

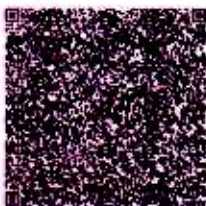


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INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Base Certificate No.	: IN-CH20636012036386R
Rectified Certificate No.	: IN-CH20636284528014R
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Certificate Issued By	: chdhasgls
Account Reference	: NONACC (GV)/ chspicg07/ E-SMP MANIMAJRA/ CH-CH
Unique Doc. Reference	: SUBIN-CHCHSPICG0741231849923591R
Purchased by	: DR ASHWINIE KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DR ASHWINIE KUMAR BANSAL ARBITRATOR VOLTAS LIMIT
Second Party	: JACK ANDOVER HAMPSHIRE SP 10 INS GREAT BRITAIN
Stamp Duty Paid By	: DR ASHWINIE KUMAR BANSAL ARBITRATOR VOLTAS LIMIT
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:
DR. ASHWINIE KUMAR BANSAL, L.L.B; PH.D.
Advocate, Punjab & Haryana High Court, Chandigarh**

VOLTAS Limited, VOLTAS House 'A", Dr. Babasaheb Ambedkar
Road, Chinchpokli, Mumbai 400 033 **...(Complainant)**

Versus

Jack Andover, Hampshire-SP10 1NS Great Britain, e-mail:
mobilexdomains@gmail.com **...(Respondent)**

COMPLAINT REGARDING: DISPUTED DOMAIN NAME:
<VOLTAS.IN>

1. The Parties:

Complainant: VOLTAS Limited, VOLTAS House 'A", Dr. Babasaheb
Ambedkar Road, Chinchpokli, Mumbai 400 033, E-mail:
cvinod@voltas.com

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Respondent:

Jack Andover, Hampshire-SP10 1NS Great Britain, E-mail mobilexdomains@gmail.com

2. **The Domain Name and the Registrar:** The disputed domain name <voltas.in> is registered with dynadot.com LLC, 210 S Ellsworth Avenue, # 345 San Mateo, California 94401, United States, E-mail: abuse@dynadot.com, info@dynadot.com (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

The Complaint has been filed with the National Internet Exchange of India (NIXI) which appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has already submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI informed the parties about appointment of arbitrator vide its E-mail dated 12.09.2019 and also sent soft copy of the Complaint along with annexures by e-mail on 12.09.2019 to the Respondent. The e-mail was duly delivered to him as per confirmation by NIXI vide e-mail dated 23.09.2019. NIXI had

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also sent hard copy of the Complaint along with annexures to him by courier on 17.09.2019. The Courier Company had informed that it was unable to deliver the packet due to non-availability of complete address.

The Arbitrator vide email dated 13.09.2019 directed the Respondent to file his reply within 10 days and the e-mail was duly delivered as there was no report of non-delivery.

All efforts were made to serve also the hard copy on the Respondent at his last known address, hence there is deemed service of the hard copy as per the provisions of Section 3 of the Arbitration and Conciliation Act, 1996 (the Act) which provides as under:

"3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-
(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.
(2) The communication is deemed to have been received on the day it is so delivered.
(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

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In view of provisions of section 3 of the Act regarding receipt of communications, the Respondent is deemed to have been duly served. A copy of Complaint and Annexures as well as notices issued by the Arbitrator were communicated to the Respondent by E-mail. Hence, service of the Respondent is complete by this mode also.

The Respondent was directed to file the response to the Complaint within 10 days vide E-mail dated 13.09.2019. The Respondent has failed to file any response to the Complaint till date although period for filing of response has already been expired. As per section 25 of the Act the arbitrator is competent to make the award if Respondent fails to file the reply before him. In view of above, arbitrator proceeds to make the award in accordance with provisions of the rules read with section 25 of the Arbitration and Conciliation Act, 1996.

4. Factual Background

The Complainant company belongs to the TATA Group of companies which was incorporated in the year 1954. The Complainant manufactures air conditioners and provides engineering services and solutions. He is the registered proprietor of the Trademark/service mark VOLTAS in India and abroad.

