

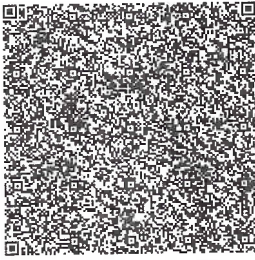
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL94900962299644P
Certificate Issued Date	: 19-Jun-2017 03:16 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1790715248994556P
Purchased by	: DIVYA BALASUNDARAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DIVYA BALASUNDARAM
Second Party	: Not Applicable
Stamp Duty Paid By	: DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Before the Sole Arbitrator, Divya Balasundaram
C/O National Internet Exchange of India

In the matter of :

Oracle International Corporation Vs. Ritesh Galam

Divya Balasundaram

Statutory Alert:

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ARBITRAL AWARD

.IN REGISTRY

C/O NATIONAL INTERNET EXCHANGE OF INDIA

DISPUTED DOMAIN NAME: <Peoplesoft.in>

BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM

Oracle International Corporation
500 Oracle Parkway
Redwood Shores California 94065
United States of America

...Complainant

Versus

Ritesh Galam
505 Delta Building Technology Street
Mumbai Maharashtra 400076
India

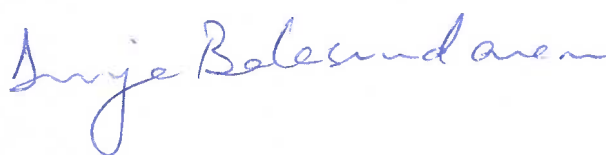
...Respondent

1. The Parties

- 1.1 The Complainant is Oracle International Corporation of the address 500 Oracle Parkway, Redwood Shores California 94065, United States of America, represented by its attorney and authorized representative, Steven M. Levy, of Fairwinds Partners, 301 Fulton Street, Philadelphia, PA 19147, United States.
- 1.2 The Respondent is Ritesh Galam of the address 505 Delta Building, Technology Street, Mumbai Maharashtra 400076, India.

2. The Domain Names and Registrar

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

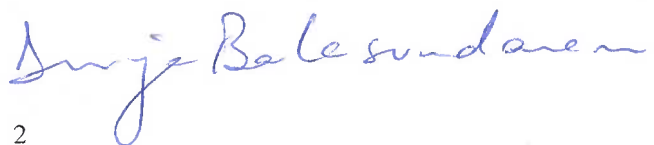


3. Procedural History

- 3.1 Arbitrator received an email on April 24, 2017 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <peoplesoft.in>. Arbitrator confirmed availability by email of April 25, 2017 and also sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules.
- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on April 28, 2017 and Arbitrator received soft copy of the Complaint along with Annexures on April 28, 2017. Hard copy was also received by courier.
- 3.3 Arbitral proceedings were commenced by Arbitrator on May 01, 2017 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days.
- 3.4 The Respondent has not entered appearance nor filed any reply.
- 3.5 Arbitrator sent email on June 14, 2017 to Respondent notifying it of its default.
- 3.6 The language of these proceedings in English.

4. Background of the Complainant and its rights in the trademark PEOPLESOFT as stated in the Complaint

- 4.1 The Complainant, headquartered in Redwood City, California, in the United States, is one of the world's largest developers and marketers of enterprise software products and computer hardware systems – particularly its own brands of database management systems and applications. As of 2011, Complainant is the second-largest software maker by revenue, after Microsoft and it has more than 420,000 customers (including 100 of the Fortune 100 corporations).
- 4.2 In 2005, Complainant acquired a company called Peoplesoft, Inc. and its main product, suite of software products focused on human resource management systems (HRMS), Financial Management Solutions (FMS), supply chain management (SCM), customer relationship management (CRM), and enterprise performance management (EPM) systems for corporations, governments, and



other organizations. These products and services are sold throughout the world under the PEOPLESOFT trademark (the "PEOPLESOFT Mark"). Complainant's customers have access to an extensive network of both live and online support services and resources for these products and many local and national user groups have formed around the PEOPLESOFT products and services.

