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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:

Compuware Corporation
One Camps Martius
Detroit, MI 48226,
U.S.A.

.Complainant

Versus

Pankaj
731 Sector-2
Sadiq Nagar
Delhi 110049,
India.

...Respondent

The Parties:

The Complainant is Compuware Corporation, One Camps Martius, Detroit, MI 48226, U.S.A., represented by Jason R. Webber, One Campus Martius, Detroit, MI USA 48226.

The Respondent is Pankaj, India.

2. **The Domain Names and Registrar**

The disputed domain name www.compuware.in is registered with .IN Registry, National Exchange of India/Visesh Info tecnic's Ltd.

3. **Procedural History**

The Complaint was filed with the .In Registry, National Exchange of India (NIXI), against Pankaj, 731, Sector-2, Sadiq Nagar, Delhi-110049, India on the basis of the WHOIS data base of NIXI showing the said respondent as registrant of the disputed domain name. 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").

3.1 In accordance with the Rules, paragraphs 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 The Arbitration and Conciliation Act, 1996, Rules framed thereunder, INDRP Dispute Resolution Policy and Rules framed thereunder, on 14th February, 2008. The parties were notified about the appointment of Arbitrator.

3.2 In response to the notification for the commencement of arbitration proceedings, the Respondent wrote back to NIXI and to Mr. Jason, representative of complainant in the following manner:-

"I do not understand what is this all about. I already communicated that this domain is with me till March 21, 2008. After that compureware can register it for their name. I do not want to go in formalities of transferring the domain when I know that I will not have hold of it after around 5 weeks.



Jason, As I Communicated to you earlier this domain is with me till March 21, 2008. You can register it then go ahead and register it for your name. Thanks Pankaj"

- 3.3 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules (paragraph 6).
- 3.4 The arbitration proceedings commenced on 20th February, 2008. In accordance with the Rules, paragraph 5(c), the Respondent was notified by me about the commencement of Arbitration proceedings and the due date for Response was ten days expiring on March 1, 2008.
- 3.5 The Respondent did not respond to the complaint within the prescribed time of ten days. By letter/e-mail dated April 5, 2008, the Respondent was again notified about his failure to file the written statement/response to the complaint in compliance with requisitions made in the letter i.e. mail dated 20th February, 2008. The Respondent was granted yet another opportunity to file the written statement/response to the complaint within five days. The Respondent by his e-mail dated April 7, 2008 responded as under:-
- "Your choice Dear" How can you put complaint or case against me when domain is not on my name? Understand this case backfire you as I am getting irritated from such mails. Thanks, Pankaj."*
- 3.6 Copies of all communications, documents and replies were forwarded to parties and .IN Registry via Internet for their records and for maintaining transparency in the proceedings.



3.7 The Panel considers that according to Paragraph 9 of the Rules the language of the proceedings be English.

3.8 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.

3.9 The present Award is passed within the period of sixty days from the date of commencement of Arbitration proceedings as per paragraph 5 of the Rules.

4. **Factual Background**

4.1 The Complaint in these administrative proceedings is Compuware Corporation, A Michigan Corporation with its principal place of business being Detroit, Michigan.

The Complainant requests arbitration proceedings in accordance with the Arbitration & Conciliation Act, 1996, the INDRP Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable.

4.2 The complainant claims to be the proprietor of the trade mark "Compuware" in relation to Scientific, electrical, electronic optical and communications apparatus; computer hardware, software and firmware; pre-recorded media encoded with computer programmes; apparatus and media for the storage, carriage, reproduction and retrieval of information, data and code; non-printed publications; teaching and instructional apparatus; all the aforesaid including that provided via a global telecommunication



network including the Internet and the world wide web.

- 4.3 The trade mark "Compuware" is registered in the name of the complainant under No.2158693 as of 19th May, 1998 in the Unites States. The said trade mark is also registered under No. 1064118 as of 3rd December, 2001 in the name of the complainant in India.
- 4.4 The Respondent in these proceedings is Pankaj of Sadiq Nagar, Delhi, India. The domain name in issue www.compuware.in was registered on 21st March, 2007.
- 4.5 The respondent by his letter/e-mail of February 14, 2008 admitted to have registered the (domain name www.compuware.in and insisting on holding the same till March 21, 2008.

