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BEFORE THE SOLE ARBITRATOR UNDER THE  
.IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Agilent Technologies, Inc.  
5301, Stevens Creek Boulevard,  
Santa Clara, CA, 95051

(Complainant)

Versus

Zeng Wei  
Shanghai Weihai Rd.  
1888, Shanghai,  
China, 200001

(Respondent)

*[Handwritten signature in blue ink]*

**The Parties:**

The Complainant in this proceeding is Agilent Technologies Inc., a corporation organized and existing under the laws of the State of California, United States of America. The Complainant is a company that designs and manufactures electronic and bio-analytical measurement instruments and equipment for measurement and evaluation.

The Complainant is represented through their authorized representative:

Ms. Jyotideep Kaur of  
Lall and Sethi Advocates,  
D-17, South Extension – II,  
New Delhi – 110049  
(F): +91 11-4289-9999

(E): [jkaur@indiaip.com](mailto:jkaur@indiaip.com)

The Respondent in this proceeding is Mr. Zeng Wei, Shanghai Weihai Rd. 1888, Shanghai, China – 200001.

**THE DOMAIN NAME AND REGISTRAR:**

The domain name in dispute is [www.agilent.in](http://www.agilent.in). According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name [www.agilent.in](http://www.agilent.in), with whom the disputed domain name [www.agilent.in](http://www.agilent.in) is registered is A to Z Domains Solutions Pvt. Ltd.

**PROCEDURAL HISTORY:**

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint by the Complainant, regarding the dispute over the domain name [www.agilent.in](http://www.agilent.in).

.IN Registry has supplied the copy of the Complaint and Annexures to the Arbitrator.

That in accordance with the Rules, on 16/02/2012, the email was sent to the parties informing them about my appointment as an Arbitrator.

On 31.03.2012, another email was sent to the parties, informing them that neither party have complied with the directions passed in the previous mail dated 16.02.2012. The parties were again directed to comply with directions given in mail dated 16.02.2012.

On 02.04.2012, the Arbitrator received an email from the Counsel of the Complainant informing about the service of the complaint and annexure to the respondent.

No response was received from the Respondent and as such he has been proceeded ex-parte and the Arbitration proceeding have been conducted in his absence. I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present ex-parte award is passed.

That I have perused the record and Annexures / document.

**Factual Background:**

The following information is derived from the Complaint and supporting evidence is submitted by the Complainant.

The Complainant in this proceeding is Agilent Technologies, Inc., a corporation engaged in designing and manufacturing of electronic and bio-analytical measurement instruments and equipment for measurement and evaluation.

The Complainant adopted the mark AGILENT in the year 1999 for goods and services of its manufacture and sale and has been exclusively and extensively using the same. The company is the owner of the trademark and service mark AGILENT. The Complainant also has the exclusive rights to use the aforesaid trademark in respect of the goods and services for which the said trade mark is registered. The Complainant's trademark AGILENT is also its trading name and it promotes goods online, using the Internet and worldwide web through the domain name [www.agilent.com](http://www.agilent.com) as well as through various other country level domains. Additionally, the Complainant has the trademark AGILENT registered and/or pending registration in many countries around the world which had definitely helped the company in gaining international repute. The Complainant's trademark AGILENT is registered under the Trademarks Act, 1999 in India in September 2009 for goods under International Class 01, 16, 10, 09, 35 and the products have been a huge success across India.

The Complainant's use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result, the Complainant's marketing and promotion of its goods and services under its trademark AGILENT, the mark has gained worldwide recognition and goodwill and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

The Complainant has spent huge sums of money towards advertisement and promotion of its brand, AGILENT globally and has done so even on the internet, *inter alia*, through its website [www.agilent.com](http://www.agilent.com), accessible anywhere in the world.

Respondent in this proceeding is an individual name Zeng Wei who has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

**Parties Contentions:****(a) Complainant**

The Complainant contends as follows:

1. The Disputed Domain Name is identical to Complainant's well-known and earlier trademark, domain name and corporate name, AGILENT.
2. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name.
3. The Disputed Domain Name was registered and is being used in bad faith.

**(b) Respondent**

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

**Discussions and Findings:**

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, ex parte and the Arbitration proceeding have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "AGILENT".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and



(iii) the Registrant's domain name has been registered or is being used in bad faith.

**The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))**

The Complainant has stated that its trademark "AGILENT" was adopted in the year 1999 and the Complainant is the registered user of the same in many countries around the world. It is also the registered proprietor of the trade mark AGILENT in India under the International Class 01, 16, 10, 09, 35, dated September 2009.

The Complainant further stated that the Respondent registered the disputed domain name on 21/06/2009 and the disputed domain name is identical to the Complainant's trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the Complainant's trademarks, as it is. At the time of registration of the disputed domain name www.agilent.in, the Complainant had already been using the mark AGILENT as its trademark and domain name with firmly established rights in the same. Also, at the time of registration, the Complainant's trademark had already acquired the status of a well-known mark.

The Complainant has further contended that the Respondent can neither show any rights superior to that of the Complainant in the trademark AGILENT nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name and the only logic of getting an identical mark registered in such a case is in the reason that the Respondent got the mark AGILENT registered with the intention to trade upon the fame of the Complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of Section 4(b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

The above mentioned contention of the complainant has not been rebutted by respondent and as such they are deemed to be admitted by him.

**The Registrant has no rights or legitimate interests in the respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))**

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant'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;*

- ii) *the Registrant (as an individual, business, or other organization) has 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 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 Complainant had contended that the Respondent cannot demonstrate any legitimate interest in the disputed domain name. The Respondent registered the Disputed Domain name after Complainant had established rights in the AGILENT marks through extensive use and registration.

The complainant had further stated that there exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the Disputed Domain Name, which is identical to Complainant's Mark. The Respondent is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name.

The above mentioned contention of the complainant has not been rebutted by respondent and as such they are deemed to be admitted by him.

**The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))**

The Complainant contended that the activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's Mark to improperly benefit Respondent financially, in violation of applicable trademark and unfair competition laws.

The Complainant has further contended that given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent that would not constitute an infringement of the Complainant's rights in the trademark. Thus, mere registration of such a well-known trademark would be an evidence of the Respondent's bad faith.

The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain and the usage of the disputed domain name is in bad faith as per defined under paragraph 6 (iii) of the policy.

**Decision**

The Complainant has relied upon numerous cases for proving the infringement of its trademark rights in the trademark AGILENT and related domain names by the registration and usage of the disputed domain name by the Respondent. In view of the above facts and circumstances, it is clear that Complainant has successfully met the requirements of the Policy, by demonstrating not only its own legitimate interest in its trade mark being part of the trade name and domain name as evidenced by its use of such marks and the fame associated therewith, but also that the Respondent's sole interest in the Disputed Domain Name is to unlawfully profit from it.

Therefore the Respondent registration and use of the disputed domain name is done in bad faith and .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. [www.agilent.in](http://www.agilent.in) to Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 7<sup>th</sup> day of August 2012.



**Rajeev Singh Chauhan**

**Sole Arbitrator**

**Date: 07.08.2012**