



महाराष्ट्र MAHARASHTRA

सदरचा मुद्राक लिहू अँड लायसेन्ससाठी नाही

HU 323383

अनुक्रमांक ६३३३ दिनांक २४/१०/१३ रुपये १००/-  
मुद्रांक कोणत्या कारणासाठी वापरण्याचा आहे.....  
मुद्रांक अधिनियम १९५८ चे अन्वयेत  
मुद्रांक वापरणाराचे संपूर्ण नाव.....  
संपूर्ण पत्ता.....  
हस्ते व्यक्तीचे संपूर्ण नाव.....  
पत्ता.....  
स्वाक्षरी (मुद्रांक विक्रेता)  
(सौ. लक्ष्मी शि. देलसरे)  
परवाना क्र. २२०१०९९/१९९५  
प्रस्तावनाची मुदत ३५/३/२०  
पत्ता: ४२५ ब, शनिवार पेठ, पुणे-४०



AWARD  
IN ARBITRATION

'XOOM.IN'

Xoom Corporation  
100, Bush Street, Suite 300  
San Francisco, California. 94104.  
U.S.A.

THE COMPLAINANT

AND

Domain Admin / Chandan MA  
# 82, II Main,  
Bangaluru. Karnataka. 560061.

THE RESPONDENT /  
THE REGISTRANT

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IN THE MATTER OF DISPUTED DOMAIN NAME: - 'XOOM.IN'  
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

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DELIVERED ON THIS 25<sup>TH</sup> DAY OF OCTOBER TWO THOUSAND  
THIRTEEN AT PUNE, INDIA.

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SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Names and addresses  
Of the Complainant: -

Xoom Corporation  
100, Bush Street, Suite 300  
San Francisco, California, 94014  
U.S.A.

Through its authorized  
representative

Mr.Tarvinder Singh &  
Mr.Anshuman Sharma  
Advocates & Legal Consultants  
Technopolis Building, 3<sup>rd</sup> Floor  
Tower B, Sector 54, DLF Golf Course  
Road, Gurgaon, 122002. (NCR) India  
Authorised Representative.

02. Name and address of  
The Respondent: -

Domain Admin / Chandan MA  
# 82, II Main, Bangaluru.  
Karnataka. 560061.

03. The Registrar: -

GoDaddy.com, LLC  
14455 N Hayden Road, Suite 226  
SCOTTSDALE, Arizona 85260.  
United States of America

#### 04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	08/10/2013
02	Hard copy of complaint received	11/10/2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 23.10.2013)	12/10/2013
04	Reply from the Registrant received	23/10/2013
05	Notice of closure of arbitration	23/10/2013
06	Award passed	26/10/2013

#### I] PRELIMINARY: -

- 1) Xoom Corporation, a company incorporated under the provisions of the laws of U.S.A., having its principal office at 100, Bush Street, Suite 300, San Francisco, California, 94104 U.S.A. (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**XOOM.IN**' (**the disputed domain name / domain name**), through its authorised representative **Domain Admin / Chandan MA, # 82, II Main Bengaluru, Karnataka 560061.**
- 2) The Complainant has disputed registration of domain name '**XOOM.IN**' in the name of **Domain Admin / Chandan MA, (The Respondent / Registrant)** Chandan MA, # 82, II Main Bengaluru, Karnataka 560061.
- 3) Major events took place as enumerated in the above table.

#### II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 12<sup>th</sup> October 2013 with the instructions to file his reply / say latest by 23<sup>rd</sup> October 2013.
02. On 23<sup>rd</sup> October 2013 the Registrant sent the following reply: -

From: "xoom@mailme.in" <xoom@mailme.in>  
To: Shirish Inamdar <ics\_pne@yahoo.co.uk>  
Cc: "tarvinder.singh@kochhar.com" <tarvinder.singh@kochhar.com>;  
"anshuman.sharma@kochhar.com" <anshuman.sharma@kochhar.com>  
Sent: Wednesday, 23 October 2013, 0:11  
Subject: Re: Notice of Arbitration - xoom.in

Dear Sir

we took the domain xoom .co. in and .in for branding our own client  
freelance team biz as xoom it solutions and were working on it .

We tried to transfer the name via escrow system to xoom .com person  
sujay jaladi but they agreed to pay 25\$ firm and later communication not  
done due to my absence of reply.

Anyway we are no longer intend to use the name xoom for our biz and  
choose some other good name instead to avoid confusing with xoom .com  
brand

so the domain can be transferred to the xoom .com person.

regards

chandan

In view of no reply by the Respondent no rejoinders were called for.

03. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
04. No personal hearing was requested / granted / held.

### **III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -**

The Complaint is based on the following points / issues in brief: - -

#### **(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:**

The Complainant is the owner of numerous registered trademarks in US, Europe, Canada, China, Brazil and several other countries. In India it has a registered trademark under no. 1272325 dated 15<sup>th</sup> March 2004. The list of registered trademarks of the Complainant runs into about 45 pages and it is not possible to mention all of them here for the sake of brevity. We have relied upon the said list for the purpose of this award.