5. **Parties' Contentions**

A. **Complainant**

- 5A.1 The complaint is Compuware Corporation, a Michigan Corporation with its principal place of business being Detroit, Michigan.
- 5A.2 The complainant claims to be the proprietor of the trade mark "Compuware" in relation to the Scientific, electrical, electronic optical and communications apparatus; computer hardware, software and firmware; pre-recorded media encoded with computer programmes; apparatus and media for the storage, carriage, reproduction and retrieval of information, data and code; non-printed publications; teaching and instructional apparatus; all the aforesaid including that provided via a global telecommunication network including the Internet and the world wide web.



- 5A.3 The trade mark "Compuware" is registered in the name of the complainant under No.2158693 as of 19th May, 1998 in the United States. The said trade mark is also registered under No. 1064118 as of 3rd December, 2001 in the name of the complainant in India.
- 5A.4 The complainant submits that the domain name www.compuware.in is identical to the name used in our trade mark of COMPUWARE. Even though the domain name holder has no affiliation whatsoever with Compuware Corporation, it appears so solely because of the name used as the basis of the domain name.
- 5A.5 In accordance with Reules, Para 3(b)(vi)(2). The Respondent should be considered as having no rights or legitimate interests in respect of the domain that is the subject of the Complaint.
- 5A.6 Before any notice was given to the Respondent of the dispute, there was no evidence whatsoever of the Respondent's use of, or demonstrable preparations to use, the domain name corresponding to the domain name in connection with a bona fide offering of goods or services. To reflect this notion from March 30, 2007 until the present time, there is no content on the web page in which the domain name is listed.
- 5A.7 The Respondent (as an individual, business, or other organization) has not been commonly known by the domain name. Accordingly, the Respondent has acquired no trademark or service mark rights. During email correspondence with the Respondent he simply indicated that Compuware Corporation has no right to the same. He



did not indicate that he used the name in his business or that he has ever had plans to do so.

5A.8 Furthermore, the Respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trade mark or service mark at issue. The acquisition of the www.compuware.in domain name without the posting of any content indicates to us that he is using it for commercial gain by holding hostage the domain in hopes that Compuware will purchase it. The Respondent was informed via e-mail that complainant's policy to pursue those individuals who would seek to ransom the Compuware Trade Name.

In accordance with Rules, para 3(b)(ix)(3), the domain name should be considered as having been registered and used in bad faith by the Respondent.

The circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trade mark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name. As the Indiatimes Website indicates, it is relatively inexpensive to register a domain name. Since there has been no use of the domain name since registration, it would appear that the sole reason the Respondent is holding on to the name is for the primary purpose of selling it to Compuware Corporation for material gain.

5A.11 In conjunction with the foregoing, the domain name was



registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name. Any legitimate business use of the domain name would have to begin with posting actual content on the page. From March 30, 2007 to the present, there has not been a single shred of content posted to the page; this is almost seven months. This indicates that the domain name was registered primarily for the purpose of disrupting the business of a competitor and anticipating that at some time Compuware would be in need of an important domain name that serves the increasingly important Indian Market. The above-mentioned actions indicate that the Respondent was first to register the domain name with the sole purpose of selling to the highest bidder.

B. Respondent

- 5B.1 The Respondent, as aforesaid, did not file any written statement/response to the complaint despite having been granted sufficient time and repeated opportunities.
- 5B.2 However, the Respondent in response to the legal notice dated 5th February, 2007 issued by complainant stated that no law makes the complainant as owner of the domain name even though the same was the complainant's trade mark.
- 5B.3 The Respondent also claimed himself to be a web development company having invested huge amount on development of website under the impugned domain name.
- 5B.4 The Respondent refused to transfer the domain name in favour of the complainant unless enough money was paid



for the losses as may be suffered by the Respondent account of such transfer.

In further correspondence, the Respondent stated that he has never used the trade mark for commercial or personal purposes. The Respondent also admitted that Compuware is the trade mark of complainant which by co-incident was the domain name registered by him.

The Respondent by his letter/e-mail of 14th February, 2008 submitted as under:

"I do not understand what is this all about. I already communicated that this domain is with me till March 21, 2008. After that compureware can register it for their name. I do not want to go in formalities of transferring the domain when I know that I will not have hold of it after around 5 weeks.

Jason, As I Communicated to you earlier this domain is with me till March 21, 2008. You can register it then go ahead and register it for your name. Thanks Pankaj"

By his e-mail of April 7, 2008, the Respondent stated as under:

"Your choice dear. How can you put complaint or case against me when domain is not on my name? Understand this can backfire you as I am getting irritated from such mails".

Discussion and Findings

The complainant, while filing the complaint, submitted to arbitration in accordance with the Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph 3(b) of the Rules and Procedure. The respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the Policy.

