



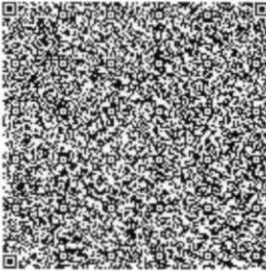
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL93607492844299L
Certificate Issued Date : 02-Dec-2013 01:07 PM
Account Reference : IMPACC (IV)/ dl839203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83920385176397291560L
Purchased by : SANJAY KUMAR SINGH ARBITRATOR
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : SANJAY KUMAR SINGH ARBITRATOR
Second Party : Not Applicable
Stamp Duty Paid By : SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR,
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
ABB Asea Brown Boveri Ltd. Complainant
versus
Macheng - - - Respondent

Sanjay Kumar Singh

**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

IN THE MATTER OF:

ABB Asea Brown Boveri Ltd.,
Affolternstrasse, 44, 8050,
Zurich, Switzerland
E-mail: domains@ch.abb.com

Through its authorized representative

ANA Law Group,
India bulls Finance Centre,
Tower-2, 11th Floor,
1103, Elphinstone Road,
Mumbai-400013, India,
E-mail: anoop@anaassociates.com

...Complainant

Versus

Machang
Hua An Holdings (H.K.) Limited
Room 14-05-301, West Block
North Hong Kong 999077
Hong Kong
E-mail: domainbook@hotmail.com

..Respondent

1. THE PARTIES:

The complainant is ABB Asea Brown Boveri Ltd., Affolternstrasse, 44, 8050, Zurich, Switzerland E-mail: domains@ch.abb.com, through its authorized representative ANA Law Group, Indiabulls Finance Centre, Tower-2, 11th Floor, 1103, Elphinstone Road, Mumbai-400013, India, E-mail: anoop@anaassociates.com.

The Respondent is Machang, Hua An Holdings (H.K.) Limited, Room 14-05-301, West Block, North Hong Kong 999077, Hong Kong, E-mail: domainbook@hotmail.com

Sanjay Kumar Singh

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

The disputed domain name "**aseabrownboveri.co.in**"

The trademark of the complainant is "**ASEA BROWN BOVERI**".

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The present dispute pertains to the domain name "**aseabrownboveri.co.in**" in favour of the respondent.
3. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "**aseabrownboveri.co.in**".
4. The complainant herein has filed the instant complaint challenging the registration of the domain name "**aseabrownboveri.co.in**" in favour of the respondent
5. I was appointed as Sole Arbitrator in the matter by NIXI.
6. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
7. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
8. On 01-11-2013 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.
9. On 28-11-2013 I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter/ reply and rejoinder with the supportive document/evidence.

Sanjay K. Singh

10. The respondent has not filed any reply with the supportive document/evidence as such he is proceeded ex-parte and the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

3. FACTUAL AND LEGAL BACKGROUND:

1. The complainant has submitted that ABB Asea Brown Boveri Ltd. is one of the world's leading engineering companies providing power and automation technologies that enable utility and industry customers to improve performance while lowering environmental impact. The complainant is a global leader in power and automation technologies and has a long track record of innovation.
2. The complainant ha submitted that it has been in industry since 1988 and is a major player in the research and development activities. The complainant maintains seven (7) corporate research centers around the world and invests in research and development activities.
3. The complainant ha submitted that it manufactures large range of products that are regarded as the best in the category and are widely used all over the world. The products include systems for control, plant optimization, and industry-specific automation applications such as power products and components to generate, transmit and distribute electricity such as motors, generators, drives, programmable logic controllers (PLCs), power electronics, Robots, Transformers, Switchgear, circuit breakers, cables and associated equipment, etc. The key industries that use the Complainant's products include oil and gas, power, chemicals and pharmaceuticals, pulp and paper, metals and minerals, marine and turbo charging. The Complainant has further submitted that it has achieved extensive goodwill and reputation for its high-quality products.
4. The complainant ha submitted that it operates in approximately 100 countries, including India, and is the largest supplier of industrial motors and drives and the largest provider of generators to the wind industry and power grids worldwide. The Complainant has further submitted that it has set up its direct and indirect subsidiaries in all major countries and therefore it has a strong national as well as international presence and significant business operations in those countries.

