

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES REDRESSAL
FORUM-II, AT HYDERABAD

C. C. NO. 759/2011

BETWEEN

Mr. Rahul Amaram

.... Complainant

AND

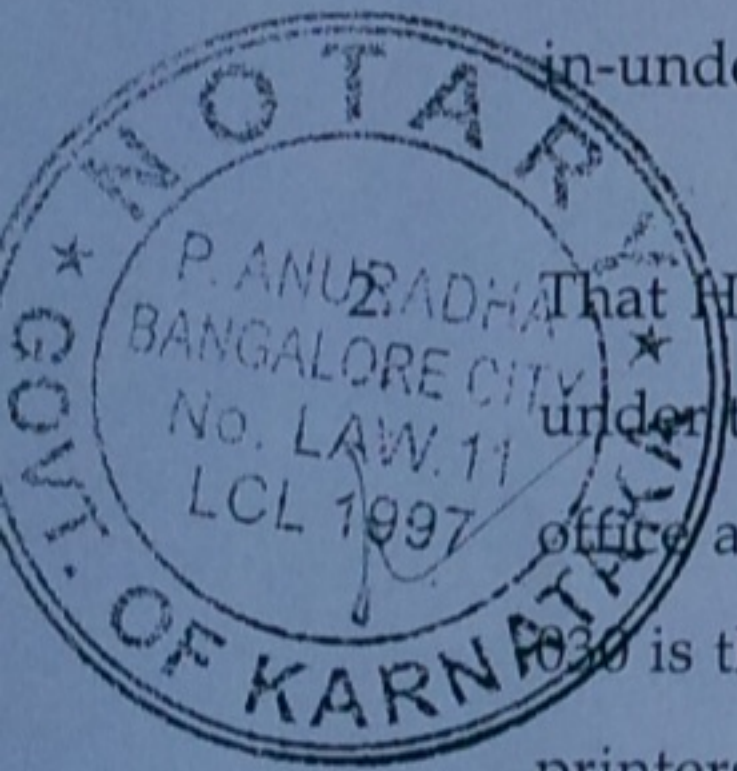
Managing Director, Hewlett Packard India Sales Pvt. Ltd.

..... Opposite Parties

VERSION/ EVIDENCE FILED ON BEHALF OF THE MANAGING
DIRECTOR HEWLETT PACKARD INDIA SALES PVT. LTD., THE
OPPOSITE PARTY NO. 1

I, Priyesh Poovanna, aged about 31 years, S/o. U.K. Nanaiah, authorized signatory of Hewlett-Packard India Sales Private Limited do here by solemnly affirm and state on oath as under:-

1. That Deponent is authorized signatory of Hewlett Packard India Sales Private Ltd. and as such he is well conversant with the facts deposed herein-under