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The Respondent has registered the disputed domain name <voltas.in> on 05.06.2019 wholly incorporating Trademark VOLTAS of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Complainant is the registered proprietor of the Trademark VOLTAS in India and abroad. Incorporated in 1954, the Complainant is credited with revolutionizing the Indian air-conditioning and refrigeration industry and setting international standards in product design, quality and retailing in India through its innovative products. The Complainant belongs to the TATA group of Companies and thus, belongs to one of India's oldest, largest and well business conglomerates.

The Complainant is India's premier manufacturer of air conditioners and engineering service provider and offers engineering solutions for a wide spectrum of industries in numerous areas such as heating, ventilation and air conditioning, refrigeration, climate control, electro-mechanical, textile machinery, mining and construction, water management, building management systems, pollution control etc. Apart from domestic home appliances such as air-conditioners, refrigerators, water coolers, water dispensers the

Complainant also manufactures products for industrial use such as industrial air conditioning and refrigeration equipment, water coolers, freezers, commercial refrigerators, visicoolers, vapour absorption machines. All the products of the Complainant bear the stamp of state-of-the-art automated manufacturing plants resulting in consistently high quality and reduced costs.

The Complainant adopted the Trademark VOLTAS over 65 years ago in the year 1954, as not only its Trademark but also as its corporate name and trading style; the same is thus a vitally important source identifier of the Complainant and its subsidiaries/affiliates and group companies and is a carrier of the Complainant's reputation and associated goodwill. Over the years, the Complainant has also received various awards and laurels for its engineering capabilities, innovative products, efficiency and excellent services as consumers and professionals alike have resonated equally to the Complainant's successful efforts in bringing international standards to India.

Since its inception in 1954, the Complainant has been continuously and consistently using the Trademark VOLTAS, which is a coined mark possessing the distinctiveness of an invented word, for its own business activities. The said mark was coined by the two promoters of the Complainant i.e. VOLKART, a Swiss company and TATAS, an Indian company. The Trademark VOLTAS was coined by telescoping

the prefix VOL which was taken from VOLKART and suffix TAS from TATAS.

The Complainant is the registered proprietor of the Trademark VOLTAS in India. The details of the various registration granted in favor of the Complainant for the mark VOLTAS in various classes along with the description of the goods and services for which the same are granted has been reproduced in the complaint.

The Complainant is also the registered proprietor of its Trademark VOLTAS in various countries across the world including Singapore, Hongkong, Qatar, Bahrain, Kuwait, China, South Africa, Mozambique. These registrations reflect worldwide recognition and exclusivity enjoyed by the Trademark VOLTAS which not only assures high standards to consumers and excellent product quality but also that the Complainant is the sole source originator of goods and services under the said mark.

As a result of the continuous and extensive use of the Complainant's Trademark VOLTAS over a long period of time spanning a wide geographical area coupled with extensive promotion and publicity, the said Trademark enjoys an unparalleled reputation and goodwill and has acquired the status of a "well-known" Trademark.

The Complainant has devoted an enormous amount of time, effort and energy in promoting and advertising the said mark in print and

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online media and the said mark is consequently identified solely with the Complainant. The Complainant and its group companies have various online internet portals. It is pertinent to mention here that the Complainant is the Registrant of various domain names containing its trade/service mark VOLTAS. Some of such domain names are www.myvoltas.com, www.voltas.com, www.voltasservice.com, voltaslimited.co.in, voltaslimited.in, etc.

The Complainant has successfully and vigorously enforced its Trademark rights in the Trademark/service mark VOLTAS in relation to various goods and services, even those that are different and unrelated from its existing field of operations.

The Respondent in the present dispute has registered the impugned domain name <voltas.in>, misappropriating illegally and without authority, the Trademark VOLTAS which is the exclusive property of the Complainant. The Respondent's domain name is identical or confusingly similar to a name, Trademark or service mark in which the Complainant has rights. The impugned domain name <voltas.in> is identical to the well-known trade/service mark VOLTAS of the Complainant. The Complainant has overwhelming common law as well as statutory rights in the trade/service mark VOLTAS and is its sole legitimate owner and proprietor. Further the disputed domain name <voltas.in> attempts to associate itself with the Complainant's online services by incorporating the name of the