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5. The complainant has submitted that it has its presence in India since 1989 through a subsidiary named, ABB India Limited, wherein ABB denotes the abbreviation of ASEA BROWN BOVERI. The Complainant's Indian subsidiary has a wide presence all over the country with 14 manufacturing facilities, more than 23 marketing offices, 8 service centers, 3 logistics warehouses, and a network of over 550 channel partners in India. The Complainant is a market leader in India in manufacturing power products and components to generate, transmit and distribute electricity.
6. The complainant has submitted that it is the registered owner of the trade mark ASEA BROWN BOVERI, and the domain name www.aseabrownboveri.in. The Complainant has recently come to know that the Respondent has registered a domain name www.aseabrownboveri.co.in. The second level domain name of which is identical to the Complainant's (i) corporate name ABB Asea Brown Boveri (ii) the registered trade mark ASEA BROWN BOVERI; and (iii) the domain name under .TN Top Level Domain Name (TL, D) www.aseabrownboveri.in.

4. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A NAME OR TRADE MARK IN WHICH THE COMPLAINANT HAS RIGHTS:

1. The complainant has submitted that it has been using the trade mark "ASEA BROWN BOVERI" in the global market, including India, extensively since 1988. The Complainant's trade mark ASEA BROWN BOVERI is an inherently distinctive trade mark. As a result of the widespread use and publicity, both the public and the trade use the trade mark ASEA BROWN BOVERI exclusively to identify and refer to the Complainant's products. The Complainant has further submitted that its trade mark ASEA BROWN BOVERI has attained a secondary meaning and extensive goodwill globally as well as in India.
2. The complainant has submitted that it is the registered proprietor or the trade mark ASEA BROWN BOVERI in many countries including. United States or America, Russian Federation, European Union, Switzerland, Czech Republic, Australia, Canada, Singapore, Argentina, Bulgaria, Brazil, Chile, Hungary, South Korea, Mexico, Malaysia, Norway, New Zealand, Poland, Turkey, Venezuela, Vietnam, South Africa, etc. The Complainant has

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attached the copies of the registration certificates of the trade mark ASEA BROWN BOVERI in Canada, Brazil, Malaysia and renewal certificates of international registration under Madrid Protocol, based on the registration in Switzerland and designating the countries, Norway, Bulgaria, Russia, Chile, Hungary, Poland, Czech Republic and Vietnam as **Annexure - III**.

3. The complainant has submitted that as regards India, the Complainant is the registered owner or the following "ASEA BROWN BOVERI" trade marks in classes 7, 9, 11, and 16 since 1997.
4. The complainant has submitted that registered trademarks are matters of public record & are available at <http://ipindiiaservices.gov.in/eregister/eregister.aspx>
The complainant has attached **Annexure-IV**, the copies of the registration certificates and the renewal certificates of the trade mark nos. 774907, 774908, 774909 and 774910 and the copies of the Trade Marks Registry's database extracts substantiating the validity and registration status of the trade marks. These trademarks are renewed and valid up to 15 September 2017.
5. The complainant has submitted that ASEA BROWN BOVERI is a well-known trade mark that is widely recognized both by the public and trade, and has built Lip extensive goodwill across the globe. By virtue of registration and continuous use of the trade mark since 1988. The Complainant has further submitted that it has the legal, vested and exclusive statutory right to use the registered trade mark "ASEA BROWN BOVERI" in respect of the goods in classes 7, 9, 11, and 16 and is entitled to protection from an) kind of misuses by third parties.
6. The Complainant has submitted that it is the registered owner or the domain name www.aseabrownboveri.in since 16 February 2005. The foregoing domain name is linked to the Complainant's group companies' website www.abb.com. The Complainant has attached as **Annexure-V**, the copy of the .In Registry's Whols database in respect or the domain name www.aseabrownboveri.in. Additionally, the Complainant has registered three (3) other domain names containing the letters ABB (the abbreviation of ASEA BROW BOVERI) under the .IN TLD. i.e. www.abb.co.in, www.abb.in and www.abb.net.in.
7. The Complainant has submitted that it is also the registered holder or 335 domain names with "ASEA BROWN BOVERI" as second level domain name under

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various TLDs. The Complainant has attached **Annexure-VI**, a list of the Complainant's domain names containing ASEA BROWN BOVERI.

8. The Complainant has submitted that the second level domain name of Respondent's domain name www.aseabrownboveri.co.in is identical to the Complainant's second level domain name, Complainant's registered and well-known trade mark ASEA BROWN BOVERI and the Complainant's corporate name as well.
9. The Complainant has submitted that in view of the foregoing strong similarities there are high chances that the general public and the traders intending to visit the Complainant's website may be misled to the Respondent's conflicting domain name. This will result in dilution of the Complainant's brand and will cause irreparable damage to the Complainant's goodwill and reputation. The Complainant submitted that the Respondent's conflicting domain name should be immediately transferred to the Complainant.

5. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME:

1. The Complainant has submitted that it is the registered holder or the trade mark; ASEA BROWN BOVERI in India since 1997 and the domain name www.aseabrownboveri.in since 16 February 2005. Whereas the Respondent has registered the domain name www.aseabrownboveri.co.in only on 12 July 2013 much later than the Complainant had registered its trade mark ASEA BROWN BOVERI and the domain name www.aseabrownboveri.in.
2. The Complainant has submitted that the domain name www.aseabrownboveri.co.in is not associated with the Respondent's trade name/corporate name or any of its business activities. The Respondent is not known by any trade name having the components or the Complainant's well-known trade mark ASEA BROWN BOVERI.
3. The Complainant has submitted that the Respondent has registered the infringing Domain name with the prior knowledge or the Complainant's brand and the domain name. Further, the Respondent does not have any bona fide reasons to

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adopt the identical domain name as that of the Complainant. The Complainant has further submitted the Respondent's conduct of registering the infringing domain name in 2013, much later in time than the Complainant's registration of its trade mark in India and domain name containing the trade mark with the .TN Registry demonstrates that the Respondent is attempting to take advantage of the international goodwill and reputation that the Complainant has acquired.

4. The Complainant has submitted, the Complainant has not authorized the Respondent to register or use the domain name containing its registered trade mark ASEA BROWN BOVERI nor has granted any license to the Respondent to use any of the Complainant's trade marks for any trade purposes.
5. The Complainant has submitted that in view of the foregoing and Rule 7 of the .IN Domain Name Dispute Resolution Policy ("INDRP"), the Respondent (i) is not offering any goods or services corresponding to the domain name (ii) is not known by the domain name and (iii) is not making any legitimate and fair use of the domain name. The Complainant has further submitted that the Respondent's website with the conflicting domain name merely includes the disputed domain name www.aseabrownboveri.co.in and a non-functional search window. The website is not functional as well. The Complainant has further submitted that the Respondent's website is not used for any legitimate purpose. The Complainant has attached **Annexure-VII**, the screenshot of the Respondents website www.aseabrownboveri.co.in.
6. The Complainant has submitted that the Respondent does not have any legal right or legitimate interest over the name ASEA BROWN BOVERI and the domain name www.aseabrownboveri.co.in

6. THE DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH:

1. The Complainant has submitted the INDRP Policy specifies certain circumstances which demonstrate bad faith in registering a domain name. as per complainant one of the circumstances is that if the registrant has registered the domain name in order to prevent the owner or the trade mark or service mark from reflecting the

Saurabh K Singh

mark in a corresponding domain name provided that the registrant has engaged in a pattern of such conduct. (Rule 6 of the INDRP Policy.)

The Complainant has further submitted that in the present case, although the Respondent had registered the domain name www.aseabrownboveri.co.in on 12 June 2013 he has not put the domain name to any use until date. Further, a search in the .IN Registry's Whols database has revealed that the Respondent has registered many domain names which are deceptively similar to the corporate names/trademarks of some of the internationally famous companies with the .IN Registry under the .IN and .CO.TN TLDs. Some of these domain names include:

www.opentv.in

wal-mart.co.in

misys.co.in

capgemini.in

osram.co.in

sagem.in

The Complainant has attached as **Annexure-VIII**, the printouts of the .IN Registry's Whols database in respect of the domain names www.opentv.in; www.wal-mart.co.in; www.misys.co.in; www.capgemini.in; www.osram.co.in; www.sagem.in.

The Complainant has further submitted that the Respondent is engaged in cybersquatting as a business to make undue financial benefits.

2. The Complainant has submitted that the Respondent has adopted and registered a domain name which is deceptively similar to the corporate name, registered trade mark, and domain name of the Complainant, thereby wrongfully, illegally and dishonestly trading upon the reputation of the Complainant and further respondent has registered the domain name www.aseabrownboveri.co.in with bad faith to derive illegal pecuniary benefit from the unauthorized use of the Complainant's trade name.

