



उत्तर प्रदेश UTTAR PRADESH

BL 168457

ALSTOM

v.

YE SENRONG

DISAUTED DOMAIN NAME:  
WWW.ALSTOMPWELL.IN

Handwritten signature or mark.

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

**ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: RODNEY D. RYDER**

**ALSTOM v. YE GENRONG**

**ARBITRATION AWARD**

**Disputed Domain Name: [alstompower.in](http://alstompower.in)**

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**The Parties**

The Complainant in this arbitration proceeding is ALSTOM, a French company incorporated under French law as "societe anonyme a directoire", having its head office at 3, Andre Malraux, 92300 Levallois Perret, France represented by Ms Nathalie Dreyfus, Dreyfus & Associes.

The Respondent in this arbitration proceeding is Shri Ye Genrong, Weihai Rd. 55, 1001 DK, Shanghai, Shanghai 200050, China as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

**The Domain Name and Registrar**

The disputed domain name is [alstompower.in](http://alstompower.in). The Registrar with which the disputed domain name is registered is Directi Web Services Pvt. Ltd., Directiplex, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai, Maharashtra 400069, India.

**Procedural History [Arbitration Proceedings]**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

The request for submission with a complete set of documents was dispatched to the Respondent by the National Internet Exchange of India [NIXI]. A reminder was sent on January 11, 2013 by the Arbitrator. The Respondent did not reply.

**Grounds for the administrative proceedings**

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.





**III. The disputed domain name has been registered or is being used in bad faith.**

**Complainant**

It has been contended by the Complainant that the Respondent has registered the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

*"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or*

*the Respondent 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 Respondent has engaged in a pattern of such conduct; or*

*by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website 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 its Website or location or of a product or service on its Website or location."*

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the Panel is of the opinion that the Respondent had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. It has been held that the registration of a domain name containing a well known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision: *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250 (December 30, 2011); *Bacarrat SA v. Doren Jungnickel/Darius Herman Domcreate*, INDRP/018, October 6, 2006; *NBA Properties, Inc. v. Rickson Rodricks*, INDRP/051, November 5, 2007]

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Since the trademarks of the Complainant are so distinctive and famous that the Respondent must have had actual knowledge of the trademarks prior to registering the disputed domain name. The Complainant has a long and well-established reputation in the Complainant's marks through its exclusive use in serving high quality coffee through its stores worldwide. There cannot be any doubt from the evidence put before this panel that the Complainant's marks are well known and that the Respondent intended to capitalize on that confusion. Therefore the panel comes to the conclusion that the registration is in bad faith. By registering the disputed domain name with actual knowledge of the Complainant's

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**Background of the Complainant and its statutory and common law rights Adoption:**

The Complainant is a French industrial group, which holds interests in power generation, transmission and transportation market. Its offer includes systems, equipment and services. Alstom Power is the Complainant's power generation business. Alstom Power is a global leader in the world of power generation with a portfolio of products covering all fuel types. Close to 25 percent of the world's power production capacity depends on the Complainant's technology and services. It is a world leader in integrated power plants for the production of electricity and air quality control systems. Complainant has solutions for all energy sources (coal, gas, nuclear, fuel oil, hydro power, wind) and is a leader in innovative technologies for the protection of the environment. It has developed a world leading position in transport infrastructure and maintenance equipment as well as global rail systems. It is recently forayed into transmission business with the acquisition of Areva T&Ds transmission business. The Complainant employs 92,700 people in around 100 countries, serving customers worldwide.

The Complainant contends that the trademark "Alstom" and other related formative marks have acquired global reputation and goodwill and are well known marks.

**Statutory rights:**

The Complainant is the owner of numerous trademarks relating to the brand "Alstom" and other marks, which incorporate the name "Alstom" and the term "power" in numerous countries including India. The Complainant contends that its marks have acquired global reputation and goodwill and are well known marks. The Complainant holds several domain name registrations incorporating the "Alstom" trademark, including [alstom.com](http://alstom.com), [alstom.in](http://alstom.in), [alstom.info](http://alstom.info), [alstom.org](http://alstom.org), [alstompower.com](http://alstompower.com), [alstompower.org](http://alstompower.org), [alstompower.info](http://alstompower.info) etc.

**Respondent**

According to the Whois database of the INRegistry, the Respondent in this arbitration was earlier of the name of Liu Jiapeng. But when the Complainant filed its first complaint on January 4, 2012 and NIXI acknowledged the complaint on January 24, 2012, the domain name had been released and reallocated to a third party i.e. Ye Genrong. The Complainant was then asked to resend the complaint to reflect the change of the name of the registrant. Therefore according to the current Whois database of .IN Registry, the Respondent in this arbitration proceeding is Ye Genrong. The Respondent failed to reply to the notice regarding the complaint.

