

# Alternative Dispute Resolution (ADR)

## DECISION

April-16-2015

## CASE NUMBER

807

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## APPLICANT

Cognizant Technology Solutions U.S. Corporation's (13-392-4155)  
211 Quality Circle,  
College Station,  
TX 77845  
United States

## Counsel:

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## DOMAIN HOLDER

Gunilla S with sole proprietorship Cognizant

## MATTER

Alternative dispute resolution regarding the domain name < **cognizant.se**>.

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## DECISION

The domain name < **cognizant.se**> shall be transferred to the Applicant.

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## BACKGROUND TO THE DISPUTE

The disputed domain name was registered on May 5, 2005.

In the application dated January 14, 2015, the Applicant has applied for alternative dispute resolution and requested that the dispute should be decided by a sole Adjudicator.

The Domain Holder has replied to the Applicant's contentions.

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The Applicant has been given the opportunity to respond to the Domain Holder's reply but has not submitted any response.

## **CLAIMS**

The Applicant has claimed that the domain name < cognizant.se> shall be transferred to the Applicant.

The Domain Holder has contested the Applicant's claim.

## **PARTIES' CONTENTIONS**

### The Applicant

The Applicant is a leading IT services and outsourcing company, headquartered in Teaneck, New Jersey (U.S.), with over 50 delivery centers worldwide and approximately 199 700 employees as of September 30, 2014. The Applicant is a member of the NASDAQ-100, the S&P 500, the Forbes Global 2000 and the Fortune 500 and is ranked among the top performing and fastest growing companies in the world.

The Applicant is the holder of the COGNIZANT trademark in Sweden applied for and registered in 1996 and is registered to do business in Sweden as Cognizant Technology Solutions Sweden AB, reg. no. 556687-8947.

The Domain Holder applied to register the trademark COGNIZANT in Sweden on July 26, 2005, in connection with Business Management and Office Function services. The mark was successfully opposed by the Applicant.

The disputed domain name is confusingly similar to The Applicant's Swedish trademark and trade name.

The disputed domain name is not being used by the owner (visitors to the web site receive a message stating "Under konstruktion... Under konstruktion ... Under konstruktion ...").

A third party acting on behalf of the Applicant has been attempting to purchase the disputed domain name since at least July, 2014, from the owner. The offers have been rejected. On October 3, 2014, the owner stated that she would consider an offer of USD 20 000. Based on the high price the owner is asking for, coupled with the fact that the domain is not being used, it is clear that this domain name was registered in bad faith and with the aim of selling the domain name to the Applicant at an exorbitant price.

The Domain Holder is using the disputed domain name for the purpose of selling it back to the Applicant for a high price, so-called Cybersquatting.

The registration of the disputed domain name constitutes conversion, which infringes upon the Applicant's property rights.

### The Domain Holder

The Domain Holder started a sole proprietorship company with the trade name *Cognizant* in 2004. The Domain Holder checked whether there were any companies under the name Cognizant in Sweden before starting her sole proprietorship company and no companies were registered under that name.

The Applicant's Swedish subsidiary *Cognizant Technology Solutions Sweden AB* was registered in 2005.

The Domain Holder has a legitimate interest in the disputed domain name because of her sole proprietorship company name. The sole proprietorship company is dormant at the moment because of personal reasons but the Domain Holder intends to conduct business with use of the sole proprietorship company in the future.

The Domain Holder has previously used the disputed domain name in relation to sales of services.

The Domain Holder applied for the trademark COGNIZANT at the Swedish patent office before the Applicant registered their Swedish subsidiary company.

The Domain Holder has never intended to sell the disputed domain name, however the Domain Holder would consider selling for the right price. The Domain Holder has replied to an e-mail with a buying offer. The e-mail did not specify the Applicant as the interested party.

The Domain Holder has registered and used the disputed domain name in good faith and intends to continue using it.

## **FINDINGS OF THE ARBITRATOR/S**

A domain name may, according to the General Conditions, section 7.2, in connection to an ADR proceeding be cancelled or transferred to the Applicant if

- the domain name is identical or confusingly similar to e.g. a trademark that enjoys legal protection in Sweden and in which the Applicant can show a right,
- the domain name is registered or used in bad faith; and
- the holder has no right or legitimate interest in the domain name.

The Adjudicator makes the following assessment.

### Identical or confusingly similar

The Applicant is the holder of a Swedish trademark registration for COGNIZANT. The disputed domain name consists of the COGNIZANT trademark in its entirety and the generic top-level domain (gTLD) ".se". According to well established consensus among ADR Adjudicators, the gTLD is not distinguishing.

The Adjudicator therefore finds the domain name to be identical to the registered trademark in which the Applicant has rights. The first criterion is thus fulfilled.

### Registered or used in bad faith

The Applicant has asserted that the Domain Holder has registered the disputed domain name in order to sell it to the Applicant for a high price. As proof the Applicant has presented an e-mail conversation in which a third party acting on the Applicant's behalf offers to buy the disputed

domain name from the Domain Holder. The Applicant has further asserted that the web site on the disputed domain name is not being used.

The Domain Holder on the other hand has asserted that the purpose of the registration was to conduct business under the trade name of her sole proprietorship company, i.e. *Cognizant*, and that she has no intention of selling the disputed domain name, however she would consider selling for the right price. The Domain Holder has further pointed out that there was nothing in the e-mail stating the Applicant as the interest party. Concerning the use the Domain Holder asserts that the web site has been used before but is currently not used since her sole proprietorship company is dormant because of personal problems.

Against the background of the Domain Holder's sole proprietorship company registration the Adjudicator finds it plausible that the disputed domain name was registered in good faith since the Domain Holder registered her sole proprietorship company prior to the registration of the disputed domain name. The Applicant has therefore failed to show registration in bad faith. However, the Adjudicator also finds that the Domain Holder was made aware of the Applicant's older trademark right and the Applicant's business activities within the field of IT and consultancy through the opposition proceedings that followed the Domain Holders attempt to register COGNIZANT as a Swedish trademark. In the Adjudicator's opinion this means that from August 30, 2007 when the opposition proceedings were concluded the Domain Holder was using the domain name with full knowledge of the Applicant's older trademark right and therefore in bad faith. The Applicant has thus showed that the disputed domain name has been used in bad faith.

The Adjudicator therefore finds the second criterion fulfilled.

#### Rights or legitimate interest

The Adjudicator finds that the Applicant is the proprietor of the oldest trademark right (i.e. the Swedish trademark registration applied for January 22, 1996). Since it is a well established principle that older rights should have priority over younger rights the Applicant's trademark registration overrides the trade name right of the Domain Holders sole proprietorship company. The Adjudicator further finds that it has already been established that the disputed domain name is being used in bad faith and that this considered together with the fact that there is no current activity on the Domain Holders website means that the Domain Holder has no legitimate interest in the disputed domain name.

Against this background The Adjudicator finds that the Domain Holder has no rights or legitimate interest in the disputed domain name and the third criterion is fulfilled.

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On behalf of .SE

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Jonas Gulliksson