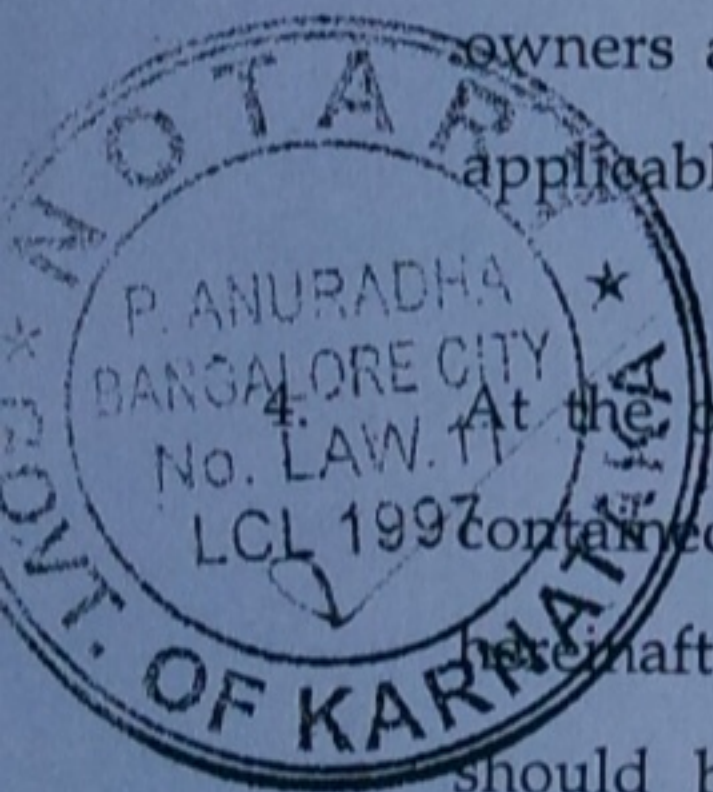
That Hewlett Packard India Sales Pvt. Ltd. a company duly incorporated under the provisions of the Companies Act, 1956 and having its registered office at No. 24, Salarpuria Arena, Adugodi, Hosur Road, Bangalore- 560 030 is the renowned manufacturer of various types of computers, laptops, printers, etc. and is globally acclaimed for its class and quality. It is submitted that the computers, laptops, printers, etc. manufactured by the answering opposite party pass through stringent quality checks and test trials before the actual commercial production starts and the computers, laptops, printers, etc. are marketed only after being approved by the approving authority which is the highest body to certify the IT products. The computers, laptops, printers, etc. manufactured at the factory of this opposite party are also thoroughly inspected for control systems and quality checks before dispatch to the authorized dealers appointed on a

'principal to principal' basis for sale of the computers, laptops, printers, etc.

3. This opposite party is ably supported by the excellent dealer ships/authorized service centers, having excellent setup for after sales servicing of the products of this opposite party, which are manned by qualified and experienced personnel only. It is submitted that the customers of all printers manufactured by the answering opposite party are provided services through a large network of authorized dealers and H.P. Authorized Service Centers. The network of such authorized service centers is being continuously enhanced & widened in order to bring maximum and efficient services as closer to the customers' doorsteps as far as possible. These service centers provide services, minor repairs, major repairs, parts support and even carry out physical damage repairs to the laptop. It is stated that a dedicated all India 24 X 7 Toll Free helpline number has been also provided to the customers for attending to any service/repairs, thus providing assistance to the customers in distress situation. Every procedure for service/repairs is standardized and procedures are laid down for the service centers for carrying out necessary services/repairs/replacement as may be required. This opposite party has carved a niche for themselves in the products as well as in after sales service across the globe. The manufacturers of the printer and the printer owners are bound by the terms and conditions of the warranty policy applicable for the printer.

At the outset, this answering opposite party denies all the allegations contained in the complaint, except those, which are specifically admitted hereinafter in this written statement, and nothing stated in the complaint should be deemed to be admitted merely because the same is not specifically traversed. It is also submitted that, anything stated in the complaint contrary to and/or inconsistent with what is stated in the present written statement be deemed to be expressly denied.

Before traversing in detail the several material allegations, averments and contentions made in the complaint under reply, the answering opposite party submits the preliminary objections regarding the maintainability of the present complaint as under:-



Preliminary Objections:

5. That the present complaint, filed by the complainant is an abuse of process of law and is not maintainable as the complainant has approached this Hon'ble Forum by suppressing the material facts. The same would be evident from the submissions/objections taken in the succeeding paragraphs below.
6. That from perusal of the instant complaint, it would be observed that averments made therein, are vague, baseless and with malafide intent. The complainant has made misconceived and baseless allegations of manufacturing defect in the printer without relying on any expert report from a recognized and notified laboratory under sec. 13 (1) of the Consumer Protection Act, 1985 and deficiency in service without any documentary evidence in support of the allegations made in the complaint.
7. That the complaint filed by the complainant does not fall within the definition of a 'consumer dispute' under the Consumer Protection Act as there is neither any manufacturing defect proved in the printer in question nor any deficiency in service being established against this opposite party, hence the averments and/or allegations made therein are frivolous, baseless and misconceived and, the complaint is liable for rejection and the same may kindly be rejected in totality.

8.

