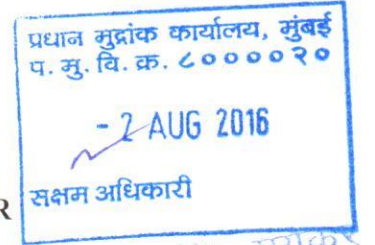


महाराष्ट्र MAHARASHTRA

© 2015 ©

PY 574040



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

श्री. गरत सि. मयकर

Oracle International Corporation

...Complainant

v/s

Ujjwal Roy

...Respondent

In the matter of Disputed Domain Name <ORACLECOMPUTER.IN>

1 The Parties

The Complainant is Oracle International Corporation, 500 Oracle Parkway, Redwood Shores, California 94065, United States, represented by P. S. Davar & Co., India.

The Respondent is Ujjwal Roy, Oracle Acquisition Technologies Pvt. Ltd., Usha Sai Enclave, Hajiganj, Patna, Bihar – 800008, India.

Dipak

2 Procedural History

- 2.1 A Complaint dated November 23, 2016 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 (hereinafter referred to as the 'INDRP') 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 December 2, 2016, the Arbitrator had emailed to the Respondent directing him to file his reply to the Complaint on or before December 17, 2016. On December 19, 2016, the Arbitrator had emailed the final reminder to the Respondent with direction to file reply on or before December 22, 2016. 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 The Complainant was founded in 1977. The Complainant is one of world's foremost and leading providers of network computing hardware, software, services, and solutions and is a leading developer of enterprise and internet-based products and technologies.
- 3.2 The trademark 'Oracle' and the trading name 'Oracle', were adopted over 30 years ago by the Complainant. The Complainant's trademark 'Oracle' has been used extensively and registered in almost all countries of the world, including India.
- 3.3 The Complainant is the registrant of the domain name <Oracle.com> and other generic and country code top level domain names which, inter alia, includes <Oracle.co>, <Oracle.in>.



<Oracle.co.in>, <Oraclefoundation.org>, <Oracle.taleo.net> and <Oraclehcmworld.com>.

3.4 The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark 'Oracle'. Over the years, the Complainant has been recognized and awarded with many awards and ranking. Due to the extensive worldwide use, numerous registration, extensive publicity and promotion, the trademark 'Oracle' has acquired ample secondary significance in favour of the Complainant.

3.5 The Disputed Domain Name <**Oraclecomputer.in**> was registered by the Respondent on February 1, 2014.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical and/or confusingly similar to its trademark 'Oracle'; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by the Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP.

5.2 According to the INDRP, 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

The Complainant is using the trademark 'Oracle' over 30 years and holds trademark registration for the same in India and several other countries around the world. The Complainant is also the



registrant of various domain names which, inter alia, includes <Oracle.com>, <Oracle.co>, <Oracle.in>, <Oracle.co.in>, <Oraclefoundation.org>, <Oracle.taleo.net> and <Oraclehcmworld.com>. The Disputed Domain Name <Oraclecomputer.in> incorporated the Complainant's trademark 'Oracle' in its entirety with mere addition of the descriptive term 'computer' and the country top-level domain '.in'. 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. Similarly, the addition of merely descriptive word 'computer' would be insufficient to avoid a finding of confusing similarity¹. Therefore, the Arbitrator finds that the Disputed Domain Name <Oraclecomputer.in> is confusingly similar to the Complainant's trademark 'Oracle'.

5.4 Rights or Legitimate Interests

The Complainant asserts that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name nor the trademark 'Oracle', in which the Complainant has sole and exclusive interest. The Respondent is not commonly known as Oracle. The Disputed Domain Name was intentionally adopted by the Respondent substantially subsequently, for commercial gain, to misleadingly divert the consumer in general or consumer of the Complainant. This will cause confusion as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name. In line with the previous UDRP and INDRP decisions, the Arbitrator concludes 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 chosen not to challenge the Complainant's allegations². There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <Oraclecomputer.in>.

¹ See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0)

² In the absence of a Response, it is appropriate to accept as true all allegations of the Complaint. Talk City, Inc. v. Michael Robertson, WIPO Case No. D2000-0009

Opinion

5.5 Registered and Used in Bad Faith

The Disputed Domain Name was registered by the Respondent on February 1, 2014 incorporating:

- i. the Complainant's trademark 'Oracle', which is being continuously used by the Complainant over 30 years; and
- ii. the descriptive term 'computer' is the core business area of the Complainant.

At the time of registration of the Disputed Domain Name, the Complainant's trademark 'Oracle' was registered in various countries, including India. The Respondent knew or should have known of the Complainant's rights in the trademark 'Oracle' at the time of registration. The Respondent registered the Disputed Domain Name with intention to attract users to its website by creating likelihood of confusion with the Complainant's trademark 'Oracle'. Such fact constitutes bad faith under paragraph 6 of the INDRP. Further, the Respondent did not put forward any justification for choosing and using the Complainant's trademark 'Oracle' in the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <Oraclecomputer.in> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: December 23, 2016