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2.11.2012

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P.S. SHANMUGA GUJADARAM,
STAMP VENDOR,
L No 84 / 100 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: < comerica.in>

Comerica Incorporated
411 W. Lafayette St., 8th Fl.
Detroit, MI 48226
USA.
djculkar@comerica.com
asujek@bodmanlaw.com

.. Complainant

Versus

GaoGou
Yerect International Limited
Suite 1100 South Tower
175 Bloor Street, East
Toronto, Ontario
M4W 3R8
CANADA
chromebooks@hotmail.com

.. Respondent

...2



भारतीय गैर न्यायिक

पचास
रुपये
रु.50



FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL



தமிழ்நாடு தமில்நாடு TAMILNADU

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9 NOV 2012

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1. The Parties:

The Complainant is Comerica incorporated, a business incorporated in the State of Delaware, with its principal place of business in Dallas, Texas, USA, represented by Angela Alvarez Sujek, Bodman PLC.

The Respondent is GaoGou of Yerect International Limited, having its office at Suite 1100, South Tower, 175, Bloor Street, East Toronto, ON M4W 3R8, CANADA.

2. The Domain Name and Registrar:

The dispute domain name : <comerica.in>

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The disputed domain name is registered with National Internet Exchange of India (NIXI).

3. Procedural History:

November 05, 2012	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
November 05, 2012	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
November 14, 2012	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
November 24, 2012	Due date for filing response.
November 28, 2012	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background

4.1 The Complainant:

The Complainant is Comerica incorporated, a business incorporated in the State of Delaware, with its principal place of business in Dallas, Texas, USA.

4.2 Complainant's Trading Name:

The Complainant states that the Complainant is the owner of numerous United States registrations for its trademarks and service marks, including:

A.Registration No. 1,251,846 for the service mark, COMERICA, for use in "banking services". The Complainant has used this mark in connection with these services



since 1982. A photocopy of the Certificate of Registration of this mark is attached as Annex 3.

B.Registration No. 1,776,041 for the service mark, COMERICA (and Design) for use in "banking services". The Complainant has used this mark in connection with these services since 1992. A photocopy of the Certificate of Registration of this mark is attached as Annex 4.

A list of the Complainant's U.S. registered marks consisting in part of the mark, COMERICA, is attached as Annex 5.

5. Respondent's Identity and activities:

The Respondent is GaoGou of Yerect International Limited, having its office at Suite 1100, South Tower, 175, Bloor Street, East Toronto, ON M4W 3R8, CANADA.

6. Dispute

The dispute arose when the respondent in the present dispute registered the domain <comerica.in>, thereby misappropriating illegally and without authority, the trademark 'comerica' which is the exclusive property of the Complainant. The respondent has registered the said domain name <comerica.in> in complete bad faith primarily for the purpose of selling, renting or otherwise transferring the said domain name or has done so as to harass the complainant into purchasing the same from the respondent. The respondent has no connection with the complainant and the respondent cannot demonstrate or establish any legitimate interest in the said domain name <comerica.in>.

7. Parties contentions:

A. Complainant:

(a) The Domain Name is identical to a Trademark or service mark of the Complainant in which the Complainant has rights:



The Complainant states that the disputed domain name is identical to the Complainant's Mark. The country code top-level domain ".in" suffix does not lessen the confusing similarity. The Complainant refers to Morgan Stanley v. Bharat Jain, INDRP Case No. 156 dated October 27, 2010. The above-referenced registrations evidence the Complainant's rights in the mark, COMERICA (the "Mark"), which is coined, distinctive, powerful, and symbolizes the goodwill of the Complainant. To promote its products and services identified by its Mark, the Complainant invests millions of dollars every year. The Complainant is a financial services company headquartered in Dallas, Texas, USA, that is the 31st largest bank and thrift company in the United States. The Complainant has filed an article as Exhibit 6. In addition to the U.S., the Complainant operates select businesses in Canada and Mexico. The Complainant has filed a printout from the Complainant's website attached as Exhibit 7.

