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**NATIONAL INTERNET EXCHANGE OF INDIA  
Incube Business Centre, 5th Floor,  
18, Nehru Place  
NEW DELHI-110 019**

**Dorma GmbH+Co.KG. v. Mr. Steven Polgar**

**AWARD**

**1. The Parties**

**The Complainants are (1) Dorma GmbH+Co.KG, Dorma Plate 1, D - 58256 Ennepetal, Germany, and (2) Dorma India Private Limited, No. 14, Pattulous Road, Chennai-600 002.**

**The Respondent/Registrant is Mr. Steven Polgar, M/s Linux Technology Pty Ltd., Suite 63, 20-28, Maddox Street, Alexandria, New South Wales - 2015 AUSTRALIA**

**2. The Domain Name and Registrar**

**The disputed domain name <www.dorma.in> is registered with the Registrar GoDaddy.com Inc.**

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### 3. Procedural History

(a) The Complaint was filed with the National Internet Exchange of India on October 25, 2010. The Complainant has made the registrar verification in connection with the domain name at issue. The print out of e-mail reply so received is attached with the Complaint as Annexure 1. It is confirmed by the said e-mail that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Respondent. The Exchange verified that the Complaint satisfied the formal requirements of the IN Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

(b) In accordance with the Rules, on November 10, 2010 the Sole Arbitrator formally notified the Respondent of the Complaint. The Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by December 7, 2010 (taking 6 days in the transit of the communication each side). The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte.

(c) The said communication has however been returned by the Australian postal authorities with the remarks that "No longer at this address". **Thus**, no reply has been received from the Respondent. Accordingly, the Respondent's default has been notified.

(d) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and Solicitor, Former Law Secretary to the Government of India, as the Sole Arbitrator to decide the domain name dispute. 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 National Internet Exchange of India..

### 4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

#### **Complainant's activities**

The present Complaint has been filed by two Complainants. It is stated in the Complaint that the first Complainant is a company registered in Germany under the laws of Germany. The second Complainant is the first Complainant's wholly owned subsidiary company operating in India and registered in India under the Companies Act, 1956 of India. The second Complainant is authorized to use D O R M A marks of the first Complainant in India.

The first Complainant was founded in the year 1908 by the name of Dorken & Mankel K G. In the year 1970 it was renamed as Dorma GmbH+Co.KG. The first Complainant is dealing in the production and supply of door technology products

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and systems including glass doors, separation walls, moveable walls, and automatic door systems, etc., under the brand name and trade mark "DORMA".

The first Complainant has 71 wholly owned companies in 47 different countries including Australia, Austria, Belgium, Brazil, Canada, china, Denmark, France, Greece, Hong Kong, Hungary, Italy, India, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Sweden, U.K., U.S.A., etc.

### **Respondent's Identity and Activities**

The Registrant did not reply to the Complainant's contentions. Hence, the Registrant's activities are not known. However, the Respondent has registered the disputed domain name in March 2009.

### **Partes Contentions**

#### **A. Complainant**

The Complainant contends that each of the elements specified in Article 4 of the Policy are applicable to this dispute.

In relation to element (i) that is, the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, the Complainant contends that it is known amongst its customers worldwide as DORMA. The DORMA trademark is registered in many countries including Australia, European Union, Germany, Ireland, India, Hong Kong, etc. in various classes 6, 7, 9, 16, 19, 35, 37, & 42. The Respondent's domain name is phonetically, visually and conceptually similar to that of the Complainant. Hence, any unauthorized usage of the mark DORMA would amount to infringement and passing offaction. Thus, the Respondent's domain name <[www.dorma.in](http://www.dorma.in)> is likely to be confusing with Complainant's distinctive mark

In relation to element (ii), that is, the Respondent has no rights and legitimate interests in respect of the domain name, the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark DORMA. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant.

Regarding the element at (iii), that is, The Registrant's domain name has been registered or is being used in bad faith, the Complainant contends that the main object of registering the domain name <[www.dorma.in](http://www.dorma.in)> by the Respondent is to earn profit and to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

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## **B. Respondent**

The Respondent did not reply to the Complainant. Hence, the Respondent's contentions are not known.

## **6. