

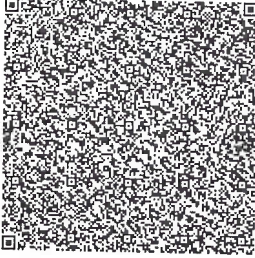
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

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Certificate Issued Date : 18-Apr-2018 11:59 AM
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1735149823492762Q
Purchased by : AMARJIT SINGH ADVOCATE
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : AMARJIT SINGH ADVOCATE
Second Party : Not Applicable
Stamp Duty Paid By : AMARJIT SINGH ADVOCATE
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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA

**.IN domain Name Dispute Resolution Policy INDRP Rules of
Procedure**

IN THE MATTER OF:

ORACLE AMERICA, INC.
500, Oracle Parkway
Redwood City, California,
94065, USA

.....Complainant

FITA ACADEMY
1/16 Velachery Main Road
Velachery, Tamil Nadu
India, PIN – 600042

.....Respondent

1. THE PARTIES:

- 1.1. The Complainant in this administrative proceeding is ORACLE AMERICA, INC. 500 Oracle Parkway, Redwood City, California 94065, USA and is represented through Mr. Achuthan Sreekumar of Anand & Anand, First Channel, Plot No. 17A, Sector 16A, Film City, Noida.

- 1.2. The Respondent in this administrative proceeding is FITA ACADEMY, 1/16 Velachery Main Road, Velachery, Tamil Nadu - 600042, India.



2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <www.javatrainingchennai.co.in> has been registered by the Respondent. The registrar with whom the disputed domain is registered GoDaddy.com. LLC.

3. PROCEDURAL HISTORY

3.1 The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against FITA ACADEMY, 1/16 Velachery Main Road, Velachery, Tamil Nadu - 600042, India. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with INDRP Policy and The Arbitration and Conciliation Act, 1996, and the Rules framed there under. The parties were first notified about my appointment of as Arbitrator on **22nd February, 2018.**

3.3 The panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 22nd February, 2018. In accordance with the rules, paragraph 5(c), the Respondent was notified about



the commencement of arbitration proceedings and was sent the complaint along with all the Annexure by NIXI.

3.4 Copy of the Complaint and the annexures thereto were forwarded to the Respondent by e-mail dated 22nd February 2018 which were duly delivered at the e-mail address of the Respondent. Copy of the Complaint and the annexures thereto were also forwarded to the Respondent through courier at the address furnished by the Respondent at the time of obtaining registration of the disputed domain name. The Respondent by e-mail dated 24th February 2018 was also intimated by this panel about the arbitration proceedings and was granted 10 days time ending on 6th March 2018 to file his response/written statement. The e-mail dated 24th February 2018 was also duly delivered at the e-mail address furnished by the Respondent at the time of obtaining registration of the disputed domain name. This panel by its e-mail of 16th March 2018, copy whereof was also forwarded to the Complainant, and which was duly delivered, intimated the parties that the Respondent was duly served through e-mail and an opportunity to file his response was given to him. This panel also notified the parties that the Respondent has failed to file his response and that the matter will be decided on the basis of the material on record and in accordance with the law in due course.

3.5 The panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person



hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.6 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

4 FACTUAL BACKGROUND

4.1 The Complainant represents its own interest including the image and reputation of the name and trademark JAVA. The Complainant is also the registered proprietor of the well-known trademark JAVA.

4.2 The Oracle family of companies, the Complainant being an integral part thereof (hereinafter referred to as the "Oracle Group"), is a software company and an international giant in the field of development, manufacture, marketing, distribution, and servicing of enterprise software that enables organizations to manage their businesses worldwide. Since decades, the Oracle Group has been the leader in database software and as it has further developed technologies and acquired best-in-class companies over the years, that leadership has expanded to the entire technology stack, from servers and storage, to database and middleware, through applications and into the cloud. The Oracle Group has over the years sought to strengthen its product offerings, accelerate innovation, meet customer demand more rapidly, and expand partnership opportunities.