- 4.3 Complainant extensively promotes its PEOPLESOFT products and services through a variety of advertising and promotional mediums. It utilizes advertisements in both general-interest and industry-focused magazines, on websites and social media pages, and at computing industry trade shows. The PEOPLESOFT products and services have been the subject of significant unsolicited news coverage in high-profile outlets such as CNN, the BBC, and others.
- 4.4 Complainant also takes seriously its duty to give back to the community and has created Oracle Giving, a philanthropy endeavor which donates over ten million dollars each year to worthy causes.
- 4.5 As a result of the long usage and promotion of the PEOPLESOFT Mark, it has become overwhelmingly famous and widely recognized around the world by both computing industry professionals and members of the general public. Examples of how the PEOPLESOFT Mark is used and promoted in relation to its related goods and services over the years are provided at Exhibit D.
- 4.6 The PEOPLESOFT Mark is aggressively protected through registration and enforcement. Complainant owns many trademark registrations around the world for the PEOPLESOFT Mark, including those in India, the United States, the European Community, and others:

Mark	Goods and Services	Reg. No.	Reg. Date
PEOPLESOFT	Cl. 9 Computer software and programs, namely, client / server architecture, relational database integration, database management, data access, data control and graphic user interface for business applications	614233 (India)	17-Dec-1993
PEOPLESOFT	Cl. 42 Cloud computing services featuring computer software for enterprise resource planning (ERP), human capital	Ser. No. 3293510 (India)	Accepted & Advertis

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	management (HCM), workforce management, talent management, financial management, financial control and reporting, governance, risk and compliance (GRC) management, travel and expense management, supplier relationship management (SRM), catalog management, procurement and settlement management, supplier contract management, enterprise services automation, project portfolio management (PPM), project analytics, project costing, billing, supply chain management (SCM), customer order management, inventory and fulfillment management, application development, software integration, user security management, data security management, and security audit and session management.		ed (Filed 2-Nov-2015)
PEOPLESOFT	IC 9. US 021 023 026 036 038. G & S: computer software and programs; namely, [client/server architecture,] relational database integration, database management, data access, data control, and graphic user interface for business applications. FIRST USE: 19881128. FIRST USE IN COMMERCE: 19881128	1929075 (USA)	24-Oct-1995 (Filed 20-Dec-1993)
PEOPLESOFT	Classes 9 and 42 (see below)	4925614 (USA)	29-Mar-2016 (Filed 5-May-2015)
IC 009. US 021 023 026 036 038. G & S: Computer software for enterprise resource planning (ERP), human capital management (HCM), workforce management, talent management, financial management, financial control and reporting, governance, risk and compliance (GRC) management, travel and expense management, supplier relationship management (SRM), catalog management, procurement and settlement management, supplier contract management,			

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enterprise services automation, project portfolio management (PPM), project analytics, project costing, billing, supply chain management (SCM), customer order management, inventory and fulfillment management, application development, software integration, user security management, data security management, and security audit and session management. FIRST USE: 20130300. FIRST USE IN COMMERCE: 20130300

IC 042. US 100 101. G & S: Cloud computing services featuring computer software for enterprise resource planning (ERP), human capital management (HCM), workforce management, talent management, financial management, financial control and reporting, governance, risk and compliance (GRC) management, travel and expense management, supplier relationship management (SRM), catalog management, procurement and settlement management, supplier contract management, enterprise services automation, project portfolio management (PPM), project analytics, project costing, billing, supply chain management (SCM), customer order management, inventory and fulfillment management, application development, software integration, user security management, data security management, and security audit and session management. FIRST USE: 20131000. FIRST USE IN COMMERCE: 20131000

PEOPLESOFT	Classes 9, 41, and 42 (see below)	09062861 (EUTM)	12-Nov-2010 (Filed 28-Apr-2010)
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Cl. 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus; computer software and programs; namely client/server architecture software, relational database integration software, database management software, data access software, data control software and graphic user interface software for business applications.

Cl. 41 Education; providing of training; entertainment; sporting and cultural activities; educational services in the fields of production of computer software and programs, namely client/server architecture software, relational database integration software, database management software, data access software, data

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control software and graphic user interface software for business applications.
Cl. 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; production of computer software and programs, namely client/server architecture relational database integration, database management, data access, data control and graphic user interface for business applications.

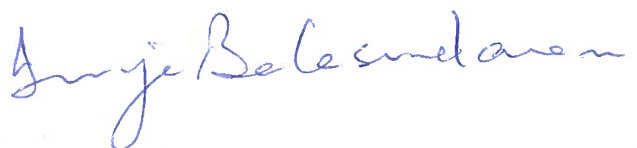
Copies of Complainant's abovementioned trademark registrations are provided at Exhibit E and a copy of the worldwide trademark assignment from Peoplesoft, Inc. to Complainant is also included.

5. Respondent and its registration of the impugned domain name

- 5.1 The impugned domain name was registered by the Respondent on November 27, 2016. The WHOIS records in respect of the disputed domain name have been provided at Exhibit - B.