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Complainant in full. The malicious intention of the Respondent is evident from its misappropriation of the Complainant's trade/service mark VOLTAS. Further the impugned domain name <voltas.in> does not resolve to an active website and thus is not being used for any commercial or other purpose. In the present instance any user who wishes to search for the Complainant with the internet country code top level domain (ccTLD) for India would be taken to the Respondent's website being currently inactive which would cause grave prejudice to the Complainant's business and online presence and possibility of inevitable confusion amongst the consumers and internet users. Moreover, any use of the word VOLTAS is understood only as making a reference to the Complainant since the said trade/service mark of the Complainant is a registered and a 'well-known Trademark'. Incorporation of the Complainant's Trademark in its entirety in a domain name is enough for establishing confusing similarity is a settled principle of law and has been upheld by the Hon'ble Supreme Court of India in the case of *Satyam Infoway vs Sifynet Solutions Pvt. Ltd.* (2004) 6 SCC 145. The unwary internet user and the unsuspecting members of the public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not in any manner licensed, authorized or endorsed the use of its famous and well-known mark VOLTAS by

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the Respondent will confuse the activities, as and when they commence, as that of the Complainant. The unauthorised use of the Complainant's registered and well-known Trademark VOLTAS by the Respondent as regards unlicensed services will lead to the erosion of the distinctive value and strength associated with the said trade/service mark and adversely impact the immense goodwill and reputation accruing thereto. It is clear from a simple internet search that the Respondent is a cyber squatter and has simply bought the disputed domain name for extorting money from the Complainant. The Respondent has no rights or legitimate interest in the impugned domain name and does not seem to be operating a business using the impugned domain name <voltas.in>. Further, the Respondent is not making any legitimate non-commercial or fair use of the impugned domain name nor is the same being used in connection with a bona fide offering of goods and services as the website associated with the impugned domain name leads to an inactive page.

The Respondent's act of registering the impugned domain <voltas.in>, being identical to the Complainant's trade/service mark VOLTAS is an infringement of the Complainant's overwhelming common law and statutory rights as is vested in its registered and well-known mark VOLTAS. There can be no plausible explanation for

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the use of the trade/service mark VOLTAS by the Respondent as same is an invented word.

Given the highly distinctive and well-known nature of the Complainant's trade name/ mark VOLTAS, the Respondent is likely to have had at least constructive, if not actual notice, as to the existence of the Complainant's trade mark at the time of registration of the disputed domain name incorporating an identical mark as that of the Complainant. This demonstrates that the Respondent acted with opportunistic bad faith in registering the impugned domain name <voltas.in> incorporating an identical mark as that of the Complainant's registered Trademark VOLTAS.

The impugned domain name bearing the 'well-known' trade name/mark VOLTAS of the Complainant has also been registered by the Respondent with the sole ulterior motive of preventing the Complainant from making a legitimate commercial use of the same for offering its products and services. The said act of the Respondent is motivated by its nefarious intention of coercing the Complainant to purchase the impugned domain from the Respondent at an exorbitant price. In other words, this is a clear case of domain name squatting by the Respondent.

In order to prevent cybersquatting or trafficking or trading in domain names or marks, Trademark law has been stretched to cover the Internet and consequently domain names may be

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protected just like Trademarks. The Trademark VOLTAS falls within the category of inherently distinctive marks. Due to its distinctive nature and popularity in several fields, the Trademark VOLTAS of the Complainant has become a well-known Trademark, enabling the Complainant to restrain others from using the same in any manner whatsoever including its registration as domain names.

The Respondent has no rights or legitimate interest in the impugned domain name <voltas.in>. The Complainant has overwhelming common law and statutory rights in the trade/service mark VOLTAS as well as in various VOLTAS formative marks. The Complainant being the sole legitimate owner of the said marks is solely entitled to use the same in relation to its products and services including the incorporation of the said mark as a conspicuous part of domains used to describe the activities of the Complainant and its group companies.

The Complainant has not in any way authorized, licensed, or otherwise permitted the Respondent to use its well-known Trademark VOLTAS or to apply for any domain name incorporating its trade/service mark in full or in part. The Respondent thus cannot be permitted to use VOLTAS in the impugned domain name, the same being identical to Complainant's registered and well-known trade name/mark. Such use by the Respondent is false and only to deceive the consumers.

