



दिल्ली DELHI

BEFORE SHRI A. K. SINGH, SOLE ARBITRATOR, NEW DELHI

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IN THE MATTER OF:

M/S Genpact Limited
Canon's Court
22, Victoria Street
Hamilton, HM 12,
Bermuda.

...Complainant

Versus

Shri Manish Gupta
Lzen Electronics
142, Deepali Enclave,
Pitampura,
New Delhi-110034

...Respondent

Disputed Domain Name: - "genpact.co.in".

AWARD:

1. A Complaint under .IN Domain Name Dispute Resolution Policy (.INDRP) has been filed by the complainant, wherein I have been appointed as an arbitrator by the National Internet Exchange of India (NIXI) to adjudicate upon the dispute between the complainant and the respondent.
2. The brief history of the dispute as raised by the complainant is as under: -
 - a) The complainant is organized under the laws of Bermuda, having its principal place of

business at the address given in the cause title.

- b) The complaint is filed by the complainant for transfer of the domain name "genpact.co.in" in its favour.
- c) The complaint is filed by the complainant through Ms Gitanjali Duggal and Shri Sidharth Chopra, its Authorized Representatives.
- d) The complainant claims that it adopted the mark "genpact" in respect of its services since 3rd March '2005, the date on which the domain name "genpact.com" was created.
- e) The complainant claims that the mark "genpact" forms a part of complainant's corporate name/ trading style and is a service mark used by the complainant for all the services provided by it.

3. The complainant further claims that:

- (i) The respondent domain name "genpact.co.in" incorporate the trade name of the complainant and is also identical to the trademark and service mark 'Genpact'.
- (ii) The respondent has no rights or legitimate interests in respect of the domain name "genpact.co.in".
- (iii) The domain name "genpact.co.in" has been registered and is being used in bad faith.



(iv) The domain name "genpact.co.in" is registered for the purpose of trafficking.

4. The complainant claims it to be a worldwide provider of wide range of business process in Technology and knowledge services having a global network in 9 countries.
5. The complainant claims that it has invested enormous sum of money in its promotional activities and that "genpact" is a coined and fanciful term which has no denotative meaning. It claims that the "genpact" trademark/trading style is distinctive, has acquired substantial goodwill and is an extremely valuable commercial asset of the complainant company.
6. The complainant claims that it has applied for registration of its trademark "genpact" in India. It has also applied for registration of the said trademark in several other countries.
7. The complainant claims that its trademark has featured in articles and advertisement in various publications in India as well as outside India and it has employed about 22,000 people in India alone and is a company of repute.
8. The complainant claims that its website "www.genpact.com" provides extensive information about services rendered by it. It also holds various trademarks containing the trade name



"genpact" and has given the details of their names in Para No. 9 of its complaint.

9. The complainant claims that the respondent who has got registered the domain name "genpact.co.in" is seeking to capitalize on the goodwill associated with the trade mark of the complainant and has registered in bad faith the disputed domain name which is creating confusion and deception.
10. The complainant further claims that the respondent has also got registered the domain name "genpact.in" for which also it is taking action as per law.
11. The complainant alleges that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting or transferring it to a competitor of the complainant or the complainant for a valuable consideration in excess of the actual cost incurred by the respondent, directly or indirectly in getting it registered.
12. The complainant apprehends that an Internet user might go the website of the respondent considering it to be the website of the complainant and would get confused to the extent that respondent is in some way connected to or affiliated with the complainant. It claims that



no one other than the complainant has any right or justification to use the word "genpact".

13. The complainant further submits that the respondent has no justification for having registered the domain name incorporating the word "genpact". Complainant claims that the respondent appears to be a professional squatter and when complainant's representative approached him on e-mail address, he did not respond. When complainant failed in its attempt to amicably settle the matter, he approached the tribunal for seeking a transfer of the domain name in question.

14. The complainant claims that the disputed domain name is an instrument of fraud and deception and its registration is causing irreparable loss, damage and injury to the complainant's reputation and goodwill.

15. The complainant as such has filed the present complaint praying therein for transfer of the disputed domain name in its favour and also to award cost in its favour.

16. The respondent has filed his response to the Complaint which was received vide mail dated 15.01.2008. The respondent has submitted that they are a small scale unit, engaged in manufacturing of electronic generators commonly



known as invertors and their scope of business is confined only to India.