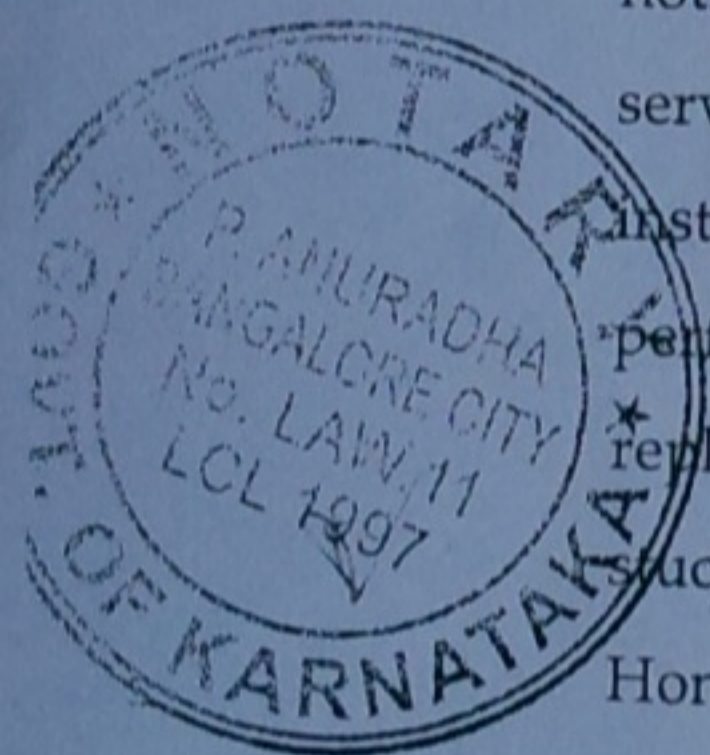
It is submitted that the printer, purchased by the complainant, is a well established product in the market and over a period of years, the consumers are using the product and the complainant had purchased the printer after being satisfied with the condition of the printer and its performance. In this regard, it is pertinent to state that all printer manufactured by this opposite party are marketed only after the prototype of the printer are put through stringent control systems, quality checks and tests by country quality department before being cleared for dispatch to the market. It is pertinent to state that this opposite party is certified by international standard for quality systems for all the computers, printers and related peripheral companies and this international standard specifies requirements for a quality system where an organization needs to demonstrate its ability to consistently provide

product meeting customer's satisfaction and applicable statutory and regulatory requirements. Further, whenever any printer reports to a service center for any repairs, the complaints/grievances of the customer are recorded in the job card, which do not imply admission of any defects in the printer, but a mere representation of the customer's grievances on the said printer. Thereafter standard checks are carried out at the service center and observation is recorded by the Service Engineer on the job-card. It helps the concerned service center to provide necessary consultancy/advice regarding the condition of the printer to the customer. The Service Engineer of the service center, who interfaces with the customer, is adequately trained to provide proper job explanation of the works carried out and even provides tests to the customer at the time of delivery of the printer after every service/repairs to the entire satisfaction of the customer. The printer as attended by the opposite party's service centers fully comply with the warranties, assurances and specifications, provided for it by the manufacturer, regarding quality and performance of the printer. Hence, there cannot be any complaint of deficiency of service against this opposite party by the complainant and the complaint deserves to be dismissed with cost.

9. The complainant has filed this baseless complaint alleging high ink consumption in the cartridge of the printer without having produced any expert opinion in the form of evidence from a notified laboratory to prove that the subject cartridge in the printer suffers from the problems as alleged, or to establish any manufacturing defect in printer in question. That the section 13 (1) (c) of the Consumer Protection Act, 1986 states as where the complaint alleges a defect in goods, which cannot be determined without proper analysis or test of the goods, the District Forum shall after obtaining a sample of the goods, send it to appropriate laboratory with a direction that such laboratory make an analysis or test, with a view to find out whether such goods suffer from any defect, alleged in the complaint or from any other defect." The opposite party submits that the allegations of the complainant in respect of manufacturing defects in printer and high ink cartridge consumption in absence of an expert report, miserably fails and the instant complaint deserves to be dismissed. These opposite parties herein rely on the judgement of the Hon'ble National Commission in the case of **K L Arora vs Groovy Communications (2002) 3 CPF 92 (NC)** for the necessity of