(b) Respondent has no rights or legitimate interests in respect of the domain name:

The Complainant states that before any notice to the Respondent of the dispute, there is no evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bonafide offering of goods or services. Internet searches through Google that were conducted on September 18, 2012 showed no results for "Gaogou and Comerica" or "Yerect International Limited and Comerica". The Complainant has filed printouts of search results attached as Annex 9. There is no evidence that the Respondent has acquired any trademark or service mark rights in marks that correspond to the disputed domain name or any portion thereof. There is no evidence that the Respondent has been commonly known by a name corresponding to the disputed domain name or any portion thereof. There is no evidence that 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 Complainant asserts that it has not licensed the Respondent or otherwise permitted the Respondent to use the Mark or



the disputed domain name, and that the Respondent does not own and cannot lawfully obtain any trademark or intellectual property rights in the Mark or any words or phrases that incorporate or are confusingly similar to the Mark.

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states that the disputed domain name was registered in bad faith because the Respondent must have known of the Complainant's rights in the Mark when registering the disputed domain name since the Mark is a well known and widely known trademark, and the website associated with the disputed domain name promotes financial services that are similar to the Complainant's financial services. The Mark had been in use by the Complainant for almost thirty years and was well-known by the time the Respondent registered the disputed domain name. The Complainant refers to Yves Saint Laurent v. S. Kambatta, INDRP Case No. 389 dated September 15, 2012, and further the Complainant states that it could be reasonably inferred that the Respondent was aware of the Complainant's prior rights in the mark at the time the disputed domain name was registered where the evidence showed that the Complainant had used the trademark YSL for about fifty years whereas the disputed domain name had been registered in 2005. The disputed domain name was registered in bad faith because the Respondent had no relationship to the mark when registering the disputed domain name. The Complainant refers to Wockhardt Limited v. Kishore Tarachandani, INDRP Case No. 382 dated August 14, 2012. The Complainant further states that since the Respondent had no previous connection to the disputed domain name, any use by the Respondent of the disputed domain name would result in confusion in consumers, who would assume a connection between the Complainant and the Respondent. The domain is being used in bad faith because it accesses a parking page with links to financial services that compete with the Complainant's financial services. The Complainant has filed a printout from August 21, 2012 attached as Annex 10. As such, consumers attempting to access the Complainant's website may be confused into thinking the Respondent's website is affiliated with the Complainant, with the



presence of the links resulting in further confusion. These circumstances indicate that the Respondent intentionally attempts to attract for commercial gain, internet users to the Respondent's web site 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 web site or location or of a product or service on the Respondent's web site or location. It has been established that this practice constitutes bad faith use. The Complainant refers to Franklin Resources, Inc. and Franklin Templeton Asset Management (India) Pvt. Ltd. V. Mr. David Dlugitch, INDRP Case No. 076 dated January 15, 2009. The Complainant further states that the Registrant's website contained links to websites of Complainant's competitors, evidencing intent to confuse consumers as to the affiliation of the Complainant and the Respondent. These circumstances also indicate Respondent's clear intent to disrupt the Complainant's business, deceive consumers, trade off of the Complainant's goodwill, and misappropriate the Complainant's well-established, famous Mark.

B. Respondent:

The Respondent did not submit any response.

8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 28.11.2012.



Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's 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 interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

(i) The Arbitral Tribunal finds that the Complainant has provided evidences that the complainant possesses and uses its famous and distinctive trade mark 'COMERICA'. The Respondent's domain name <comerica.in>, consists of entirely complainant's trademark and has an addition of the geographic term ".in" to the trade mark 'Comerica' only solidifies confusion among Internet users rather than dissipating it. It is well established that the mere addition of generic terms does not create a different trademark. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <comerica.in> is confusingly similar or identical to the Complainant's marks.

(ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

(i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to



respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

(ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

(iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, 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 the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered **COMERICA** mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name. As a proof of the misdeeds committed by the respondent, the Complainant has provided various documentary evidences which are marked as Annexure 3 to 8.

(ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.



9. **Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <comerica.in> be transferred to the Complainant.

Dated at Chennai (India) on this 1st day of December, 2012.



(D.SARAVANAN)
Sole Arbitrator