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NATIONAL INTERNET EXCHANGE OF INDIA
INCUBE BUSINESS CENTRE, 5th FLOOR,
18, NEHRU PLACE
NEW DELHI-110 019

Convergys Corporation v. Private Registrations Aktien Gesellschaft

AWARD

1. The Parties

The Complainant is the Convergys Corporation, Convergys Corporate Headquarters, 201, East Fourth Street, Cincinnati, Ohio 45202, United States of America.

The Respondent is **Private Registrations Aktien Gesellschaft, CNR og Granby & shape Street, Suite K 2134, Kingston VC.**

2. The Domain Name and Registrar

The disputed domain name is <www.convergys.in>. The said domain name is registered with IN Domain Name Registry.

3. Procedural History

The Complaint was filed with the National Internet Exchange of India on March 20, 2009. The Complainant has made the registrar

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verification in connection with the domain name at issue. The print out so received is attached with the Complaint. It is confirmed that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Respondent. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on March 31, 2009. 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.

In accordance with the Rules, the Exchange through an e mail dated 2nd April 2009 formally notified the Respondent of the Complaint along with all its annexure. The Respondent was required to submit his defence within 15 days, that is, by April 17, 2009, The Respondent was informed that if his response were not received by that date, he would be considered in default. The Respondent did not submit any response.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant, M/s Convergys Corporation is located in Cincinnati, Ohio, USA. According to the information furnished in the complaint, the Complainant is engaged in human relationship management. The Complainant focuses on helping its clients to make strategic decisions and to enhance their relationship with customers and employees with a view to improving business performance. It provides solutions that optimize the every day interactions between customers and employees. In the past the Complainant has also received several awards and recognition from various institutions and bodies.



Respondent's Activities

The Respondent did not reply to the Complainant's contentions. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is known amongst consumers worldwide as "CONVERGYS". Therefore, the use of "CONVERGYS" by any other person either as a mark, name, domain name, or in any other form would constitute infringement and passing off and will be a violation of Complainant's rights.

Further that, the trade name/mark of the Complainant is a well-known trademark within the meaning of section 2(l)(zg) of the Trade Marks Act, 1999. According to the Complainant, its trade mark "convergys" also falls under the category of a famous mark as provided by Article 6bis of the Paris Convention.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark CONVERGYS. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant.

Regarding the element at (iii) and (iv), the Complainant contends that, "the Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives:

1. The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name. This is pretty much evident as the Respondent is not running any website on the disputed domain name.



2. Though the impugned domain name, by activating a website, the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some third party by entering into transactions or contacts with them under the garb of being associated with the Complainant. This could be extremely dangerous and prejudicial to public interest as well.
3. The Respondent can sell or transfer the domain name to some competing interest of the complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant Company. This will lead to complete tarnishment of the Complainant's image if valuable property like the domain name falls into the hands of competing interest.

These all appear to be assumptions or apprehensions of the Complainant. No definite evidence in support of any of these allegations has been filed or produced. There is no evidence on record to demonstrate the fact that the Respondent "could try to extract huge sums of money from the complainant".

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;



- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint;
- (iii) The domain name in question has been registered and is being used in bad faith; and

A. Identical or Confusingly Similar

The trademark "CONVERGYS" is associated with the Complainant, It established an identity and connection with the Complainant.

The trademark of the Complainant "CONVERGYS" was registered in India vide registration certification No. 284039 on December 29, 2003 for items under class 9, that is, computer software.

Similarly, the trademark of the Complainant "CONVERGYS" was also registered in India vide registration certificate No. 469716 on November 23, 2005 for items under class 16, that is, "Brochures, letterheads, stationery, working manuals, flow charts, logic manuals and other technical documents, catalogues, pamphlets used in relation to telephone managements and accounting report services," etc.

The trademark of the Complainant "CONVERGYS" was also registered in India vide registration certificate No. 534334 on June 13, 2006 for a large number of items under class 35, 36, 38 and 42. The said registrations are valid and subsisting till today.

The Complainant has offices in various countries and cities, though the Complainant has not given any list of such countries and/or cities. They use the trade name CONVERGYS in many countries including the United States. However, no list of countries where the said trademark/service mark is registered has been given in the complainat. The Complainant already possesses a domain name www.convergys.in. The present dispute pertains to the domain name <www.convergys.in> which is exactly identical to the Complainant's domain name. Thus, the disputed domain name is very much similar, rather identical, to the domain name and the trademark/service mark of the Complainant.

Therefore, I hold that the domain name <www.convergys.in> is confusingly similar to the Complainant's trademark.



In support of its contention, the Complainant has relied on the WIPO Arbitration and Mediation Center cases of **Reuters Ltd., v. Global Net 2000 Inc. [WIPO Case No. D2000-0441]**, **Altavista Company v. Grandtotal Finances Ltd., [WIPO Case No. D2000-0848]** and **Playboy enterprises v. Movie Name Company [WIPO Case No. D2001-1201]**. In these cases it has been held that addition or deletion of one alphabet of a trademark has no effect on the determination of confusing similarity between a trademark and domain name. However, in the present case, there is neither a addition nor there is a deletion of any alphabet. Therefore, these WIPO Cases have no application to the present dispute.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making 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.

The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the default and the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. CONVERGYS is the name and mark of the Complainant registered in India. It is evident that the Respondent can have no legitimate interest in the said domain name. Further,



the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent 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 is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. The use of a domain name that appropriates a well known trademark to promote competing or



infringing products cannot be considered a "*bona fide offering of goods and services*".

The Respondent has not responded to the Complainant. Therefore, a view may be taken that he might attempt to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark. The Respondent's registration of the domain name <www.convergys.in> is likely to cause confusion and deception and lead the general public and the members of the trade into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. As the Respondent has failed to rebut this presumption, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

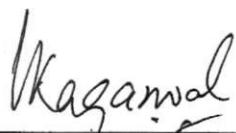
In the first instance, I would like to add that the complaint has been deficient in many respects. Just to illustrate, in the complaint various Annexures are mentioned, such as Annexure A, Annexure B, and so on. However, the Annexures are not correspondingly marked as such. Therefore, it is difficult to correlate the Annexures with the text. Further that, the Complaint contains generalized statements unsupported by evidence. In paragraph 19, the complaint states that the Complainant has developed the website by the name of <www.convergys.in>. However, no date of registration of the said website or the name of the registrar is given.

Another interesting aspect is that the Complainant had already registered the domain name <www.convergys.in. The Respondent has also registered the exactly identical domain name, that is, <www.convergys.in>. It is not clear as to how the registration of two exactly identical domain names is possible. This is a serious matter and requires probe by the competent authorities.

In any case, in light of the foregoing findings, namely, that the



domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of trafficking, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.convergys.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: April 23, 2009