expert evidence to prove the submissions of manufacturing defects in the printer made in the complaint. The opposite party craves leave to file an affidavit of the service engineer, being the expert to prove that the complainant allegations are baseless and unjustified. Hence, this Hon'ble Forum, in absence of an expert report on behalf of the complainant, ought to have directed the complainant to produce an expert's report in support of his allegations, as provided in section 13 (1) (c) of the Act above and in absence of the same, the allegations of the complaint cannot be established and the instant complaint ought to be dismissed with costs.

10. The opposite party states that the complainant had failed and neglected to follow the guidelines given in the user manual, as recommended for smooth and better performance of the printer in question at optimum cost viz. correct operating procedures - do's and don'ts for maintenance and performance of the printer. This opposite party relies on the relevant terms and conditions of warranty of the printer, limitations, user manual and craves leave to refer the relevant extracts of the terms and conditions, limitations, user manual at the time of hearing, if required. Further, as per the instructions, given in the user's manual, which amounts to agreed terms of contract, the owner of the printer is advised to follow certain guidelines for smooth and maximum performance of the printer. In this case, there were instances of maintenance faults and operational faults noticed by the opposite party when the said printer was reported at the service center, where the complainant was advised to follow the instructions given in the user's manual for smooth and maximum performance of the printer. As submitted above, the subject printer was replaced on 8th Aug, 2010, but the problem was different "carriage getting stuck. The complainant had suppressed the said material facts from this Hon'ble Forum. In this case, the opposite party relies on other terms & conditions of warranty, which states as - *"HP is not responsible for damage that occurs as a result of your failure to follow the instructions intended for the HP hardware product. This limited liability does not apply to expendable or consumable parts and does not exceed to any product from which the serial number has been removed or that has been damaged or rendered defective (a) as a result of accident, misuse, abuse, contamination, improper or inadequate maintenance or calibration, or other external causes; (b) by operation outside the usage parameters stated in the user documentation that shipped with the product; (c) by software, interfacing, parts, or supplies not supplied by HP; (d) by*



improper site preparation or maintenance; (e) by virus infection; (f) from loss or damage in transit; or (g) by modification or service any other than (i) HP, (ii) an HP authorized service provider, or (iii) your own installation of end user replaceable HP or HP approved parts of available for your product in the servicing country/region." The opposite party states that in view of improper maintenance and operational faults on part of the complainant, the warranty ceases to exist and craves leave to rely on the relevant terms and conditions of the warranty at the time of hearing.

11. That the warranty benefits provided by the opposite party on the said laptop are for a defined period. The warranty is explicit and the terms and conditions of such limited warranty state in unequivocal terms that the warranty coverage extends till the product is depleted or the "warranty ends" date has been reached. The opposite party states that it does not provide any service/remedy available under the warranty free of cost, if the complaint in relation to the product occurs after the expiry of the stipulated warranty period. Even if the fault occurs before the expiry period of the warranty, the opposite party is not liable to provide any service to the customer, free of cost, if the customer communicates such fault to the opposite party after the expiry of the warranty period. In the case in hand, the subject printer had a warranty of one year from the of sale viz. till 14.08.2011. The asserted complaints of carriage getting stuck were reported during the duration of warranty and this opposite party replaced the printer with a new one. Hence, the complaint filed by the complainant is prima facie unsustainable and therefore the question of granting any relief whatsoever to the complainant does not arise.

12. It is humbly submitted that the complainant has purchased the printer on or around 14.08.2009 from the opposite party dealer and the said printer in question had been used for certain period. The fact proves that the subject printer is in absolute worthy condition and that the jobs carried out on the printer in question is a replacement.

