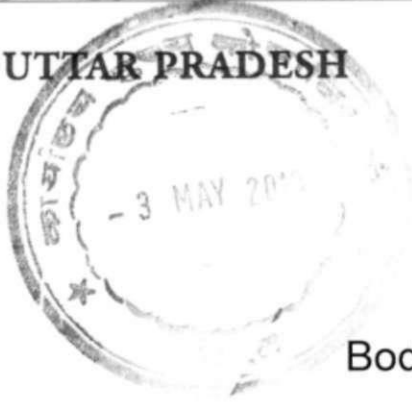




उत्तर प्रदेश UTTAR PRADESH

AG 589933



Bodhisatva Acharya  
LL.M.  
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. .... Of 2010

ARBITRATION AWARD: DISPUTED DOMAIN NAME : [www.microsoft.org.in](http://www.microsoft.org.in)

In the matter of:

*Microsoft Corporation,  
One Microsoft Way,  
Redmond,*

*WA 98052-6399,  
USA.*

Thru its authorized representative -

*Russell Pangborn  
One Microsoft Way,  
Redmond,*

*WA 98052-6399,  
USA.*

Email: [russpang@microsoft.com](mailto:russpang@microsoft.com)

Filed by its authorized representative attorney -

*Pravin Anand with Jaya Negi,  
Anand & Anand,  
First Channel, Plot No.17A,  
Sector 16A, Film City,  
NOIDA,  
INDIA.*

Email: pravin@anandandanand.com,  
iavaneqi@anandandanand.com.....**Complainant.**

*Vs.*

*Llmzang Ladenla,  
5<sup>th</sup> Park Avenue,  
New York,  
Kolkata,  
West Bengal- 700129.*

Email: info@worldbestsavings.com.....**Respondent.**

## **A W A R D**

### **1. The Parties:**

**The complainant** in this arbitration proceeding is *Microsoft Corporation, One Microsoft Way, Redmond, WA 98052-6399, USA.* Thru its authorized representative - *Russell Pangborn, One Microsoft Way, Redmond, WA 98052-6399, USA.* Email: russpang@microsoft.com and it has been filed by its authorized representative attorney - *Pravin Anand with Jaya Negi, Anand & Anand, First Channel, Plot No.17A, Sector 16A, Film City, NOIDA, INDIA.* Email: pravin@anandandanand.com, iavaneqi@anandandanand.com

**Respondent** in this arbitration proceeding is *Lhazang Ladenla, 5<sup>th</sup> Park Avenue, New York, Kolkata, West Bengal- 700129.* Email: info@worldbestsavings.com

### **2. The Domain Name, Registrar & Registrant:**

The disputed domain name is www.microsoft.org.com

### 3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name [www.microsoft.org.in](http://www.microsoft.org.in) following the clause 4 of the policy of .IN Registry and .IN Registry appointed *Mr. Bodhisatva Acharya (The Arbitrator)* as sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on March 14<sup>th</sup>, 2010. The complaint was produced before the Arbitrator on March 19<sup>th</sup>, 2010 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on March 24<sup>th</sup>, 2010, with a 10 days deadline to submit his reply but till the date of AWARD but the email address was found wrong and a notice failure was received by the Arbitrator hence the AWARD is being declared on the May 10<sup>th</sup> 2010 as Ex-parte.

### 4. Factual Background:

The complainant "**MICROSOFT CORPORATION**" was setup in the year 1975 by adopting the trademark "**MICROSOFT**" and this is the biggest software publisher for personal and business computing in the worlds. The complainant engages in the development, manufacture, licensing, and support of a range of software products for various computing device and its software products include operating systems for servers, personal computers and software development tools. The complainant's popular software products include world's mostly used operating system software MICROSOFT WINDOWS and application software as MICROSOFT OFFICE and these are the most installed and used softwares worldwide as per Annexure-A.

The complainant trademark 'MICROSOFT' was adopted in the year 1975 and which has been used continuously and extensively not only as a trademark but also as a prominent key and a leading brand in the name of computer world and the trademark MICROSOFT is the most famous and well known to the computer software users regarding its goods and services and by that as per Annexure-C the total current market of complainant is \$254.52B worldwide as on March 2<sup>nd</sup> 2010.

In INDIA the complainant is also registered proprietor of the trademark of MICROSOFT under classes 9 and 16 with bearing registration numbers **430449** and **430450** respectively as per Annexure-B

When the complainant came to know about the alleged website of the Respondent the complainant made an earnest effort to settle the matter with the Respondent and for that purpose, the complainant sent a letter on March 24<sup>th</sup> 2009 but the said letter was turned back to the complainant due to the wrong postal address and same was done with the e-mail of complainant which was sent to the Respondent and finally the complainant was filed to the NIXI to solve the matter by Arbitration Proceeding.

5. *Parties Contentions:*

**(a) Complainant** contends that

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

(ii) The Registrant has no rights or legitimate interests in respect of the domain name; and

(iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

**(b) Respondent** contends that

The respondent gave no response and produced no reply before Arbitrator.

6. *Discussion & Findings:*

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i)The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name; and

(iii) The Registrant's domain name has been registered or is being used in bad faith.

By Annexure-D it is submitted by the complainant that complainant rights in trademark MICROSOFT ,its services names and other deceptively similar marks have been upheld before by the various Hon'ble Board of WIPO's.

After having gone through the records, documents, produced by the Complainant, Arbitrator's findings are that the complainant has proved all the aforesaid premises in his favor and he is has produced all the documentary proof in his favor to satisfy the Arbitrator .The Respondent is not with clean hand and his intention is wrong. Therefore he has no right to use the disputed domain name.




7. *Decision:*

Hence the Arbitrator decides, The disputed domain name www.microsoft.org.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.microsoft.org.in shall be transferred to the Complainant with immediate effect.

Complaint hence is allowed with no costs.

  
**BODHISATVA ACHARYA**  
10/05/2010  
**SOLE ARBITRATOR**  
**NIXI**

**DATED: May 10<sup>th</sup> 2010,**  
**PLACE: NEW DELHI,**  
**INDIA.**