4.3 The Complainant is the proprietor of the trademark JAVA which was first used in commerce in 1996 to identify a set of computer software products and specifications that together provide a system for developing application software and deploying it in a cross-platform computing environment. JAVA is used in a wide variety of computing platforms from embedded devices and mobile phones on the low end, to enterprise servers and supercomputers on the high end.

4.4 The JAVA trademark and its variants thereof are duly protected and registered under the Trade Marks Act, 1999. The trade mark registrations in various classes are as follows:

Trade Mark	Regn.No.	Date	Classes
JAVA	661023	Mar 30, 1995	09
JAVA COMPATIBLE	681401	Sep 25, 1995	09
JAVASCRIPT	697361	Feb 6, 1996	09
JAVA DEVELOPER CONFERENCE	700208	Feb 29, 1996	09
JAVA DEVELOPER CONFERENCE	700209	Feb 29, 1996	16
JAVAONE	700207	Feb 29, 1996	09
JAVAONE	700206	Feb 29, 1996	16
COFFEE CUP Logo	01246392	Oct 28, 2003	42, 38, 09
JAVA GET POWERED	1328949	Dec 29, 2004	09, 25, 16, 42, 41, 35
JAVAFX	1619422	Nov 07, 2007	09

4.5 The Complainant is also very active online through their main websites namely www.oracle.com and www.java.com. Printouts of the relevant pages from the said websites are filed in the present proceedings marked as ANNEXURE-E.

4.6 The Respondent in the present dispute has registered the domain www.javatrainingchennai.co.in.

5. PARTIES CONTENTIONS

5A. COMPLAINANT

5A-1 The Complainant i.e. Oracle Corporation, was founded in the year 1977, under the name Software Development Laboratories (SDL). In 1979, SDL changed its name to Relational Software, Inc. (RSL) which was renamed in 1982, as Oracle Systems Corporation to align itself more closely with its flagship product Oracle Database. In 1995, Oracle Systems Corporation changed its name to Oracle Corporation. In 2010, Oracle Corporation sought a merger with Sun Microsystems, Inc. Thereafter, one of Oracle Corporation's subsidiaries, Oracle USA, Inc., was merged into Sun Microsystems, Inc. on February 15, 2010, and the name of the surviving corporation was changed to Oracle America, Inc., i.e. the Complainant herein.

5A-2 The Complainant offers database, tools and applications products along with related consulting, education and support services. The Complainant's database software and middleware software is used for developing and deploying applications on the Internet and on corporate Intranets, and includes database management software, application server software, development tools, data hubs, and collaboration software. The Complainant's application software is used to automate business processes and to provide business intelligence for financials, projects, marketing, sales, order



management, procurement, supply chain, manufacturing, service, and human resources.

The Complainant also offers software license updates and product support, and other services, including advanced product services, and training and education services. Additionally, the Complainant also provides consulting services, which provides the design, implementation, deployment, upgrade, and migration services for its database technology and applications software.

5A-3 The Oracle Group first ventured into the Indian business market in the year 1987 through a distribution agreement with a partner, TATA Consultancy Services. The Oracle Group thereafter set up its first liaison office in India in 1991. Oracle India Pvt. Ltd. ('Oracle India') was set up in 1993 as a wholly owned subsidiary of Oracle Corporation Inc., whose primary focus was to market its products (including software) and offer its services throughout India, including New Delhi. It is pertinent to note that Oracle India Pvt. Ltd. has its registered office at F01/02, First Floor, Salcon Rasvillas, Plot No.D-1, District Centre, Saket, New Delhi 110017. It is an exclusive licensee of the Oracle Group with the right to use the trade mark JAVA@ and its variants in India. The Oracle Group was one of the first software giants in the world to establish an India Development Center (IDC) in 1994. The IDC is The Oracle Group's largest research and development center outside the US, and carries out cutting-edge development work across the entire plethora of services offered by them.