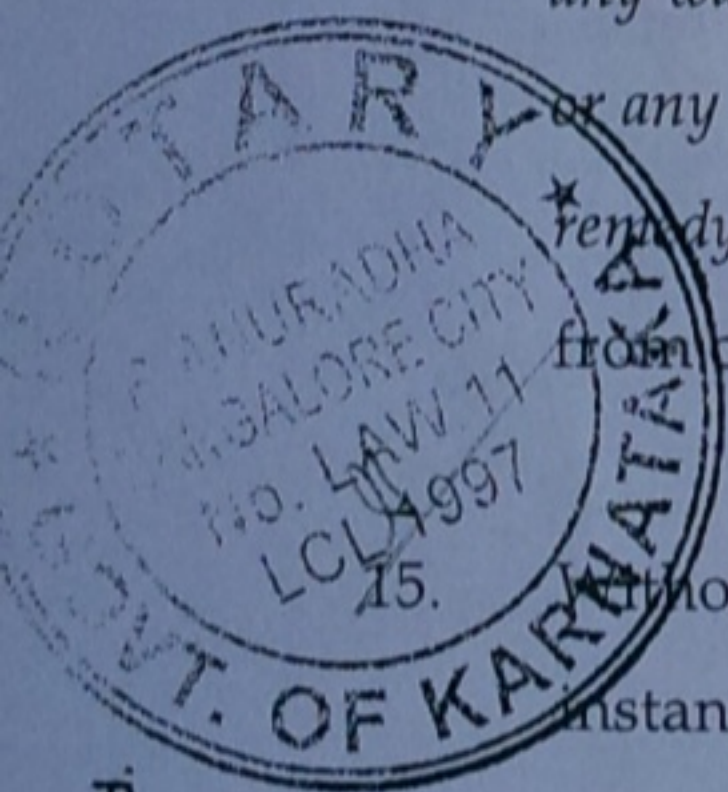
13. The opposite party has been prompt and swift to attend to the alleged grievances reported by the complainant under the warranty as and when reported. Therefore, the prayers as made by the complainant for refund of the price of the said printer with interest apart from compensation and costs are untenable and unsustainable. In the case of **S Pattabiraman vs Sp**

St. Palaniappan 1994 (2) CLT 261 (NC), the Hon'ble National Commission held that, "there was no deficiency of service on part of the opposite party. The service was rendered from time to time. The service was also satisfactorily inasmuch as the defects were rectified and the computer system was made operational to the satisfaction of the complainant." In view thereof, the complainant seeking refund of the full amount of the printer with interest along with compensation and costs is contrary to law and is untenable.

14. That this Hon'ble Forum, while considering the prayers as sought for by the complainant in the present complaint, ought to keep in mind the well established principle laid down by the Hon'ble Supreme Court in the case of **Bharti Knitting Company vs. DHL Worldwide Express Courier (1996) 4 SCC 704**, whereby it was held that when the complainant signs the contract documents, he is bound by its terms & conditions and the onus would be on him to prove the terms & the circumstances, in which he has signed the contract. The same would be evident from the relevant clause of the warranty, which states as - *"To the maximum extent permitted by applicable law, in no event shall HP or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or coincidental or other information, for business interruption, for personal injury, for loss of privacy arising out of or in any way related to the use of or inability to use the software product) even if HP or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose."* Hence, the complainant is debarred from claiming any compensation or damages from the opposite party.

15. Without prejudice to the foregoing submission, it is submitted that the instant complaint makes out no ground for relief under the provisions of section 14 of the Consumer Protection Act, 1986. The onus lies on the complainant to show that the reliefs as contemplated under section 14 can be given for the defect in goods supplied or deficiency in service provided to the complainant. In the present case, it is crystal clear that there has been no manufacturing defect in the goods purchased by the complainant and/or deficiency in service on the part of the answering opposite party.

16. That the instant complaint is liable to be dismissed under section 26 of the Consumer Protection Act, with costs for being false, frivolous, vexatious



and misconceived. It is submitted that the complaint has been filed with ulterior motive and malafide intention to cause harassment and prejudice to the answering opposite party, which is a company of long standing and high repute and as a ruse to extract money without just cause or valid reason.