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 hearings by teleconference video conference, and web conference) unless the Arbitrator, in his sole discretion and as an exceptional matter, 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. Under Section 19 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal is not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. Sub-Section 3 of Section 19 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. It is therefore appropriate to examine the issues in the light of the statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act. The Complainant has filed evidence by way of Annexure 1 to Annexure 5 with the complaint. The Respondent has not filed any written statement or documentary evidence despite opportunities provided.

The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the complaint concerning the complainant's legitimate right, interest and title in the trade mark, trade name and domain name "Compuware" and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has also not denied the correctness or genuineness of any of the Annexures 1 to 5 to the Complaint.



6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure the material facts as are not specifically denied are deemed to be admitted. 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 Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with Law.

6.5 Under the provisions of Order 8 Rule 10 of the Code of Civil Procedure, where any party from whom a written statement is required fails to present the same within the time prescribed, the Court shall pronounce judgment against him or make such order as it thinks fit. In the present case, the Respondent failed to present the written statement despite repeated opportunities.

6.6 The database address of the respondent mentioned in the complaint in the title and paragraph 7 of the complaint is:

Sponsoring Registrar: Visesh Infotecnics Ltd. (R42-AFIN)

Registrant/Admin ID: DL_5509000

Registrant/Admin Name: PANKAJ

Registrant/Admn. Address:

731 Sector-2
Sadiq Nagar,
Delhi-110049,
India.

Phone: +011.01164574268

E-mail: melotus@gmail.com

6.7 The record of the proceedings shows that the respondent did



receive all communications and was granted full opportunity to meet the case of the complainant and principles of natural justice have duly been followed. The respondent did not complain at any time of the proceedings about non-receipt of pleadings or correspondence. The mails sent to the Respondent were never returned. The intent of the Respondent to defeat the ends of justice are apparent.

- 6.8 Be that as it may, the Panel will also examine the contentions raised by the Respondent in his correspondence while refusing to transfer the disputed domain name to the complainant and deal with the same in accordance with law.
- 6.9 Paragraph 10 of the Policy provides that the remedies available to a complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the complainant.
- 6.10 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent be transferred to the Complainant or cancelled:
- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
 - (iii) the domain names have been registered and are being used in bad faith.



That being so, the Panel will now proceed to examine if the Complaint has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A. Identical or Confusingly Similar

- 6A.1 The complainant Compuware Corporation is a company incorporated with the name Compuware as a key, leading and essential portion of its corporate name. The incorporation of the complainant company with Compuware forming an essential part thereof is not in dispute.
- 6A.2 It is also not disputed that the complainant is the registrant of trade mark "Compuware" in U.S.A. and in India.
- 6A.3 It is also not in dispute that the complainant is the registrant of U.S. trade mark No. 2158693 dated 19th May, 1998 and trade mark No.1064118 dated 3rd December, 2001, which are the dates prior to the registration of impugned domain name www.compuware.in by the Respondent.
- 6A.4 The respondent, in its response dated 3rd May, 2007, admitted the proprietorship of Complainant to the trade mark "Compuware". The perusal of Annexure 2 & 3 to the complaint show that trade mark COMPUWARE is registered in the name of complainant. The perusal of Annexure 5 show that prior to the filing of complaint the complainant served notice dated May 2, 2007 on the Respondent calling upon him to transfer the registration of the domain name www.compuware.in to the Complainant to which refusal was made.
- 6A.5 The respondent, in his correspondence failed to give any explanation as to how he conceived and hit upon the



domain name www.compuware.in. The name of the respondent or any of his companies or organization does not contain the mark / name COMPUWARE.

6A.6 The letters www are clearly intended to emulate the prefix www (with a period punctuation mark) of an authentic Internet Address and do not diminish the confusing similarity with the trade mark of the complainant, (WIPO Case No. D 2003-0490, Case No.2004-0486, Case No. 2004-0105 and Case No. D 2003-0639). In many prior penal decision of WIPO, the prefix www affixed to domain names consisting of a trade mark has been considered as substantially similar to the relevant trade mark (Case No. D 2003-0012), Case No. D 2003-0054, Case No. D 2000-0441 and Case No. D 2000-0069). The Domain name also performs the role of a trade mark. The Respondent admitted the complainant's right in the trade mark "Compuware" by his e-mail of 3rd May, 2007 (Annexure-5).

6A.7 The complainant has thus discharged its onus in establishing its proprietary rights in the mark/name COMPUWARE on account of priority in adoption and registrations.