17. The Respondent admits to have got registered the domain name "genpact.co.in" and submits that they adopted Genpact as their trademark some time in 2000 and have been using the same since then.
18. The Respondent further submits that they are far prior users of mark/domain name (Genpact) since they have conceived and adopted their mark way back in 2000, when the complainant was not even in existence although they registered the domain name "genpact.co.in" in January 2006 almost 10 months after when complainant adopted the domain name.
19. The respondent submits that the domain name "genpact.co.in" is related to the products of the respondent and sounds like the name of a generator brand. The respondents submits that it adopted the word "GENPACT" in good faith by taking first three alphabets "GEN" from the word generator and last four alphabets 'PACT' from the word compact.
20. The Respondent submits that they have all the right and legitimate interest in the domain name and they have used the same in good faith and not for the purposes of trafficking.
21. The Respondent claims that the respondent, and for that anyone in India, had never ever heard of



existence of domain name/trademark. "GENPACT" as claimed to have been adopted by the Complainant in March 2005.

22. The respondent claims that there have been no advertisements by the complainant company of any kind prior to January 2006 of their domain name. Even if the complainant had tried to advertise and popularize their domain name between the period of March 2005 and January 2006, they could not have succeeded since the period was so short. The respondent at the time of adoption of the said domain name made thorough inquiries and found that there was no as such identical domain name or trademark in India for products of their nature.

23. The Respondent claims that the complainant did not have any presence in India in January 2006, when the respondent adopted their said domain name "genpact.co.in" and the crucial and important date on which the complainant has to prove its claimed goodwill, reputation is January 2006, when the respondent honestly conceived and adopted their trademark *GENPACT' and got "genpact.co.in" registered as its domain name. The Respondent claims that the complainant has completely and miserably failed to prove that on January 2006 there was any goodwill attached to its trademark "Genpact".



24. The Respondent claims that the Complainant's service mark "Genpact" relates to services, whereas the Respondent's mark/domain name "genpact.co.in" is used in relation to respondent's product, inverters (electronic generators), and the fields of both the parties being different and their classes of consumers being entirely different and distinct, the Respondent's domain name "genpact.co.in" does not in any manner affects the trademark or the complaint.

25. The Respondent claims that the "GENPACT" is a common word used by inverter and generator companies in the trade and there are several companies who are using similar names like 'GENPACK', 'GENPAK' and so on.

26. The Respondent has filed the following documents along with its response

- 1) Photocopy of the Affidavit of Shri Deendayal Kejriwal, Surat (Gujarat), certifying that his firm Tirupathi Electronics has been purchasing goods from the Respondent since 2000-2001 for sale.
- 2) Representation of Respondents mark 'Genpact' as applied for Registration by the Respondent with the trade mark registry, showing user as 01-02-2000.



3) Invoices/sale Bills of the Respondent along with transport contractor's Consignment receipts.

27. The Claimant has filed the rejoinder to the response of Respondent.

28. The Complainant in its rejoinder denies the contents of the Respondent's reply and submits that: -

1) The use of domain names "genpact.in" and "genpact.co.in", by the respondent, is clearly in bad faith and it is a prima facie case of cyber-squatting, with an intention to commercially exploit the Complainant's reputation

2) The fact that the Respondent never hosted websites under the disputed domain names further substantiate the bad and malafide intentions of the Respondent. The argument is supported by a WIPO case "Telstra Corporation Limited v Nuclear Marshmallows (WIPO Case No. D2000-0003) where an Arbitration panel observed" that the Respondent's passive holding of the domain name for a substantial period of time can be taken into account in concluding bad faith use of a domain name". Similar view was taken in the cases of Jupiter Limited v. Aaron Hall D2000-0574,



(Transfer) and Ladbroke Group Pic v. Sonoma International LDC D2002-0131, (Transfer).

29. The Complainant claims that the Respondent is a professional Cyber Squatter as

- 1) The Respondent has created fictitious identities to register domain names such as "SCRAP.IN" and "NCR.IN." The domain names "SCRAP.IN" and genpact.co.in are registered on the same name, Shri Krishan Kumar Heda, and email ID krishanheda@hotmail.com, the email ID of the Respondent. The Registrant's phone number, as evident from the WHOIS report for the domain names, is same for "genpact.co.in", "genpact.in" and NCR.IN.
- 2) The respondent, subsequent to filing of the present complaint, changed its details such as email ID and name servers, in the WHOIS database of the '.in registry' which is evident from the printouts of WHOIS reports filed by the Complainant as exhibit to the rejoinder.


30. The Complainant claims that the Respondent is not the prior user of the mark in dispute as the Respondent has failed to file any evidence in support of this contention.

31. The Complainant claims that the Affidavit filed by the respondent is procured by the Respondent.

32. The complainant claims that the disputed domain name is not associated with the Respondent entity and latter had made no indication of its association with the impugned brand "GENPACT".