That the preliminary objections, stated hereinabove, are of vital nature and go to the very root of the case, which may be decided and adjudicated first. However, without prejudice to the preliminary objections stated hereinabove, the answering opposite party submits Para wise reply to the complaint in seriatim:-

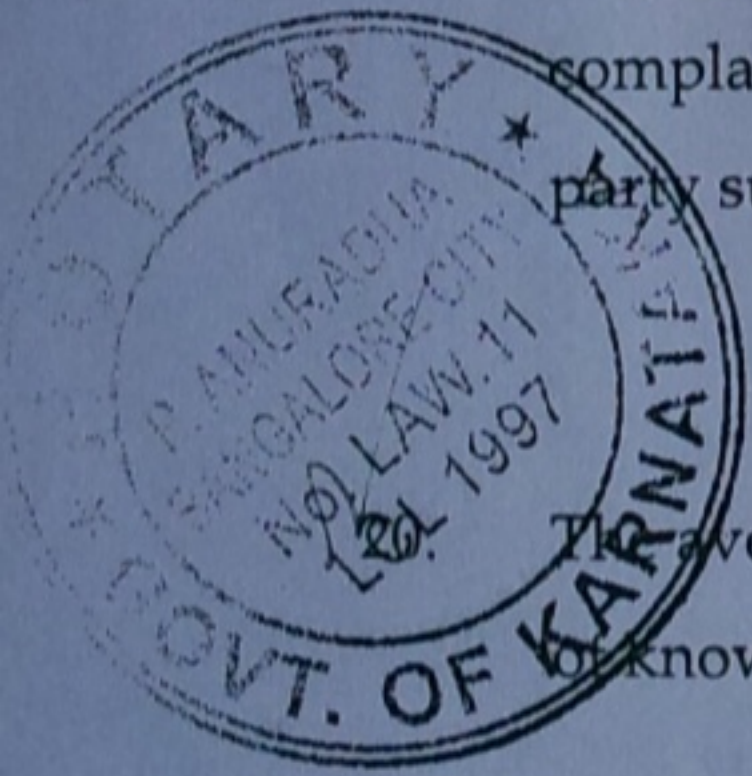
PARAWISE REPLY:-

18. The averments made in Para 1 of the complaint stating that the Complainant on 14.08.2009 purchased a HP Photosmart C6388 printer, bearing serial no. MY9349D01D for Rs. 12,500/- from opposite party no. 2 are not within the knowledge of this opposite party and the complainant is put to strict proof of the same. However the answering opposite party admits that the opposite party no. 2 is the authorised dealer and service center of opposite party no. 1.

19. The averments made in Para 2 of the complaint are denied as false and the complainant is put to strict proof of the same. However this opposite party submits that the said printer comes with a warranty of one year.

20. The averments made at Para 3 and 4 of the complaint are denied for want of knowledge and the complainant is put to strict proof of the same.

21. With regards to the averments made at Para 5 & 6 of the complaint, this opposite party submits Hewlett Packard India Sales Pvt. Ltd. is a customer friendly company and if customer has any genuine complaint the company has no problem in redressing the same. The company has an efficient Complaint Redressal Department and Customer Care Centers with 24 hours toll free numbers and on verifying customer care data base, based on serial no. of product purchased by you in the present case, it was found the complainant had lodged complaints to the customer care centre/service centre of this opposite party vide service ticket No.



8038823475 and No. 8041281812 on 19.05.2010 and 04.08.2010 respectively complaining regarding high ink consumption which was attended and on inspection by the service person, it was found that the issue was of "carriage getting stuck" as such the same was resolved by replacing the printer with a new printer with cartridges under ININ-627-2329378 on 8th, Aug 2010. That again on 18.09.2011, the complainant had sent a email to esc.helpdesk@hp.com to which Ms. Nalini Anand responded to complaint no. 7501638295 and closed the complaint. Rest of the averments made at the Para are denied for want of knowledge and the complainant is put to strict proof of the same.