5A-4 Oracle India today has more than 6,000 database and middleware customers and 500 applications customers in India, and conducts extensive business with offices at Delhi, Bangalore, Kolkata, Chennai, Hyderabad, Mumbai and Gurgaon. It also has software development centers in Bangalore, Karnataka and Hyderabad, Andhra Pradesh. Further, the Oracle Group's Global Support Center in India provides service around the clock, and is one of the four Global Support Centers in the world offering technical support for its entire product range.

5A-5 The Oracle Group provides its services extensively in India to State Governments, Public Sector Undertakings and Government run organizations like Airport Authority of India, Indian Air Force, Andhra Pradesh Government, Central Bureau of Investigation, Gujarat Government, Indian Railways, Police departments, West Bengal Government, Coimbatore Municipal Corporation etc. to name a few.

5A-6 The Complainant's JAVA technology has versatility, efficiency, platform portability, and security which make it the ideal technology for network computing. From laptops to datacenters, game consoles to scientific supercomputers, cell phones to the Internet, JAVA is omnipresent. popularity of the Complainant's JAVA programs is such that currently 1 billion desktops run Java; 930 million JAVA Runtime Environment downloads each year; 3 billion mobile phones run JAVA; 31 times more JAVA phones ship every year than Apple and Android



combined; 100% of all Blu-ray players run Java; 1.4 billion JAVA Cards are manufactured each year. The JAVA programs and platforms powers set-top boxes, printers, Web cams, games, car navigation systems, lottery terminals, medical devices, parking payment stations, and more.

5A-7 The Complainant publishes JAVA MAGAZINE. It is a digital-only publication and an essential source of knowledge about Java technology, the JAVA programming language, and JAVA based applications for people who rely on these in their professional careers, or who aspire to.

5A-8 The trade mark JAVA was conceived and adopted as an arbitrary and fanciful mark in respect of the distinctive programming language, hardware, software and products developed by the Complainant's predecessor-in-right title and interest. The JAVA trade mark was adopted for the range of software, products and services and was launched commercially in 1996, as stated herein above. The JAVA product portfolio also has a distinctive logo which is depicted as follows:



5A-9 The JAVA trademark and its variants have been used continuously, uninterrupted and exclusively by the Complainant's predecessor in business, title and interest since the year 1996. The Complainant is therefore the proprietor of the well-known trademark JAVA and its variants, by virtue of devolution of the rights from Sun Microsystems Inc.

5A-10 The Complainant's trademark JAVA and permutations / combinations thereof are also protected around the world and the Complainant is the registered proprietor of the said trademarks in several countries. The Complainant is filed herewith a table detailing the registrations that it has for the mark JAVA and permutations / combinations thereof across the globe marked as ANNEXURE-C.

5A-11 (i) Initially through various sources, the Complainant was informed that the Respondent was making baseless claims to the public at large stating that the Respondent is technology provider in Chennai giving training to students on personality development and new technologies to explore job opportunities. In this regard, the Respondent had registered domain names, namely, www.javatrainingchennai.co.in (i.e. the impugned domain) and www.oracletraining.co.in.

(ii) The Respondent had therefore registered yet another domain squarely incorporating the Complainant's corporate / business name as well as its trademark i.e. ORACLE.

(iii) On receipt of the said information, the Complainant addressed a legal notice dated 20 October, 2016 to the Respondent requiring them to abandon the above mentioned domains and to give



a disclaimer on their website stating that the alleged training services provided by them are not affiliated with the Complainant and they have no tied-up with the Complainant for providing the said training services. A copy of the said legal notice dated 26th October, 2016 is filed herewith marked as ANNEXURE-G.