33. The Respondent claims that the disputed domain name is not associated with the Respondent's website www.lzenelectronics.com, until recently. It is only subsequent to filing of the present complaint that the Respondent has started using the Complainant's trademark 'GENPACT' on the website www.lzenelectronics.com. In support of this claim the Complainant has filed a printout of a cache memory (Google's cache of (<http://www.lzenelectronics.com/contactus.htm>) as retrieved on 20 Nov 2007 03:06:18 GMT) of the respondent's website, which shows that Respondent did not use the mark 'GENPACT' on the website earlier.

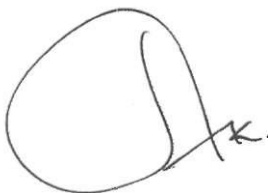
34. The Complainant claims that the copies of cash memos and invoices filed by the Respondent are only from the year 2006 and no evidence is produced which confirms that the Respondent was using 'GENPACT' prior to January 2006. Complainant further claims that the copies of the invoices and cash memo filed by the respondent are fabricated and procured only for the purpose of reflecting use of the mark 'GENPACT'.



35. The complainant claims that the Respondent adopted the impugned mark "GENPACT" on 19 Jan 2006 and since then they have failed to possess a website that has any relevance or indication of the impugned mark being a source or a brand of the respondent entity. The complainant claims that it's only after the domain name complaint that the Respondent has attempted to demonstrate its use by hyper linking the disputed domain names, "genpact.co.in" and "genpact.in" to its main website "www.lzenelectronics.com".

36. The complainant submits that the respondent has intentionally attempted to attract internet users to the disputed website and from there to its other on-line location, by creating confusion with the complainant's trademark as to the source, sponsorship, affiliation, and/or endorsement of the respondent's website. The complainant submits that in *Barney's Inc v. BNY Bulletin Board*, WIPO Case no. D2000-0059 it was held that the registration of a domain name containing a famous mark is a strong evidence of bad faith.

37. The Complainant submits that the respondent has its business in the inverter industry and therefore its rationale of combining, "GEN" from "GENERATOR" and "PACT" from "COMPACT" is merely an after thought and an attempt to create legal

A handwritten signature or set of initials, possibly 'D.K.', enclosed in a hand-drawn oval shape.

rights and interest to legitimize the bad faith registration. The Complainant further submits that inverter and generator are not synonyms.

38. The Complainant submits that if the complainant owns a registered trademark then it satisfies the threshold requirement of having trademark rights. The location of the registered trademark and the goods and/or services it is registered for are irrelevant when finding rights in a mark. The cases referred by the complainant are as follows: Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503, (Transfer) And Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-0661, (Transfer).

39. The Complainant submits that the website "GENPACT.CO.IN" does not communicate or illustrate the existence of any invertors or electronic goods which go by the name of "GENPACT".

40. The Complainant submits that illustrations given by the Respondent of various brands starting with "GEN" are used by entirely different entities. The Complainant submits that none of the brand names are identical in their combination of words and sound, either visually or orally.

41. Vide mail dated 31.01.08, Shri R.K. Aggarwal Counsel for the Respondent informed that the

respondent was not interested in contesting the matter on merit and requested to keep the proceedings in abeyance for few days to file a compromise.

42. Vide mail dated 31.01.08, the Arbitrator informed to Shri R.K. Aggarwal that his request would not be entertained in case, the copy of the said mail was not sent to the other party and to NIXI.

43. After mail dated 31.01.08 by the Arbitrator, Shri R.K. Aggarwal Advocate resend the earlier email dated 31.01.08 on 02.02.08 requesting to keep the proceedings in abeyance, this time copying the mail to all the necessary parties.

44. The Arbitrator also received mail dated 06.02.08, sent by Shri Sidharth Chopra, For Saikrishna & Associates, Counsel for the Complainant, requesting to grant time to the parties to explore settlement.

45. Thereafter nothing was heard from both the parties. Vide mail dated 21.01.08, NIXI enquired the probable date for giving the decision as two months from the date of commencement of proceedings were about to expire. It was brought to the notice of the Arbitrator by NIXI that clause 5(C) of INDRP rules of Procedure stipulates 60 days time frame for giving arbitration decision.