The Complainant offers online products and services under its trade name and registered trade mark xoom. These products include computer accessible remittance products and services which allow users to transmit monies through

the website www.xoom.com to more than 30 different countries around the world. These products are available for use through computers and mobile devices include mobile, tablet computers etc.

The Complainant has several websites including www.XOOM.com since last many years.

**(B) BASIS OF THE COMPLAINT: -**

1. The Registrant's domain name www.XOOM.in directly uses the trademark / trade name XOOM as one of the operative words and this name is identical to that of the registered trademark of the Complainant. The impugned domain name is also extremely similar to the Complainant's international website www.XOOM.com. Therefore ordinary internet users are likely to be confused by the presence of the impugned domain name on the internet, ostensibly offering goods and services similar / identical to those of the Complainant and thus cause loss of business and reputation to the Complainant.
2. The Registrant has no affiliation, past or present, with the Complainant and hence has no rights or legitimate interests in respect o the domain name. By registering the impugned domain name the Registrant is blatantly seeking to cash in on the brand value and reputation of the Complainant's trademark XOOM for his personal gain.
3. The disputed domain name was created in August 2011 as against the Complainant being in this business since 2004. Similarly the Registrant also has registered other domain name like xoom.co.in which use the Complainant's trademark XOOM or some confusingly similar word(s) / name(s). This has been done for the Registrant's own business which causes loss of business and reputation to the Complainant. Accordingly the registration of the impugned domain name by the Registrant is in bad faith.
4. The domain name was registered in bad faith. The said registration has been done for the purpose of selling / renting the same for unlawful monetary gains by the Registrant.

In support of its contentions the Complainant has furnished several WIPO and INDRP decisions in the similar previous cases.

**(C) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of domain name to it. The Complainant has also requested for costs to be imposed on the Registrant / Respondent.

**V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

As stated earlier the Respondent / Registrant has filed say / reply, merely stating that he had registered the domain name for the purpose of branding his own team as xoom. He had also offered to sell the said domain name but the



Complainant offered him only \$ 25. He has also confirmed that he has already registered another domain name 'xoom.co.in' for the same purpose. It

#### **VII] REJOINDERS OF THE PARTIES: -**

In view of admissions by the Respondent and also the willingness to transfer the domain name it was not felt necessary to call for rejoinders from the parties to the dispute.

#### **VIII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

<b>SR. NO.</b>	<b>ISSUE</b>	<b>FINDING</b>
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	<b>Yes</b>
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	<b>Yes</b>
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	<b>No</b>
04	Whether the Registrant has commonly been known by the domain name?	<b>No</b>
05	Whether the Registrant has any legitimate interests in the disputed domain name?	<b>No</b>
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	<b>Yes</b>
07	Has the Registrant 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?	<b>Yes</b>
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	<b>Yes</b>

### VIII] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of various trademarks as stated above. The Complainant also owns domain names which include the words 'XOOM'. The said trademark in India has been registered since 2006 and has been renewed from time to time.

*Therefore my finding on this issue is in affirmative.*

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'XOOM' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt, by several arbitral decisions in INDRP as also WIPO cases, that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its global presence, as also its strong presence on the internet, it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'XOOM'.

*Therefore my finding on the first issue is affirmative.*

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

*Therefore my finding on this issue is in negative.*

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Domain Admin / Chandan MA. As such he is not commonly been known by the domain name or any variation thereof.

*Therefore my finding on this issue is in negative.*

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'XOOM'. He is not commonly known by that name or any variation or combination thereof. He has not been associated with or permitted by the Complainant to use the said trade name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant to use the word 'XOOM' in this behalf.

*Therefore my finding on this issue is negative.*

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain is up for sale. The Registrant has offered to sell the same to the Complainant itself. It is very clear that the registration of the disputed domain name has been done by the Registrant / Respondent merely for the purpose of selling the same to the Complainant or any other interested party at a premium.

*Therefore my finding on this issue is affirmative.*

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

*Therefore my finding on this issue is affirmative.*

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

At present it can not be said that internet users are being attracted. However upon internet search the webpage is being displayed by the search engines. The blank page of the website is more harmful to the credibility and reputation of the Complainant since no such company would create such blank page and offer the same for sale.

*Therefore my finding on this issue is affirmative.*



## IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name is up for sale and the notice to that effect is being displayed on the landing page itself. This clearly establishes that the Registrant was never serious of doing any legitimate use of the domain name. On the contrary it was his intention to sell the same for illegal monetary gain by encashing the reputation of the Complainant.
2. Since the Registrant has offered to sell the domain to the Complainant itself, it can be inferred that the registration has been done with deceitful intentions and for the purposes of gaining illegally and immorally.
3. The disputed domain name includes the registered marks and registered domain names of the Complainant as an integral part of it. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
4. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'XOOM' and hence does not have any legitimate interest in the disputed domain name. He has not been authorised by the Complainant to register the said domain name at any time.
5. The Registrant has *not* been commonly known by the disputed domain name.
6. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. **The Complainant is entitled to the disputed domain name – 'XOOM.IN' and hence the same be transferred to the Complainant.**
02. The Registrant shall pay to the Complainant all the documented costs of these proceedings.

Dated: - 26.10.2013  
Place: - Pune

  
(S.C. NAMDAR)  
SOLE ARBITRATOR