(iv) That thereafter vide email dated 23rd November, 2016, one Kavitha G, who is an employee of the Respondent replied to the legal notice dated 26th October, 2016 admitting that the Respondent is working on the concerns raised by the Complainant in their legal notice and that the Respondent shall revert shortly. A copy of the said email dated 23rd November, 2016 is filed herewith marked as ANNEXURE-H.

(v) The Respondent further replied vide another email dated 28th November, 2016 asking for more time till mid-December 2016 to remove all the contents from the said websites and the Respondent further assured that they will have all the concerns resolved at the very earliest. A copy of the said email dated 28th November, 2016 is filed herewith marked as ANNEXURE-I.

(vi) It is pointed out that principal officer / proprietor of the Respondent concern is



one Mr. Venkat. The said Mr. Venkat was previously employed with the Indian arm of the Complainant. It was in light of this fact that the Complainant first tried to resolve the dispute without resorting to any formal legal action. However, such efforts from the Complainant were unsuccessful.

(vii) These facts, according to the Complainant, would clearly evidence the malafides and ulterior motives on behalf of the Respondent to usurp the immense goodwill and reputation associated with the well-known trademarks JAVA.

(viii) The Complainant submits that the Complainant, with a view to amicably resolve the matter, again addressed a reminder letter dated 25th October, 2017 followed by yet another reminder letter dated 16th November, 2017. Both the said reminder letters were also addressed to the Respondent through email as well and the same were also received by the Respondent. But the Respondent continued on with their illegal and infringing activities. Copies of the reminder letters dated 25th October, 2017 and 16th November, 2017 are filed herewith marked as ANNEXURE-J and ANNEXURE-K respectively.



5A-12 The Respondent has therefore registered the impugned domain name in bad faith, having no legitimate interest thereon, and therefore present proceedings are initiated.

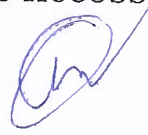
5B. RESPONDENT

The Respondent failed/neglected and omitted to file any response to the averments made in the Complaint and/or the documents filed in support thereof despite opportunities having been granted by e-mails dated 24th February 2018 and 16th March 2018.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for



deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.

6.5 The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent.

6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the



cancellation or transfer of domain name registration to the Complainant.

6.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

6A-1 The Complainant is the proprietor of the trademark JAVA which was first used in commerce in 1996 to identify a set of computer software products and specifications that together provide a system for developing application software and deploying it in a cross-platform computing environment. JAVA is used in a wide variety of computing platforms from embedded devices and mobile phones on the low end, to enterprise servers and supercomputers on the high end.

6A-2 The JAVA trademark and its variants thereof are duly protected and registered under the Trade Marks Act, 1999. The trade mark registrations in various classes are as follows:

Trade Mark	Regn.No.	Date	Classes
JAVA	661023	Mar 30, 1995	09
JAVA COMPATIBLE	681401	Sep 25, 1995	09

JAVASCRIPT	697361	Feb 6, 1996	09
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JAVA DEVELOPER CONFERENCE	700209	Feb 29, 1996	16
JAVAONE	700207	Feb 29, 1996	09
JAVAONE	700206	Feb 29, 1996	16
COFFEE CUP Logo	01246392	Oct 28, 2003	42, 38, 09
JAVA GET POWERED	1328949	Dec 29, 2004	09, 25, 16, 42, 41, 35
JAVAFX	1619422	Nov 07, 2007	09

6A-3 The Complainant thus owns exclusive rights to use the trademark / service mark JAVA and its variants thereof under common law due to honest and prior adoption, long, continuous and extensive use as is spread geographically across the country and across several other countries around the world, extensive advertisement, marketing and promotional activities conducted under the said trade mark. The said trademark is well-known and the products sold and services rendered there under are construed as originating exclusively from the Complainant.

6A-4 The products and services of the Oracle Group can be found in the largest of companies in more than 100 countries around the world. Some measure of the Oracle Group's success is indicated by the fact that 98 out of the Fortune 100 companies use its software. Oracle Corporation is listed in the Fortune 500 list Standard and Poor (S&P) 5000 and the FT (Financial Times) Global 500 among other indexes, The Plaintiff is also listed at the

National Association of Securities Dealers Automated Quotations (NASDAQ), the largest equity securities market in the United States, Its market capitalization is valued at a staggering US S 167.88 billion. It has posted revenues in the excess of US\$ 14 billion in the financial year ending 2012 and profits of US S 3.3 billion.

6A-5 As a result of the continuous and extensive use of the JAVA trademark / service mark over a long period of time and spanning a wide geographical area coupled with vast promotion and publicity, the said trademark and variants thereof enjoy an unparalleled reputation and goodwill in the market having acquired the status of a well-known trademark. It is submitted that this is so because the JAVA trademark embodies an aura of pre-eminent excellence and is recognized irrespective of the class of goods or services for which they are used by the Complainant.

6A-6 That the Complainant has filed in the present proceedings various documents illustrating the well-known nature and repute associated with its mark JAVA marked as ANNEXURE-D.

6A-7 The Respondent's domain <www.javatrainingchennai.co.in> incorporates the well-known trade/service mark of the Complainants i.e. JAVA. The Complainants have overwhelming common law as well as statutory' rights in its trade/service mark JAVA. Therefore, the Complainants are the sole legitimate owners of the trade/service mark JAVA.



6A-8 Further the disputed domain name <www.javatrainingchennai.co.in> attempts to associate itself with the Complainants' online service under the trade name/domain name www.java.com by incorporating the name of the service in full. The malicious intention of the Respondent is evident from the blatant misappropriation of the Complainants' trade mark/service mark JAVA by the Respondent.

6A-9 Incorporation of a trademark in entirety in a domain name is sufficient in establishing confusing similarity as stated by numerous UDRP decisions such as Magnum Piering Inc v. The Mudjackers; WIPO Case No. D2000-1525. A copy of the decision is annexed as ANNEXURE-F.

6A-10 The Internet user or the unwary general public who do not know that the Complainants and the Respondent have no affiliation with each other or that the Complainants have not licensed or authorized or endorsed the use of their famous and well-known mark JAVA will thus confuse the Respondent's activities as those authorized or endorsed or affiliated with the Complainants which would lead to the dilution of the Complainants' well-known and famous trademark JAVA.

6A-11 In order to prevent cybersquatting or trafficking or trading in domain names or marks, trademark law has been stretched to cover the Internet and domain names should be protected just like trademarks.



6A-12 Hence, the Respondent's domain name is identical and confusingly similar as a whole to the trademark in which the Complainants have rights.

6A-13 The Complainant is therefore successful in establishing the first element of INDRP and the panel finds that the disputed domain name is identical to the mark/domain name of the complainant. Consequently, the first requirement of paragraph 4 of the policy is satisfied.

B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

6B-1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interest in the disputed domain name:

(i) *before any notice to the Registrant of the dispute, the Registrant'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;*

(ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

(iii) *the Registrant 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.

6B-2 The Domain Names under the Policy are available to anyone on first come first serve basis. In case, any person or organization claims right over the Domain Name as violation of its trade/service mark rights, the onus is on such person/organization to prove the right in the mark and the burden thereafter shifts to the Respondent to prove its legitimate interest and the use of the Domain Name in good faith.

6B-3 The Respondent has no rights/ legitimate interest in the domain name www.javatrainingchennai.co.in for the following reasons:-

- a) The Complainants have not licensed or otherwise permitted the Respondent to use their trade/service mark JAVA or to apply for any domain name incorporating the said trade/service mark.
- b) The domain has been created by the Respondent to make unjust gains by depriving the Complainants of their legitimate rights to register an identical domain name.
- c) The Respondent's domain name is not bona fide since the Respondent is trading on the fame and recognition of the Complainants' well-known trademark in order to cause initial interest confusion



and bait internet users into accessing its website and force the Complainants to buy the Respondent out in order to avoid the said confusion as is typically the strategy of such cyber squatters. The Respondent has no right or legitimate interest in the disputed domain name.

d) There could be no plausible explanation for the use of the domain name www.javatrainingchennai.co.in by the Respondent since the Complainants' trade/service mark JAVA is exclusively used by the Complainants.

