



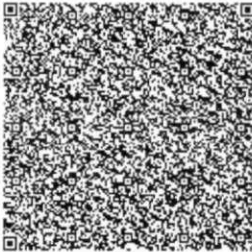
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL99209737033015L
Certificate Issued Date	: 05-Apr-2013 12:39 PM
Account Reference	: IMPACC (IV)/ dl737903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL73790397942431360922L
Purchased by	: V K AGARWAL
Description of Document	: Article Others
Property Description	: 0
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: V K AGARWAL
Second Party	: OTHER
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



Please write or type below this line.

NATIONAL INTERNET EXCHANGE OF INDIA

**Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025**

Xerox Corporation v. Mr. Mani Kannan

Wagaw I

NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

Xerox Corporation v. Mr. Mani Kannan

AWARD

1. The Parties

The Complainant is Xerox Corporation, 45 Glover Avenue, Norwalk, Connecticut 06856-4505, USA

The Respondent is Mr. Mani Kannan, Quick2soft Technologies, Renga Road, Alwarpet, Chennai – 600 028.

2. The Domain Name and Registrar

The disputed domain name is <www.xeroxshop.in>.

The particulars of registration of the disputed domain name are as follows:

(a) Name of the Registrant	: Mr. Mani Kannan
(b) Domain ID	: D6417915-AFIN
(c) Created on	: 26 May 2012
(d) Expiration date	: 26 May 2013
(e) Sponsoring Registrar	: GoDaddy.com, LLC (R101-AFIN)
(f) Registrant ID	: CR114086127

3. Procedural History

(a) A Complaint dated February 28, 2013 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and

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technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

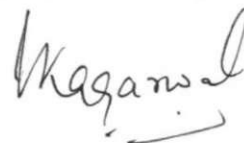
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator received the Complaint on March 26, 2013. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, the Sole Arbitrator formally notified the Respondent along with a copy of the Complaint by speed post. The Respondent was required to submit his defence within 15 days. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte.
- (d) No response has been received from the Respondent. On the contrary, the postal authorities have returned the letter containing a copy of the Complaint sent to the Respondent through speed post.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

In these proceedings the Complainant is Xerox Corporation. The Complainant is carrying on the business of providing "innovative document solutions, services and systems, including photocopiers, printers, digital presses, publishing systems, facsimile machines, multifunctional devices, toners, paper, ink, associated supplies, software and support specially designed for office and production printing environment". The Complainant is a US \$ 22 billion technology and services Fortune 500 company with operations spread over more than 160 countries.



Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant has not made specific submission in respect of each of the following three elements specified in the Policy, nevertheless from the Complaint it appears that:

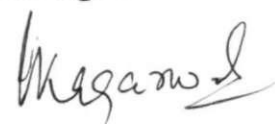
In relation to element (i), the name of the Complainant is Xerox Corporation. The Complainant is having a subsidiary in India known as Xerox India Limited. The disputed domain name is <www.xeroxshop.in>. Thus, the disputed domain name contains the name of the Complainant. The addition of the words "shop" or "in" is insignificant.

In relation to element (ii), the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "Xerox". Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

In relating to element (iii), the main object of registering the disputed domain name <www.xeroxshop.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.xeroxshop.in> or any trademark right, domain name right or contractual right.



6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

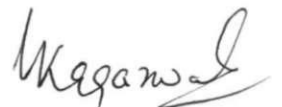
- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

The Complainant contends that in India it owns registration of the trademark “XEROX” for a long time. In paragraph 5, item No. 1 of the Complainant the “Registration Certificate No. and Date of Registration” of trademark given is 47754 dated 07.01.1954. In respect of the same item No. 1, the Application No. and class is given as 155627, Class 01. As per the Complaint this appears to be the oldest registration certificate. However, copy of the said registration certificate has not been annexed to the Complaint. On the contrary, page No. 4 of the Annexures indicates that the “Registration of Trade Mark No. 155627 was renewed for a period of seven years on 22nd September 2002.

Similarly, there is a discrepancy in the trademark application numbers 217824, 217825, etc. and the date of registration indicated in paragraph 5 of the Complaint and the registration certificates Annexed with the Complaint.

Since the trademark “Xerox” is registered in India, I hold that the domain name <www.xeroxshop.in> is confusingly similar to the Complainant’s marks.



B. Rights or Legitimate Interests

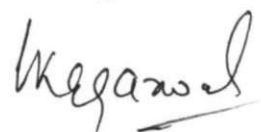
The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Though in the Complaint no specific submission has been made on this aspect, nevertheless it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Xerox Corporation is the name of the Complainant. The trade mark "xerox" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Mani Kannan. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has contended that it has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.



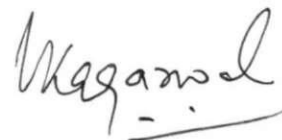
C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

Though no specific contentions have been submitted by the Complainant in this respect, the circumstances indicate that the Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website.

The Respondent's registration of the domain name <www.xeroxshop.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.



The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

The Complainant has stated that the word "XEROX" is a registered trademark of the Complainant adopted and used in many countries of the world. However, the Complainant has neither indicated in the Complaint the names of at least some of the countries in which the said word "Xerox" is registered as trademark nor copies of the registration certificates have been attached to the Complaint, except of India, as stated above. Thus, the Complaint is deficient in many respects.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.xeroxshop.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: May 08, 2013