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

- 6.1 Respondent's registration of the <Peoplesoft.in> domain violates the Policy.
- 6.2 The <Peoplesoft.in> domain is identical or confusingly similar to the Mark under Policy 4(i). The <Peoplesoft.in> domain is confusingly similar, on its face, to Complainant's registered and distinctive PEOPLESOFT Mark. Trademark registrations for the Mark were obtained, and the Mark became globally famous long prior to the creation date of the <Peoplesoft.in> domain.
- 6.3 Apart from its use of the .in TLD Respondent's <Peoplesoft.in> domain is identical, on its face, to Complainant's registered PEOPLESOFT Mark. At a minimum, the domain is confusingly similar to Complainant's Mark. Further, in light of the fame of the PEOPLESOFT Mark and as a truly unique combination of words, it is not possible that the Respondent chose the <Peoplesoft.in> domain out of its own original imagination or for any reason other than its confusing similarity with the Mark.



- 6.4 Further, the addition of the .in gTLD does nothing to alleviate confusion between the PEOPLESOFT Mark and the <Peoplesoft.in> domain.
- 6.5 Respondent has no rights or legitimate interest in the <Peoplesoft.in> domain under Policy 4(ii). Section 7 of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate Respondent's rights or legitimate interests to the <Peoplesoft.in> domain. None of these circumstances apply to Respondent in the present dispute.
- 6.6 The Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the <Peoplesoft.in> domain name or the PEOPLESOFT Mark.
- 6.7 Respondent's actions are not a bona fide offering of goods or services under Policy 7(i). When a user inputs Respondent's <Peoplesoft.in> domain, their browser is immediately redirected to the URL ttb.isofterkit.com and then on to a website at dlmacfiles.com (Exhibit F). This website displays a false message urging the user to update its Adobe Flash player. As more fully described in Exhibit F-5, this is a rather common scheme by which websites deposit a virus or malware on a user's computer. Such virus is then used for the purposes of gathering sensitive information from the computer, often for the purposes of identity theft. Such activity cannot possibly be considered to be a bona fide use of the <Peoplesoft.in> domain name under 7(i) of the Policy.
- 6.8 After the Respondent was put on notice of the present dispute it removed this function from its domain name which now does not resolve to any website. Nevertheless, such post-dispute changes are irrelevant to the present case as they only reflect Respondent's attempt to avoid enforcement of the INDRP against its domain name.
- 6.9 With respect to Policy 7(ii), the whois records for the <Peoplesoft.in> domain lists Respondent as "ritesh galam / N/A." Upon information and belief, Respondent is not commonly known by the <Peoplesoft.in> domain or the name "PEOPLESOFT" nor does Respondent operate a legitimate business or other organization under the PEOPLESOFT Mark or this domain name and does not own any trademark or service mark rights in the "PEOPLESOFT" name.
- 6.10 Next, Respondent is not making a legitimate noncommercial or fair use of the <Peoplesoft.in> domain without intent for commercial gain, and so its actions do not fall within Policy 7(iii). The <Peoplesoft.in> domain is not being used for

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any generic or descriptive meaning of the words therein. Rather, Respondent uses the domain to confuse and misleadingly divert consumers. Such use cannot be considered fair and does not fit into any accepted category of fair use such as comment, criticism, political speech, etc. Based upon the strong global reputation of the PEOPLESOFT Mark, those who see the <Peoplesoft.in> domain will immediately perceive the domain to refer to Complainant.

- 6.11 For the Respondent to claim that it is making, or intends to make, some legitimate or fair use of the <Peoplesoft.in> domain would be disingenuous and highly suspect.
- 6.12 Respondent's use has tarnished and diluted Complainant's Mark. Respondent has diminished the public's capacity to associate the PEOPLESOFT Mark with the quality products and services offered under the Mark by Complainant as a result of its using the Mark in association with websites that offer goods and services not provided by the Complainant. Respondent's use creates the very real risk that Complainant's trademark is not only being associated with numerous products and services not related to Complainant's branded products, but also to products and services over which Complainant has no quality control.
- 6.13 Finally, as set out more fully below and in Exhibit G, Respondent has attempted to sell the <Peoplesoft.in> domain to Complainant at an inflated price. In addition to the deposition of malware on users' computers, this reveals Respondent's other planned use of the domain and provides it with no greater claim to legitimacy.
- 6.14 Respondent registered the <Peoplesoft.in> domain in bad faith under Policy 4(iii). The Policy clearly explains that bad faith can be found in a number of different circumstances.
- 6.15 Respondent intentionally used the globally well-known PEOPLESOFT Mark without consent from Complainant. Respondent was on actual notice of Complainant's rights in its well-known Mark as a result of Complainant's extensive and global use of the Mark which long predates the date on which Respondent acquired the <Peoplesoft.in> domain. Given its unique combination of words and the strong global reputation of the PEOPLESOFT name, the Respondent could only have created the <Peoplesoft.in> domain upon its knowledge of Complainant's Mark rather than out of its own original imagination.

