, the Respondents have subsequently in all mala-fide intention adopted the disputed domain name incorporating the said trade mark of the Complainant.

(iii) The Complainant has further submitted that the Respondent is currently providing information about the Complainant's products and any visitor to the impugned website would in all probability retain an impression that the Complainant's products may be purchased through the Respondent's website and further adversely affect directly the Complainant's business and thereafter impact the reputation, goodwill entrusted to the Complainant.

(iv) The Complainant has submitted that the registration of the disputed domain name and its subsequent use by the Respondent has a purpose, the purpose being defrauding the public. The registration of the disputed 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 'MPHASIS' trade mark, trade name and domain name 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. The Complainant believes this has been done for fraudulent purposes.

(v) The Complainant has submitted that to the best of Complainant's knowledge, Respondent did not use or register the mark or name 'MPHASIS' or any variation thereof prior to the date upon which the disputed domain name was registered. Neither does it appear that the Respondent is/was commonly known by the mark or name 'MPHASIS / **www.mphasis.in**' or any variation thereof prior to the disputed domain name registration.

The Complainant has prayed that the disputed domain name '**www.mphasis.in**' be rightfully transferred to the Complainant herein.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name **www.mphasis.in**
3. I was appointed as Sole Arbitrator in the matter by NIXI.

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4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .IN Registry of NIXI.
6. On 13-04-2014, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of the receipt of the notice. However the respondent did not file any reply to the complaint nor did he file any supportive document /evidence despite the notice duly served on the respondent at his e-mail address
7. On 05-05-2014, I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *FIVE* days from receipt of the notice failing which the award would be passed ex-parte on the merits of the complaint and as per law of the land.
8. However the respondent did not file any reply to the complaint of the complainant nor did he file any supportive document /evidence despite the notices duly served on the respondent at his e-mail address "shivakumaran.8.2@gmail.com"
9. I have perused the records and have gone through the contents of the complaint. Since respondent has not filed any reply hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.
10. The complainant has forcefully contended that there is prima facie evidence of respondent's involvement in bad faith and cybersquatting as the respondent has registered an unrelated domain name similar to the complainant's trade mark and corporate name.
11. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put

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forth and has not provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.


12. It has been held in Indian decision M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.
13. Thus the conclusion is that the domain name "www.mphasis.in" is identical and confusingly similar to the trademark of complainant "MPHASIS" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "www.mphasis.in" in bad faith.

RELIEF

The domain name www.mphasis.in of respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name www.mphasis.in to him, as complainant has established its bonafide rights in trademark. In facts and circumstances of the complaint and in view of law discussed herein above I direct that the Domain name be transferred to the complainant by the registry.
No order as to costs.

Delhi

Date: 19/05/2014


(Sanjay Kumar Singh)
Arbitrator