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3. The Complainant has submitted that its trade mark ASEA BROWN BOVERI is an inherently distinctive and unique trade mark having uncommon combination of words. The Complainant has submitted that It is quite unlikely that any other trader would choose to use the same combination of words as a trade mark or corporate name. The Complainant has further submitted that the Respondent has created the domain name www.aseabrownboveri.co.in independently without the knowledge of the Complainant's brand.
4. The Complainant has submitted that the Respondent's foregoing unlawful act is intended to, and is likely to blur and erode the distinctiveness of the ASEA BROWN BOVERI trade mark and tarnish the reputation of the Complainant and its famous ASEA BROWN BOVERI trade mark and its products.
5. The Complainant has submitted the Respondent's foregoing unlawful act has caused, and will continue to cause irreparable harm to the Complainant and its ASEA BROWN BOVERI trade mark and to the business and substantial goodwill represented thereby, unless the Respondent's domain name www.aseabrownboveri.co.in is disabled and transferred to the Complainant.
6. The Complainant has further submitted that it has not granted any right to the Respondent to use its registered trade mark ASEA BROWN BOVERI in any form. Further, the Respondent does not have any bona fides in adopting a domain name which is deceptively similar to the Complainant's domain name, registered and internationally well-known trade mark as well as corporate name. As the respondent does not have any legal right or legitimate interest over the name ASEA BROWN BOVERI, its adoption or the domain name is with malafide intention.
7. The Complainant has submitted that under the INDRP, another circumstance which demonstrate the bad faith is when 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 or the trademark or service mark, or to a competitor of that complainant, for valuable consideration.

Pragya K. Singh

8. The Complainant has submitted that in this regard the Complainant has received an e-mail from an e-mail id maimirenban@gmail.com on 7 October 2013, offering to transfer the Respondent's domain name www.aseabrownboveri.co.in to the Complainant. The Complainant has further submitted that the e-mail also specifies that if the Complainant agrees to purchase the domain name, the registrant could do the transaction via www.escrow.com (USA) and the transfer would be completed within one (1) week. The Complainant has further submitted that the contact address is provided in the e-mail is domainhk@hotmail.com. The Complainant has attached as **Annexure-IX**, the copy of the e-mail dated 7 October 2013 received by the Complainant from the e-mail idmaimirenban@gmail.com.

The Complainant has submitted that the foregoing e-mail has been sent on behalf of the Respondent because no one other than the Respondent is entitled to transfer the domain name registered in the Respondent's name. The Complainant has further submitted that the Respondent has registered the domain name www.aseabrownboveri.co.in solely to derive undue pecuniary benefit from the Complainant and not for any genuine or legitimate use. The Complainant has further submitted that Respondent had no bonofide interest in registering domain name www.aseabrownboveri.co.in and respondent has done it in absolute bad faith.

9. The Complainant has submitted that upon information and belief, that the Respondent has bad faith intent to profit from the registration and use of the internet domain name www.brownboveri.co.in by creating an association with the Complainant's well-known ASEA BROWN BOVERI trade mark as to source or sponsorship.
10. The Complainant has submitted that if the Respondent is allowed to maintain its registration of domain name www.aseabrownboveri.co.in it will cause irreparable loss and damage to the Complainant and its goodwill and reputation. Further there is strong likelihood of confusion among the consumers and general public that the Respondent's domain name is sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant.

Sanjay Kumar Singh

7. OPINION/FINDING:

1. The complainant as such has prayed for an award in the above matter for transfer of the domain name "aseabrownboveri.co.in" in favour of the complainant.
2. I have perused the records and have gone through the contents of the complaint and the documents attached with the complaint. Since respondent has not filed any reply or evidence in his favour despite notices hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.
3. The Complainant has submitted an e-mail sent by respondent on 30th November 2013 from e-mail id maimirenban@gmail.com to the complainant whereby the Respondent has offered to transfer the Respondent's domain name www.aseabrownboveri.co.in to the Complainant. The complainant has forcefully contended that there is prima facie evidence of respondent's involvement in bad faith and cybersquatting as the respondent has first registered an unrelated domain name similar to the complainant's trade mark and corporate name and then tried to make profits by selling the domain name to the complainant.
4. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has not provided such evidence. Thus the conclusion is that the respondent has no right or legitimate interest in the domain name.
5. It has been held in Indian decision M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Sify" were held to be phonetically

Satyam vs Sify

similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

6. Thus the conclusion is that the domain name "**aseabrownboveri.co.in**" is identical and confusingly similar to the trademark of complainant "ASEA BROWN BOVERI" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "**aseabrownboveri.co.in**" in bad faith.

RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "aseabrownboveri.co.in", as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

Delhi

Date: 12-12-2013.

Sanjay Kumar Singh
(Sanjay Kumar Singh)

Arbitrator