**Discussion and Findings**

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand "Alstom". Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark. It is a well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

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*The Respondent 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."*

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.

## **Parties Contentions**

### **Complainant**

The Complainant in his complaint, interalia, contended as follows:

#### **I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

The Complainant, based on various Indian and international trademark registrations across various classes owns the trademark "Alstom". Based on the use of the said trademark in India it is submitted by the Complainant that it is the sole proprietor of and has sole and exclusive rights to use the said trademark "Alstom".

The Complainant submits that as the disputed domain name is 'alstompower.in', it is clearly identical/confusingly similar to the Complainant's trademark – "Alstom" in which the Complainant has exclusive rights and legitimate interest.

It has been proved by the Complainant that it has intellectual property, particularly trademark rights, and other rights in the mark "Alstom" by submitting substantial documents. The mark has been highly publicized and advertised by the Complainant in both the electronic and print media; both in India and globally and the disputed domain name is similar to that of the complainant's mark, services and domain names.

The disputed domain name contains the entirety of the Complainant's trademark. Previous panels have found that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark. [**Relevant Decisions:** *Tenneco Inc. v. Toni Li*, Case No. INDRP/130, March 5, 2010; *ITC limited v. Travel India*, Case No. INDRP/065, April 15, 2008]

Further more it has been previously decided that additions such as "power" in the present disputed domain name as a suffix and the ccTLD ".in" are mere minor additions that are insufficient to avoid any likelihood of confusion between Complainant's trademark and the disputed domain name. It has been well established in domain name cases that a suffix, used to indicate the top level of the domain name has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant's trademark. [**Relevant Decisions:** *PepsiCo, Inc v. Bijon Chatterji*, Case No. INDRP/014, June 24, 2006; *Mothercare UK Limited, United Kingdom v. Mr. Rajkumar Jalan*, New Delhi, Case No. INDRP/061, April 27, 2008; *Bombay Stock Exchange Limited v. Jigar Vikamsey*, Case No. INDRP/063, August 17, 2008]





### **The Respondent's Default**

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

*"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."*

Rule 11(a) empowers the arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case.

The 'Rules' paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

### **The issues involved in the dispute**

The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

*"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 Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;*
- *(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and*
- *(iii) the Respondent's domain name has been registered or is being used in bad faith.*

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It must be noted that the addition of the term "power" in the disputed domain name is more likely to cause confusion than to prevent confusion given that the term directly refers to one of Complainant's activities. It must also be noted that the Complainant has developed an active website at the address: <http://www.alstom.com/power/>. Therefore the panel agrees with the contention of the Complainant that the addition of the word "power" in the disputed domain name will increase the likelihood of confusion.

According to the INDRP paragraph 3 it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations -*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:*

- the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- the Respondent is not registering the domain name for an unlawful purpose; and*
- the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

*It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

### **Respondent**

The Respondent as stated above, has failed to respond to the Complainant's filing and assertions. The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant; The Panel comes to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' marks and its business. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

### **II. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

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The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name.

The Complainant's registered trademark, company name and trade name are "Alstom". The Complainant is also the owner of many domain names incorporating the term ALSTOM and many others incorporating the terms "Alstom" and "Power"

The Respondent does not have prior rights or legitimate interests in the "Alstom" trademark. The Complainant's rights in a trademark predate Respondent's registration of the disputed domain name incorporating that trademark, Respondent does not have rights or legitimate interests in the disputed domain name. [**Relevant Decision:** *Compaignie Gervais Danone v. Digitech Software Solutions*, Case No. INDRP/096, June 27, 2009]

Respondent is in no way affiliated with the Complainant. The Complainant has not authorized or licensed Respondent to use and register the "Alstom" trademark, nor sought registration of any domain name incorporating this trademark.

It must be noted that the trademark "Alstom" is used worldwide. Its well known character has been held by previous Panels. [**Relevant Decisions:** *ALSTOM v. jerry jonn*, WIPO Case No. D2010-2075; *Alstom v. Future ISP*, WIPO Case No. D2010-1376; *ALSTOM v. Daniel Bailey*, WIPO Case No. D2010-1150]

Also, it is well established that where a Complainant has or had registered and used various domain names consisting of its trademark and tradename before the Respondent registered the disputed domain name, there can be no right or legitimate interest on the Respondent's side. [**Relevant Decision:** *Societe Anonyme des Eaux Minerales d'Evian (SAEME) v. Rajesh Agarwal*, Case No. INDRP/099, June 12, 2009]

Further, the Respondent has not made any preparation for a legitimate use of the disputed domain name. Since its registration, it is used for commercial links including links in the Complainant's field and links reproducing names or competitors and other actors of the Complainant's market, which is not a bona fide offering of goods and services. [**Relevant Decision:** *Lazard Strategic Coordination Company LLC v. Jack Sun Domain Jet, Inc* INDRP/167 November 30, 2010]

The Respondent is not currently known, nor has been known by the name of "Alstom" in the past. Besides, since the domain name is so identical to the Complainant's trademark "Alstom", the Respondent cannot reasonably pretend to develop a legitimate activity.