6B-4 The Respondents choice of the reputed Trademark as its domain name is completely unnecessary and lacks any legitimate business purpose and the sole purpose of carrying business through the impugned domain name is to create confusion as the source, sponsorship, affiliation or endorsement of activity being carried on through the website.

6B-5 If one were to visit the website located on the impugned domain www.javatrainingchennai.co.in it can be seen that the said website has various sections such as JAVA COURSE SYLLABUS, WHY JAVA, JAVA TRAINING SYLLABUS, JAVA TRAINING IN CHENNAI, JAVA COURSE IN CHENNAI etc. to name a few. The Respondent has placed the main focus on the mark JAVA of the Complainant with the malafide and ulterior motive to portray to the general public and internet users that his products and

services are endorsed by the Complainant. The Respondent is therefore operating a fully commercial website on the impugned domain by misappropriating the well-known brand / trademark JAVA of the Complainant with a view to cause unlawful gains to himself at the cost of causing unlawful losses to the Complainant and its customers.

6B-6 If one was to key-in the words JAVA / ORACLE on a popular search engine like Google, the Respondent's impugned websites will also be featured along with the Complainant's official websites www.oracle.com and www.java.com. Therefore it can be seen that the Respondent is unauthorisedly using the Complainants' well-known trademark JAVA and the associated name and fame, taking undue advantage of the same and making huge profits by diverting internet traffic to its website. Printouts from the Respondent's website are filed herewith marked as ANNEXURE-L.

6B-7 A mere perusal of the Respondent's impugned website located on the domain www.javatrainingchennai.co.in would show that the Respondent is unauthorisedly and blatantly using the JAVA trademarks of the Complainant in a very prominent manner.

6B-8 Hence there is every likelihood that potential or unwary persons in the future could be misled into using the services of the Respondent on the webpage that may be resolved to the disputed domain name under the impression that the same are being offered by the Complainants. The Complainants submit that



the impugned domain name www.javatrainingchennai.co.in was registered by the Respondent despite having no nexus, affiliation or endorsement by the Complainants and neither being licensed by the Complainants to register the same.

As noted above, the Disputed Domain Name is not being used for a legitimate purpose. In the case Williams-Sonoma, Inc vs GaoGou, Yert International Ltd <potterybarndkids.in> INDRP/912, the domain did not resolve to a web page. In that case the Panel relevantly stated:

“In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainant has made out a prima facie case that of the Respondent has no right or legitimate interest in the Disputed Domain Name and as such the burden of proof shifts to the Respondent.”

See **Annexure J**. The same argumentation should be adopted in the current case.

6B-9 The Complainant has legitimate interest in the “JAVA” trademark in India as it had registered the said mark on March 30, 1995 and has been openly, continuously and extensively using it in India for more than 20 years. By virtue of long and extensive use and advertising, the Complainant has acquired proprietary right in the Trade Mark “JAVA”.

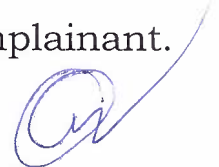
6B-10 Further, the Complainant has registered the domain name www.java.com whereas the Disputed Domain Name <www.javatrainingchennai.co.in> was registered by the Respondent on 16th May 2013. Hence, such



subsequent adoption and registration of the Disputed Domain Name shows that the Respondent has no right or legitimate interest in the Disputed Domain Name <www.javatrainingchennai.co.in >.

The Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark "JAVA" or any similar mark.

