



महाराष्ट्र MAHARASHTRA

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LZ 623735

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

International Business Machines Corporation

...Complainant

v/s

Zhu Xumei

...Respondent

In the matter of Disputed Domain Name "COGNOS.CO.IN".

1 The Parties

The Complainant is International Business Machines Corporation, New York, USA, represented by Madhu Rewari, Partner of Anand and Anand, India.

The Respondent is Zhu Xumei of Huzou, China.

D Parmar

2 **Procedural History**

- 2.1 A Complaint dated December 22, 2014 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (hereinafter referred to as the "Policy") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. 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.
- 2.3 On January 12, 2015, the Arbitrator had emailed to the Respondent setting forth the relief claimed in the Complaint and directing her to file her reply to the Complaint on or before January 21, 2015. On January 22, 2015, the Arbitrator had emailed the final reminder to Respondent with direction to file reply on or before January 27, 2015. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 **Factual Background**

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 Cognos Inc. was founded in the year 1969. At its peak, Cognos Inc. had employed almost 3,500 people and served 23,000 customers in over 135 countries.
- 3.2 The Complainant's trademark "Cognos" is a registered trademark in several countries around the world, including three registered trademarks in India.



- 3.3 On January 31, 2008, the Complainant had acquired Cognos Inc. and continues to use the trademark "Cognos" to its products.
- 3.4 The Complainant's trademark "Cognos" is used in many variants such as "Cognos Connection", "Cognos Business Intelligence", "Cognos Express", "Cognos Insight", "Cognos Disclosure Management" and "Cognos TM1". Products under the Complainant's trademark "Cognos 8 BI" have won numerous awards.
- 3.5 The Complainant has positioned itself as a market leader throughout the world. It has expended a great amount of time, money and effort to promote and advertise the trademark "Cognos" in all and every manner possible.
- 3.6 The Complainant is the registrant of the domain names <cognos.com> and other generic top level domain and country code top level domain names which, inter alia, includes <cognos.biz>, <cognos.us> and <cognos.in>.
- 3.7 The Disputed Domain Name <**COGNOS.CO.IN**> was registered by Respondent on May 12, 2014. At the time of filing the Complaint, the Respondent is offering the Disputed Domain Name for sale.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark "Cognos", the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Respondent registered and is using the Disputed Domain Name in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

- 5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules

and principles of law.

5.2 According to the Policy, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant is using the trademark "Cognos" since 1969 and holds worldwide trademark registration for the trademark "Cognos" and other mark containing "Cognos", including three registered trademarks in India. As mentioned above, the Complaint is also the registrant of various other domain names which, inter alia, includes <cognos.com>, <cognos.biz>, <cognos.us> and <cognos.in>. The recently registered Disputed Domain Name <cognos.co.in> incorporated the Complaint's trademark "Cognos" in its entirety without any other word or letter. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".co.in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. I, therefore, find that the Disputed Domain Name <cognos.co.in> is identical to the Complaint's trademark "Cognos".

5.4 Rights or Legitimate Interests

5.4.1 The Complainant asserts that it has given the Respondent no license or other right to use the trademark "Cognos" in which the Complainant has sole and exclusive interest. Based on the evidence adduced by the Complainant, it is concluded that the Respondent chose the Disputed Domain Name to cause confusion as to the source, sponsorship, affiliation, or endorsement. The



Respondent's website, which has not been properly constructed as on the date of filing the Complaint, is not bona fide since the Respondent is riding over the reputation of the Complaint's trademark "Cognos". Thus, the Respondent is not using, nor demonstrated any preparation to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.

5.4.2. The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Respondent's personal name is not "Cognos". It is evident from the print outs from the Disputed Domain Name that the Respondent is not making a legitimate non-commercial use of the Disputed Domain Name.

5.4.3. In line with the previous UDRP and INDRP decisions, I conclude 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. The Respondent chose not to challenge the Complainant's allegations. There is no evidence before me to support any position contrary to these allegations, and therefore I accept these arguments. Consequently, I find that the Respondent has no rights or legitimate interests in the Disputed Domain Name <cognos.co.in>.

5.5 Registered and Used in Bad Faith

The Disputed Domain Name was registered by Respondent on May 12, 2014 and incorporated the Complainant's trademark, which is being used since 1969. At the time of filing the Complaint, the Respondent is offering the Disputed Domain Name for sale. The Disputed Domain Name resolves to a web page containing advertising links, from which the Respondent likely to benefits through the Registrar's "Cash Parking" monetization program. This fact supports the inference that the purpose of the Respondent's diversion of traffic from the Complainant to herself is for the Respondent's own commercial gain. The Complainant had listed several UDRP cases filed against the Respondent by other complainants and all these cases were decided against the Respondent resulting in the transfer of the impugned domain names. Therefore, I note that the Respondent was engaged in a pattern of such

conduct. All above facts constitute bad faith under paragraph 6 of the Policy.

6. Decision

In light of the foregoing findings, namely, that the Disputed Domain Name is identical to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and that the Disputed 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 Disputed Domain Name <cognos.co.in> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: January 30, 2015