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- 6.16 It is also apparent that Respondent failed to meet its obligation under 3 of the Policy by not determining if the <Peoplesoft.in> domain violates Complainant's trademark rights. Even a simple Google search of the word "peoplesoft" would have quickly revealed Complainant's PEOPLESOFT Mark to the Respondent (Exhibit D-17). Therefore, Respondent intentionally registered and used the <Peoplesoft.in> domain name in bad faith with knowledge of, and in violation of Complainant's trademark rights in its PEOPLESOFT Mark.
- 6.17 Next, evidence of the Respondent's bad faith intention to earn money from the <Peoplesoft.in> domain name under Policy 6(iii) is seen in the function of the domain name itself. As noted above, the domain name ultimately resolves to a website that attempts to trick users into depositing a virus or malware onto their computers thus leaving them vulnerable to hacking and identity theft. This is all in the pursuit of profit, either for Respondent or for the owner of the redirected website. Most likely, Respondent receives compensation based upon the number of users that are redirected to this other website. Moreover, Respondent's use of the <Peoplesoft.in> domain and its redirected website results in a commercial gain for others by forwarding visitors to the website of a third party who, in some cases, may commercially gain from the planting of this virus or malware, or from engaging in identity theft. There is no other rational explanation for Respondent having registered and maintained the <Peoplesoft.in> domain and redirected it to a website that engages in such questionable actions. Even if the Respondent, itself, is not the recipient of forwarding fees, in many UDRP cases, Panels have held that there only needs to be commercial gain sought by some party for the use to be commercial.
- 6.18 Regardless, such use of the domain name strongly supports a finding of bad faith registration and use by the Respondent to profit from confusion between its <Peoplesoft.in> domain name and Complainant's well-known PEOPLESOFT Mark.
- 6.19 Respondent may claim that it somehow did not know that its <Peoplesoft.in> domain name was being used in this manner, however, this is irrelevant. It is well settled that, as the owner of the <Peoplesoft.in> domain name, Respondent is entirely and solely responsible for the functioning of the domain name.
- 6.20 Adding even more certainty to this conclusion of bad faith, after Complainant's Representative sent a demand letter to Respondent on February 13, 2017, it received a reply email from Respondent indicating that he was willing to transfer the <Peoplesoft.in> domain name to Complainant upon payment of one

thousand two hundred US Dollars (US\$1200) as a "technical fee" (Exhibit G). Respondent clearly knew that such request was improper as his email specifically stated "I have asked my lawyer friend, he said I can not talk to you with intension of sell this domain." Id. Despite Complainant's attempt to seek a reasonable settlement of this dispute, the Respondent would not reduce its price below \$1200. It is expressly set out in the Policy at 6(i) that offering to sell an infringing domain to a brand owner for a price far in excess of the registration cost is an obvious display of the Respondent's bad faith. In the present case, Respondent's request for US\$1200 is clearly far and beyond its registration costs and so this fully supports a finding of bad faith under the Policy.

7. Discussions

- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 7.2 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark PEOPLESOFT based upon the contentions in the Complaint and the annexures thereto.
- 7.3 The Arbitrator also finds that the Complainant has established all the 3 elements essential to maintain its complaint, being that 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. The factors that support this conclusion are:
 - 7.4 Not even a single letter differs between the disputed domain name and the trademark of the Complainant.
 - 7.5 The Respondent is not named PEOPLESOFT nor is commonly known by this name.
 - 7.6 The word PEOPLESOFT is not a dictionary word, it is a unique combination of common words created by the Complainant; Respondent has registered the impugned domain name much subsequent to Complainant's adoption of the

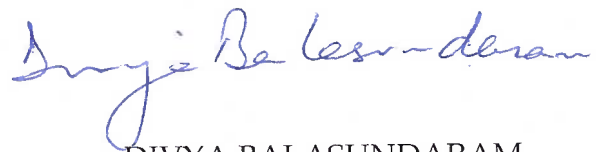
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mark and the Respondent could not have adopted it except with reference to the Complainant's mark.

- 7.7 The Respondent has no statutory or common law rights in the disputed domain name.
- 7.8 The Respondent is not authorized or licensed by the Complainant to use the mark or domain name PEOPLESOFT.
- 7.9 The Respondent is not making a legitimate noncommercial or fair use of the disputed domain without intent for commercial gain.
- 7.10 The impugned domain was offered for sale to the Complainant for USD 1200 which is higher than costs involved in registering the same.
- 7.11 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

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 <peoplesoft.in> be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM
ARBITRATOR

Date: June 21, 2017
Place: New Delhi, India