6B-11 It is apparent that the Disputed Domain Name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the Disputed Domain Name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant. The Disputed Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant's well-recognized products. The Disputed Domain Name also contains a reference to the country name India where the Complainant has a significant business presence. There is no evidence that the Respondent has a history of using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive identifier associated with the term "JAVA" and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant.



6B-12 From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the Disputed Domain Name. The Panel finds that the Respondent has no right or legitimate interest in the impugned domain name.

C. RESPONDENT REGISTERED THE DOMAIN NAME IN BAD FAITH

6C-1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C-2 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:-

- i) Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented



out of pocket costs directly related to the Domain Name; or

- ii) The Registrant has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- iii) By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's Website or location or of a product or service on Registrant's Website or location.

6C-3 The Respondent's domain <www.javatrainingchennai.co.in> incorporates the well-known trade/service mark of the Complainants i.e. JAVA. The Complainants have overwhelming common law as well as statutory' rights in its trade/service mark JAVA. Therefore, the Complainants are the sole legitimate owners of the trade/service mark JAVA.

6C-4 By using the Disputed Domain Name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark



as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP.

6C-5 Further, it is apparent that the Respondent has deliberately registered the Disputed Domain Name with the intention of preventing the Complainant who is the owner of the trademark "JAVA" from reflecting the said trademark in its domain name in India.

6C-6 In the *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003 the Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly references the Complainant's trademark may constitute registration and use in bad faith. In the current case it is clear that the Respondent has registered the Disputed Domain Name in bad faith by intentionally adopting Complainant's widely known marks in violation of Complainant's rights. Panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known



trademark, no response to the cease and desist letter has been sent.

6C-7 To summarize, the identical nature of the Disputed Domain Name to the Complainant's trademarks, the lack of any explanation from the Respondent as to why he registered the Disputed Domain Name of a well-known brand all over the world including in India, indicates bad faith registration.

The Respondent had constructive notice of the Complainants' rights in the trade/service mark JAVA by virtue of the Complainant's widespread reputation, use and registrations. Some notable decisions stating that:-

- i) As mentioned hereinabove, the principal officer / proprietor of the Respondent concern is one Venkat. The said Venkat was previously employed with the Indian arm of the Complainant. Therefore, the Respondent clearly knew of the Complainant's trademark and the well-known nature and stature associated with the said mark.
- ii) Such knowledge of the Respondent is an indicator of bad faith of the Respondent in registering the disputed domain name

are Research In Motion Limited v. Privacy Locked LLC/Nat Collicot, WIPO case No. D2009-0320 (ANNEXURE-M), SembCorp Industries Limited v. Hu Huan Xin, WIPO case No. D2001-1092 (ANNEXURE-N)



Respondent's present web page or any future web page that is resolved to this disputed domain names, will be induced to:-

- a) believe that the Complainants have licensed their trademark JAVA and/or the service mark trade name, to the Respondent or authorized the Respondent to register the disputed domain name.
- b) believe that the Respondent has some connection with the Complainants in terms of a direct nexus or affiliation with the Complainant / Oracle Group or has been authorized by the Complainants to carry out these activities.
- c) believe that the website to which the impugned domain name resolves is affiliated with the Complainants

6C-12 In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.

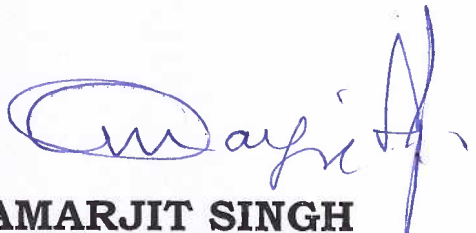
7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel directs the transfer of impugned domain name <www.javatrainingchennai.co.in> to the complainant. The



Respondent is also burdened with cost of Rs. 20,000/-
being the cost of proceedings.


AMARJIT SINGH
Sole Arbitrator

Dated: 14th April, 2018