#### **Respondent**

The Respondent has failed to respond to the request for submission of a response as noted above.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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trademark, the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [**Relevant Decision:** *Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd.*, INDRP/215 (July 9<sup>th</sup> 2011); *Kenneth Cole Production Inc. v. Viswas Infomedia*, INDRP/93 (April 10, 2009)]

It must also be noted that the Respondent seems to be using several identities. Its email address is used by the Respondent Ye Genrong domiciled in China as well as by a person named Nancy Fortin located in the US. This also shows that the Respondent registered the domain name in bad faith.

Furthermore, the disputed domain name [www.alstompower.in](http://www.alstompower.in) resolves to a parking page displaying pay per click links, some of which are related to the energy activities of the Complainant and other players in the market. The use of a disputed domain name to divert Internet users and directing them to a website providing click through revenues as well revenue through sale of the disputed domain name to the Respondent evidences bad faith. The panel agrees with the Complainant that the Respondent is taking undue advantage of the Complainant's trademark to generate profits. Further more the parking page to which the disputed domain name currently resolves also features a form enabling Internet users to submit an offer to buy the domain name. [**Relevant Decision:** *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075]

Finally, the Respondent has engaged in a pattern of conduct of abusive domain name registration and is involved in several cases of cybersquatting as evidenced and is also using several identities.

### **Respondent**

The Respondent has failed to respond to the Complainant as noted above. Based on the submissions received from the Complainant, it is established that the disputed domain name was registered in bad faith as well as used in bad faith

### **Decision**

The following circumstances are material to the issue in the present case:

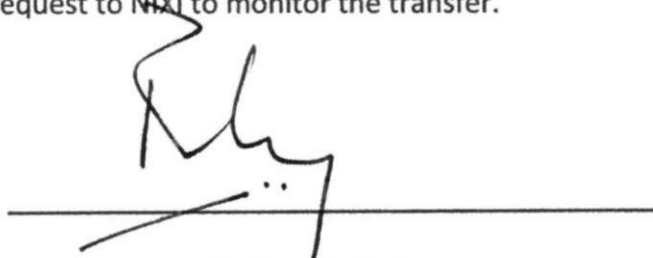
- (i) the Complainants' trademark has a strong reputation and is widely known on a global basis;
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name;
- (iii) taking into account the nature of the disputed domain name and in particular the .in extension alongside the Complainant's mark, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of the disputed Domain Name by the Respondent is and would be illegitimate. Use by the Respondent as such would amount to passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

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The Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. [Relevant Decisions: *Salmi Oy v. PACWEBS* WIPO Case No. D2009-0040; *Graco Children's Products Inc. v. Oakwood Services Inc.* WIPO Case No. D2009-0813; *Artemides Holdings Pty Ltd v. Gregory Ricks*, WIPO Case No. D2008-1254; *Ville de Paris v. Jeff Walter*, WIPO Case No. D2009-1278]. The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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. [Relevant Decisions: *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu* WIPO D2003-0849; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119; D2012-0466 WIPO *Luigi Lavazza S.p.A. v. Noori net*; D2008-1474 WIPO *Serta Inc. v. Charles Dawson*; *Netflix, Inc. v. Sharma*, INDRP/216 (INDRP July 1, 2011); *Guerlain S.A. v. Peikang*, D2000-0055 (WIPO March 21, 2000); *Univ of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum March 21<sup>st</sup> 2006); *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24<sup>th</sup> 2006; *Lockheed Martin Corporation v. Steely Black*, INDRP/183 (January 5, 2011); *Equifax Inc. v. The Admin*, INDRP/163 (November 23, 2010);, *Revlon Consumer Products Corporation of New York v. Ye Genrong, et al*, D2010-1586 WIPO November 22, 2010]

The Respondent's registration and use of the domain name [www.alstompower.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Panel directs that the disputed domain name [www.alstompower.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

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Rodney D. Ryder  
Sole Arbitrator  
Date: February 6, 2013