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The Respondent's act of registering and commercially exploiting the impugned domain name could be a manifestation of his ulterior motive to prevent the Complainant from making a legitimate commercial use of the same for offering its products and services. The said acts of the Respondent is motivated by its nefarious intention of coercing the Complainant to purchase the impugned domain from the Respondent at an exorbitant price. In other words, this is a clear case of domain name squatting by the Respondent.

The Respondent's registration of the impugned domain name <voltas.in> is not bona fide since he is likely to trading on the fame and recognition of the Complainant's registered and well-known Trademark VOLTAS in order to cause confusion and bait internet users.

The Respondent uses the Complainant's registered and well-known Trademark VOLTAS as part of the impugned domain name <voltas.in> in which the Complainant has immense common law and statutory rights without any authorisation or license from the Complainant. The said unlawful acts of the Respondent therefore amount to an infringement of the Complainant's trade mark VOLTAS as well as the tort of passing off. Owing to the continuous and uninterrupted use of the mark VOLTAS by the Complainant, the Respondent should have had constructive notice of the insurmountable reputation and goodwill associated with the

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Complainant's trade/service mark VOLTAS, which inures and continues to inure to the Complainant. There is no other activity on part of the Respondent to show that a website or other online presence is in the process of being established which will use the domain name. Further, there is no advertising, promotion or display to the public of the domain name by the Respondent.

Respondent

The Respondent has not filed the Response to the Complaint inspite of opportunity given to him.

6. Discussion and Findings:-

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought

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against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (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 Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator has examined the Complaint and documents filed by the Complainant and he will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant owns the intellectual property rights in the Trademark VOLTAS and he has secured Trademark registrations from the Registrar of Trade Marks after filing applications since 1955. The Complainant has given a long list of Trademark registrations in its favour in the complaint along with print outs of

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various registrations with the authorities. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration myvoltas.com incorporating the Trademark VOLTAS which leads to website containing information on the various products of VOLTAS.

The disputed domain name was registered by the Respondent on 05.06.2019, which wholly incorporates Trademark VOLTAS of the Complainant.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <voltas.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <voltas.in> incorporating the Trademark VOLTAS of the Complainant, which the Arbitrator finds is sufficient to establish

¹ See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <voltas.in> is confusingly similar to the website and Trademark VOLTAS of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name². The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark VOLTAS since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark VOLTAS.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <voltas.in> as per Paragraph 7 of the Policy.

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark VOLTAS of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made out a prima facie case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <voltas.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant 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 bears the name or is the owner of the Trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

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(ii) the Registrant 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 the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered domain name <voltas.in> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark VOLTAS. The domain name is also identical to the prior registered domain of the Complainant i.e. myvoltas.com. There can be no plausible explanation for the registration and use of the impugned domain name <voltas.in> by

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the Respondent as the trade/service mark VOLTAS of the Complainant is a coined mark and exclusively used by the Complainant and its group companies for its products and services. The impugned domain name <voltas.in> has been created by the Respondent very recently on 05.06.2019. The Respondent thus has deliberately acquired an identical name in which the Complainant has substantial interest being its registered Trademark. The Respondent is presumed to have constructive notice of the commercial value and significance of the Trademark VOLTAS which forms a conspicuous part of the disputed domain name.

The Respondent is not making actual use of the domain name since the same does not lead to an active website. The Respondent is passively holding the impugned domain name <voltas.in> in bad faith as the same does not resolve to a web site or other online presence. The use of the impugned domain name <voltas.in> being passively held by the Respondent will diminish the strength and the distinctive value of the trade/service mark VOLTAS resulting in its dilution and tarnishment.

The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark VOLTAS in any manner. The disputed domain name clearly incorporates the Complainant's Trademark VOLTAS in its entirety. Such unauthorized

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registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <voltas.in> which incorporates the Trademark VOLTAS of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <voltas.in> has been registered by the Respondent in bad faith.

The Trademark VOLTAS has been a well-known name. The domain disputed name <voltas.in> is confusingly similar to the Complainant's Trademark VOLTAS, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <voltas.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <voltas.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <voltas.in> be transferred in favour of the Complainant.

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <voltas.in> is

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similar to the Trademark VOLTAS in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <voltas.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 05.11.2019



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

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