6A.8 The domain name www.compuware.in registered by the respondent in India is identical to the trademark / trade name of the Complainant. The panel, therefore, hold that the domain name registered by the respondent is identical and confusingly similar to the trade mark and trade name, of the complainant.

B. Rights or Legitimate Interests

6B. Paragraph 7 of the Policy lists the following three



non-exclusive methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant 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) have 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 noncommercial 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 As to the circumstances under paragraph 4 of the Policy, the Complainant has not consented to the Respondent's use of the domain name, which incorporates the Complainant's trademark/trade name COMPUWARE or the marks as are identical or deceptively similar thereto. The domain name www.compuware.in bear no relationship to the business of the Respondent. The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization, of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do remotely with the business of complainant. The Respondent has never been commonly known by the domain name in



question. The Respondent is thus in the opinion of the Panel not at all making a legitimate non-commercial or fair use of the domain name. The Respondent stated that he did not make any commercial or personal use of the domain name. The question for consideration has the Respondent made any fair use? The answer will be NO in the facts of the case.

- 6B.3 Once a complainant makes a *prima facie* showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.
- 6B.4 The Respondent claimed right or legitimate interest in the domain name in question on the ground that he started Web Development Company and invested huge amount on development of website for the domain in issue. The Respondent, as aforesaid, has not specifically disputed or denied the material averments made in the Complainant on merit of the case. The Panel finds the complaint is in accordance with paragraph no. 3. The procedure as per paragraphs 5 of Rules has also been followed. The parties were notified about the appointment of Arbitrator by .In Registry and by the Arbitrator. The respondent never disputed or denied the receipt of complaints, correspondence and annexures. The Respondent on the other hand informed the .IN Registry and the Complainant that the disputed domain will be with him only till March 21, 2008 and thereafter the same can be registered by complainant. Subsequently the Respondent also took the stand that the disputed domain was not in his name. The



statements made by Respondent in his e-mails dated 14.2.2008 and 7.4.2008 clearly prove that the Respondent did not even claim any legitimate interest in the disputed domain. Under the circumstances, the Panel is inclined to hold that the Respondent has no right or legitimate interest in the disputed domain names. See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No.2000-0624.

- 6B.5 Nevertheless, in the absence of any relevant submission by the Respondent, this Panel is inclined to accept all reasonable inferences and allegations included in the Complaint as true. See *Talk City, Inc. v. Robertson*, WIPO Case No. D2000-0009. The Respondent makes no claim to have been authorized by the Complainant to use the Complainant's marks. Similarly, the Respondent makes no claim that it has been commonly known by the disputed domain names, or that it has attempted to make any legitimate noncommercial or fair use of the domain names.
- 6B.6 The disputed domain name www.compuware.in was registered in the name of the Respondents on the date of filing of the complaint as well as in the date of commencement of arbitration proceedings. The WHOIS data base still show the Respondent as the registrant of the disputed domain name till 21st March, 2009. The Respondent did not transfer the domain name to the complainant despite notice as well as commencement of arbitration proceedings and thus put the complainant to incur cost for the proceedings.
- 6B.7 The Panel therefore holds that none of the circumstances listed under 7(i) of the Policy, possibly demonstrating rights or legitimate interests of the Respondent, are present.



Registered and Used in Bad Faith

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

Paragraph 6 of the Policy states circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

- "(i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of our 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 trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location."



6C.3 The overriding objective of the Policy is to prevent abusive domain name registration and use for the benefit of legitimate trademark owners, and the Panel notes that the examples of bad faith registration and use set forth in the policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. The Panel in the *Telstra* case interpreted the third element of paragraph 4 of the Uniform Domain Name Policy, which is para-meteria to the INDRP Policy in the following manner:

"It is less clear cut whether the Complainant has proved the third element in paragraph 4(a) of the Uniform Policy, namely that the domain name "has been registered and is being used in bad faith" by Respondent. The Administrative Panel notes two things about this provision. First, the provision contains the conjunction "and" rather than "or". Secondly, the provision refers to both the past tense ("has been registered") and the present tense ("is being used").

