



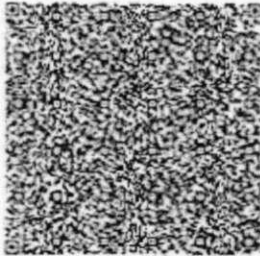
सत्यमेव जयते

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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA**
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure

ARBITRATION AWARD

DATED: October 31, 2013

In the matter of:

**Comerica Incorporated
411 W. Lafayette St., 8th Fl.
Detroit, MI 48226
USA**

Complainant

Vs

**Zhaxia
Pfister Hotel
424 East Wisconsin Avenue
Milwaukee, WI 53202
USA**

Respondent

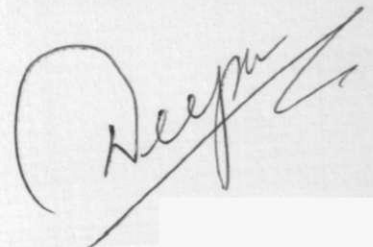
1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is **Comerica Incorporated, 411 W. Lafayette St., 8th Fl. Detroit, MI 48226, USA**
- (b) Respondent firm is: **Zhaxia, Pfister Hotel, 424 East Wisconsin Avenue, Milwaukee, WI 53202 USA**. It has its presence on internet with domain name of www.comerica.co.in which is the subject matter of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.comerica.co.in registered with the DOT IN Registry through the Direct Internet Solutions Pvt. Ltd.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi.
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").



- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
- (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.

3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

Complainant is the owner of numerous United States registrations for its trademarks and service marks, including COMERICA like "comerica.com", "comerica.net", and comerica.org and uses it in banking services. The Complainant has used this mark in connection with these services since 1982 & COMERICA and (Design) for use in "banking services" since 1992. Complainant, a financial services company, is among the 30 largest U.S. banking companies, having \$62.6 billion assets as of April 2013 with its headquarters in Dallas, Texas, USA. In addition Complainant operates select businesses in Canada and Mexico also.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

- a) **THAT INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH PVR LIMITED HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS.**

The disputed domain name is identical to the Complainant's mark. Registrations evidence the his rights in the mark COMERICA (the "Mark"), which is coined, distinct, and symbolizes the goodwill of the Complainant. To promote its products and services identified by its Mark, he invests Millions of dollars every year. That Complainant, a financial services company, is among the 30 largest U.S. banking companies, having \$62.6 billion assets as of April 2013 with its headquarters in Dallas, Texas, USA. In addition Complainant operates select businesses in Canada and Mexico also. The Complainant is the domain name registrant for numerous domain names, including "comerica.com", "comerica.net", and comerica.org".



b) THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF DOMAIN NAME

There is no evidence whatsoever of the Respondent's use, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

There is no evidence that the Respondent has acquired and trademark or service mark right in marks that correspond to the disputed domain name.

There is no evidence that Respondent has been commonly known by the disputed domain name.

There is no evidence that the Respondent is marking 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.

Complainant asserts that it has not licensed the Respondent or otherwise permitted the Respondent to use the Mark or the disputed domain name, and that the Respondent does not own and cannot lawfully obtain any trademark or intellectual property rights in the Mark or any words or phrases that incorporate or are confusingly similar to the Mark.

c) THE IMPUGNED DOMAIN NAME COMERICA.CO.IN HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH.

The disputed domain name was registered in bad faith because the Respondent must have known of the Complainant's rights in the Mark when registering the disputed domain name since the Mark is a well-known and widely known trademark. The Mark had been in use by the Complainant for thirty years and was well-known by the time the Respondent registered the disputed domain name.

The disputed domain name was registered in bad faith because the Respondent had no relationship to the mark when registering the disputed domain name.

The domain is being used in bad faith because it accesses a parking page with sponsored links, including links to financial services that compete with the Complainant's financial services. Consumers attempting to access the

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Complainant's website may be confused into thinking the Respondent's website is affiliated with the Complainant. Respondent intentionally attempts to attract Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. These circumstances indicate Respondent's clear intent to disrupt the Complainant's business, deceive consumers, trade off of the Complainant's goodwill, and misappropriate the Complainant's well-established, famous mark.

B. Respondents Contentions

Not responded at all.

5. OPINION:

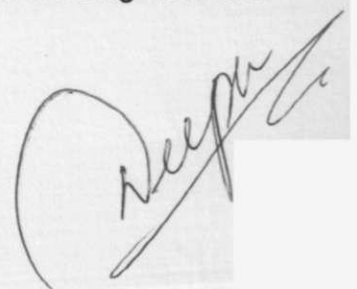
I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1982 and is using the mark 'COMERICA' since then and has made massive efforts to promote the brand name by 'COMERICA' consuming various resources available at his end and word 'COMERICA' has certainly acquired a popular Brand name the length and breadth of USA, CANADA, MEXICO and a prominent place in internet electronic media also.

On the basis of the records submitted by the complainant it's proved that the domain name 'comerica.co.in' is related to the business of Complainant and is being used for purpose related to his work.



It is confirmed that Complainant is user of name 'COMERICA'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

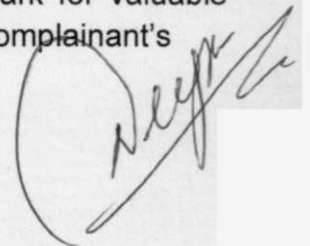
That trade mark 'COMERICA' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in USA as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'COMERICA' marks in USA and throughout global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'COMERICA' mark and design as a domain name.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

.The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not , still the respondent proceeded with registration of the domain name in question to intentionally trade on 'Comerica Incorporated' reputation, goodwill and trademarks and was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with COMERICA reputation and services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the Respondent registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's

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rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'comerica' is a registered and protected trademark of the Complainant.

Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademarks Comerica, Internet users will apparently and reasonably expect an offer of the Complainant or authorized or affiliated enterprises under 'comerica.co.in'.

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'COMERICA' and similar domain names, i.e., 'comerica.com', 'comerica.net', 'comerica.org' were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'comerica.co.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread

recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

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II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

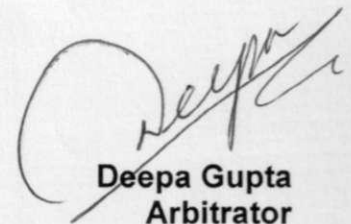
As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking for sale through direct or indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name www.comerica.co.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 15000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 31st day of Oct 2013.



Deepa Gupta
Arbitrator