23. The averments made at Para 7 and 8 are denied and the complainant is put to strict proof of the same.

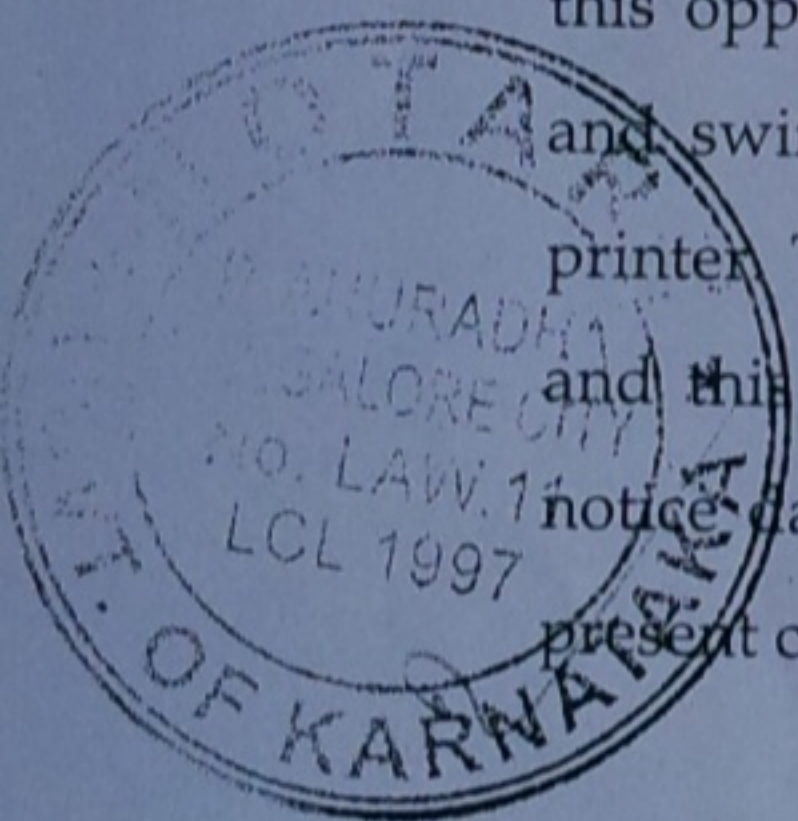
24. The averments made at Para 9 are denied for matters of record and do not require any comment therein. The Deponent submits that no cause of action arises against this Opposite Party no. 1 and the complaint is liable to be dismissed on this ground alone.

25. With regards to the averments made at Para 10 of the complaint, this opposite party submits that there printer is currently out of warranty and this opposite party and its authorised service center attended promptly and swift to any problem faced by this complainant in relation to the printer. The complainant had issued a legal notice to this opposite party and this opposite party has suitably replied to the same vide its reply notice dated 15.07.2011, in spite of which the complainant has filed the present complaint against the opposite party.

26. The averments made at Para 11, 12, 13 and 14 are denied and the complainant is put to strict proof of the same.

27. The Deponent submits that no cause of action arises against this Opposite Party no. 1 and the complaint is liable to be dismissed on this ground alone.

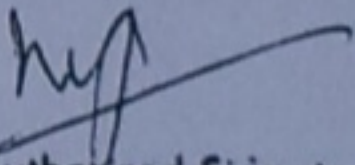
28. The Deponent submits that the averments made at Para relating to Nature of Complaint and Jurisdiction of the complaint does not require any traverse.



29. That it is submitted that the complainant is trying for an unjust enrichment and trying his luck by filing the present complaint.
30. That it is submitted that the complainant is not entitled to any of the relief as sought in the prayer Para of the complaint. The present complaint is filed just to harass this opposite party.
31. The answering opposite party craves leave to amend/alter/add or rescind the written statement or file the rejoinder, if so advised.

It is, therefore, most respectfully prayed that since the complainant has failed to make out a prima facie case against the answering opposite party, the instant complaint of the complainant be kindly dismissed against the opposite party no.1. It is strenuously denied that there is any case of deficiency in service is established against this opposite party no. 1. It is submitted that the averments/prayers are bald, frivolous, misconceived and made without any merit and the instant complaint merits dismissal of the complaint with costs.