46. Through its legal officer, NIXI was informed by the Arbitrator about the request made by the parties vide mail dated 22.02.08. However parties were given 10 days of time to finalize the compromise, from the date of the mail i.e. 22.02.08.
47. Since no compromise was received despite mail dated 22.02.08 sent by the Arbitrator nor any information was received from them about the settling of dispute in the arbitration proceedings, keeping in view the time frame given in the INDRP rules of procedure framed there under, vide mail dated 08.03.08, the parties were informed that the arbitrator would proceed with the matter as per law.
48. That since till date no response is received either from the petitioner or from the respondent nor they have filed any compromise before the Arbitrator, the arbitrator is passing the present award considering that the parties probably could not come to any settlement out of the arbitration proceedings and as such preferred neither to file the compromise nor to inform to the arbitrator the conclusion of their talks. The Complainant vide letter dated 24.01.08 requested for personal hearing. The Arbitrator, after going through the pleadings did not find any need of calling the parties for personal hearing.



The .IN Domain name dispute resolution policy clause 6 provides as to what Evidence of Registration and use of Domain Name in bad faith is required. The said clause is reproduced as under.

Clause 6: Evidence of Registration and use of Domain name in Bad Faith: -

For the purposes of Paragraph 4 (iii) , the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

-) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to 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
- i) 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 the Registrant has engaged in a pattern of such conduct; or



ii) by using the domain name, the Registrant has intentionally attempted to attract internet user to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant'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 the Registrant's website or location.

51. From the above question arises whether the complainant is entitled for the transfer of domain name "genpact.co.in" in its favour?

52. In the complaint the complainant has alleged that the Respondent has got registered the domain name "genpact.co.in" in bad faith and has stated that the Respondent has registered the domain name primarily for the purpose of selling, renting and transferring it to a competitor of the complainant for a valuable consideration in excess of actual cost incurred.

53. The Complainant submits that it is a well-known name in the domestic and international market and has adopted 'GENPACT' as their trademark in number of countries. The Complainant has filed exhibits showing the number of countries in which it has acquired 'GENPACT' as its domain name/Trademark. The complainant also alleges that the respondent is seeking to capitalize on the



goodwill associated with the trademark for the domain name. In support of this contention the Complainant has referred to WIPO case number D2000-0059, it was observed, "Registration of a domain name containing a famous mark is strong evidence of bad faith". The complainant apprehends that an internet user might go on to the website of the respondent considering it to be the website of the complainant and would get confused to the extent that respondent is in some way connected to or affiliated with the complainant.

54. The respondent claims that they have been engaged in manufacture of inverters and adopted the name 'GENPACT' from Generator and Compact. The respondent further claims that it has been doing business under the name 'GENPACT' since 2000 whereas the website which appears on web address "www.genpact.co.in" does not in any way shows that the Respondent is selling the inverters under the name of 'GENPACT'.

55. The respondent is holding the domain name since 2006 without hosting a proper website related to Respondent's products. For this Complainant has relied upon WIPO case "Telstra Corporation Limited v. Nuclear Marshmallows" which says that the respondent's passive holding of the domain name for a substantial period of time can be



taken into account in concluding bad faith use of a domain name". A similar view was adopted in case of Jupiters Limited v. Aaron Hall D2000-0574, (Transfer) and Ladbroke Group Plc. v. Sonoma International LDC D2002-0131, (Transfer).

56. The Complainant has filed a printout of Google cache memory of "www.lzenelectronics.com" as retrieved on 20 Nov 2007, which shows that the Respondent was not using the mark 'GENPACT' earlier on its website. The Respondent made changes to the website at a later stage.

57. The complainant alleges that the Respondent is a professional Cyber squatter and has registered other domain names such as "NCR.IN" and "SCRAP.IN" for which the Respondent has failed to provide any explanation. In support of this contention the Complainant has filed the printouts of WHOIS report for the domain names registered in the name of the Respondent which also shows that the Respondent made changes to the WHOIS registry after the complaint was filed to misguide the Tribunal.

58. The above discussion would show that the Respondent has acquired the domain name in bad faith, primarily for the purpose of selling or transferring it to the Complainant or others for a valuable consideration. Apprehension of the Complainant is correct to the extent that an




internet user might go on to the website of the respondent considering it to be the website of the complainant and would get confused to the extent that respondent is in some way connected to or affiliated with the complainant.

59. The exhibit filed by the Complainant shows that the word "GENPACT" is the trademark of the Complainant which it has got registered at various countries and for its registration in India it has also moved an application in Trademark Registry, Government of India. The Complainant has also filed an exhibit showing various countries in which it holds the 'GENPACT' as its trademark/domain name.

60. In the above circumstances I hold that the Respondent has booked the domain name in bad faith and directs the registry to cease the said domain name "genpact.co.in" from the Respondent and transfer it to the Complainant as per its rules and procedure. I also direct the Respondent to pay Rs. 60,000/- (Rupees Sixty Thousand Only) as the cost of these proceedings to the Complainant.

~~Announced and published~~ on 24.03.2008.


(A.K. Singh)
Arbitrator