

महाराष्ट्र MAHARASHTRA

● 2015 ●

MP 293392

ARBITRATION AWARD

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

Teradata Corporation

...Complainant

v/s

Virginia Cross

...Respondent

In the matter of Disputed Domain Name "TERADATA.IN".

1 The Parties

The Complainant is Teradata Corporation, 10000 Innovation Drive, Dayton, OH 45342, USA, represented by Flip Petillion of Crowell & Moring LLP.

The Respondent is Virginia Cross, 4391 Bird Spring Lane, Kemah, Texas, TX 77565, USA.

2 Procedural History

- 2.1 A Complaint dated March 23, 2015 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 April 18, 2015, the Arbitrator had emailed to the Respondent setting forth the relief claimed in the Complaint and directed the Respondent to file their reply to the Complaint on or before April 27, 2015. On April 28, 2015, the Arbitrator had emailed the final reminder to Respondent with direction to file their reply on or before May 4, 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 Teradata Corporation, the Complainant, is in the business of analytical data platforms and is considered as the global leader in enterprise data warehousing and analytic technologies. The Complainant has a worldwide presence, including India.
- 3.2 The Complainant's trademark "Teradata" is a registered trademark in the US and India. The "Teradata" mark is known in India and other parts of the world. The Complainant actively promoting its trademark "Teradata" through its website linked to the domain name teradata.com.



3.3 The Complainant is the registrant of the domain names <teradata.com> and other generic top level domain and country code top level domain names which, inter alia, includes <teradata.net>, <teradata.org>, <teradata.info>, <teradata.biz> and <teradata.us>.

3.4 The Disputed Domain Name <teradata.in> was registered on September 14, 2010. The Disputed Domain Name was transferred from Zeng Wei to the Respondent between January 11, 2013 and June 20, 2013. At the time of filing the Complaint, the Disputed Domain Name does not resolve to any content except for an error page and the Respondent is offering the Disputed Domain Name for sale on the website "sedo.com".

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark "Teradata", 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 As per paragraph 11 of the Rules where a Respondent does not submit a response and in the absence of exceptional circumstances, the arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case. 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

- 5.3.1 The Complainant's trademark "Teradata" is a registered trademark in the US and India. The trademark "Teradata" is known in India and other parts of the world.
- 5.3.2 The Complainant is also the registrant of various domain names which, inter alia, includes <teradata.com>, <teradata.net>, <teradata.org>, <teradata.info>, <teradata.biz> and <teradata.us>.
- 5.3.3 The registered Disputed Domain Name <teradata.in> incorporated the Complainant's trademark "teradata" 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) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".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 <teradata.in> is identical to the Complaint's trademark "Teradata".

5.4 Rights or Legitimate Interests

- 5.4.1 The Complainant asserts that it has not authorised the Respondent to use the trademark "Teradata". 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. At the time of filing the Complaint, the Disputed Domain Name does not resolve to any content except for an error page and the Respondent is offering the Disputed Domain Name for sale on the website "sedo.com". The Respondent's website is not bona fide since the Respondent is riding over the reputation of the Complaint's trademark "Teradata". 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. 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 <teradata.in>.

5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's trademarks are known all over the world, including the US. As per Whois records of the Disputed Domain Name, the Respondent is residing in US. The Disputed Domain Name incorporated the Complainant's trademark. A simple trademark search in the US, at time of registration/transfer of the Disputed Domain Name, would have revealed the Complainant's trademark "Teradata". At the time of filing the Complaint, the Disputed Domain Name does not resolve to any content except for an error page and the Respondent is offering the Disputed Domain Name for sale on the website "sedo.com". These facts supports the inference that the purpose of the Respondent's diversion of traffic from the Complainant to itself is for the Respondent's own commercial gain. I, therefore, find that 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 <teradata.in> be transferred to the Complainant.


Dipak G. Parmar
Sole Arbitrator

Date: May 8, 2015