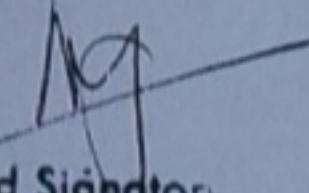
For Hewlett-Packard India Sales Pvt. Ltd.


Authorized Signatory
(Deponent)

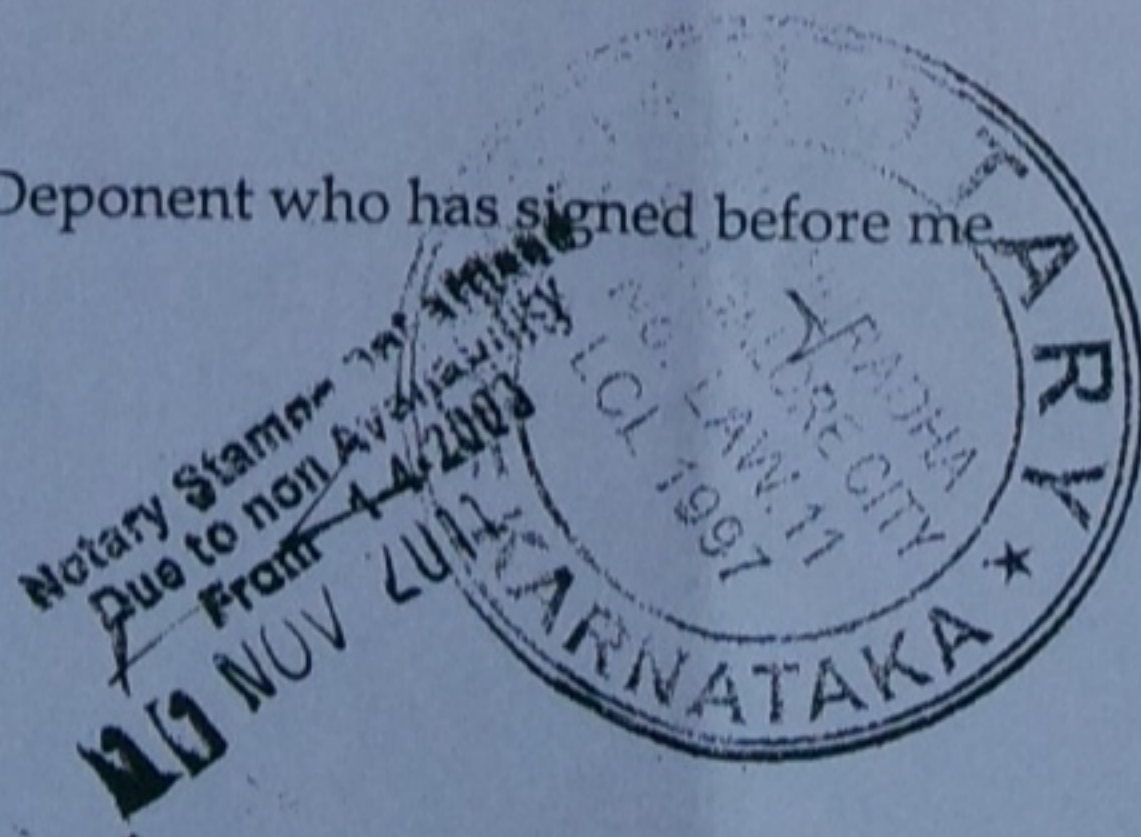
VERIFICATION

I the above named Deponent do hereby verify that the contents of version are true to the best of my knowledge and nothing material has been concealed by me.

For Hewlett-Packard India Sales Pvt. Ltd.


Authorized Signatory
(Deponent)

I, identify the Deponent who has signed before me



SWORN TO BEFORE ME
P. ANURADHA, M.A., M.L., M.B.B.
ADVOCATE & NOTARY PUBLIC
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