The significance of the use of the conjunction "and" is that paragraph 4(a)(iii) requires the Complainant to prove use in bad faith as well as registration in bad faith. That is to say, bad faith registration alone is an insufficient ground for obtaining a remedy under the Uniform Policy. This point is acknowledged in the Administrative Panel Decision in the WIPO Case No. D99-0001, the first case decided under the Uniform Policy. In paragraph 6 of that Decision, the Administrative Panel refers to the legislative history of the Uniform Policy, and in particular to the Second Staff Report



on Implementation Documents for the Uniform Dispute Resolution Policy submitted to the ICANN Board at its meeting on October 24, 1999. That Report, at paragraph 4.5, contains the following relevant statement and recommendation:

Several comments (submitted by INTA and various trademark owners) advocated various expansions to the scope of the definition of abusive registration. For example:

These comments suggested that the definition should be expanded to include cases of either registration or use in bad faith, rather than both registration and use in bad faith. These comments point out that cyber squatters often register names in bulk, but do not use them, yet without use the streamlined dispute-resolution procedure is not available. While that argument appears to have merit on initial impression, it would involve a change in the policy adopted by the Board. The WIPO report, the DNSO recommendation, and the registrars-group recommendation all required both registration and use in bad faith before the streamlined procedure would be invoked. Staff recommends that this requirement not be changed without study and recommendation by the DNSO.

From the fact that the ICANN Board accepted the approach recommended in the Second Staff Report, and thus adopted the Uniform Policy in the form originally proposed, it is clear that ICANN intended that bad faith registration alone not give rise to a remedy under the Uniform Policy. For a remedy to be available, the Complainant must prove both that the domain was registered in bad faith and that it is being used in bad faith.



This interpretation is confirmed, and clarified, by the use of both the past and present tenses in paragraph 4 (a)(iii) of the Uniform Policy. The use of both tenses draws attention to the fact that, in determining whether there is bad faith on the part of the Respondent, consideration must be given to the circumstances applying both at the time of registration and thereafter. So understood, it can be seen that the requirement in paragraph 4(a)(iii) that the domain name "has been registered and is being used in bad faith" will be satisfied only if the Complainant proves that the registration was undertaken in bad faith *and* that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Has the Complainant proved that the domain name "has been registered in bad faith" by the Respondent? In light of the facts established in paragraphs 4.6 to 4.8, the Administrative Panel finds that the Respondent does not conduct any legitimate commercial or non-commercial business activity in Australia. In light of the facts established in paragraphs 4.6 to 4.8, the Administrative Panel further finds that the Respondent has taken deliberate steps to ensure that its true identity cannot be determined and communication with it cannot be made. Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. These



findings, together with the finding in paragraph 7.2 that the Respondent has no rights or interests in the domain name, lead the Administrative Panel to conclude that the domain name <telstra.org> has been registered by the Respondent in bad faith.

Has the Complainant proved the additional requirement that the domain name "is being used in bad faith" by the Respondent? The domain name <telstra.org> does not resolve to a web site or other on-line presence. There is no evidence that a web site or other on-line presence is in the process of being established which will use the domain name. There is no evidence of advertising, promotion or display to the public of the domain name. Finally, there is no evidence that the Respondent has offered to sell, rent or otherwise transfer the domain name to the Complainant, a competitor of the Complainant, or any other person. In short, there is no positive action being undertaken by the Respondent in relation to the domain name.

- 6C.4 This panel is in full agreement with the view taken in Telstra Case. In the present case both elements of bad faith registration as well as bad faith use are established. The respondent, as aforesaid, has no relationship with the business of Compuware. The Respondent acquired the domain registration for the purpose of selling or otherwise transferring to the complainant who is owner of the trade mark for valuable consideration in excess of out of pocket expenses directly related to the registration of disputed domain name. The reply of Respondent by his e-mail dated 3.5.2008 is sufficient to draw such inference. It is a clear case of cyber squatting.

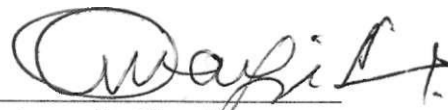


- 6.5 This Panel find that the Respondent offered to transfer the domain name to the complainant in consideration of the payment of enough money to make for the losses he may suffer on account of such transfer. The respondent failed to offer any plausible explanation as to how he came about to hit upon the mark "Compuware" while obtaining domain name registration in India. The Respondent registered the domain name in order to prevent the complainant being the owner of trade mark from reflecting the mark in a corresponding domain name.
- 6C.6 There is evidence to conclude that the Respondent has registered the domain in bad faith and has made use thereof to sell or transfer the same for consideration.

7. **Decision**

In accordance with paragraph 10 of the Policy and for the reasons stated above, the panel directs that the domain name www.compuware.in be transferred to the complainant.

In view of the facts and circumstances of the case, the panel also directs the Respondent to pay the cost of the proceedings to the complainant.



Amarjit Singh
Sole Arbitrator

Dated: 16th April , 2008.

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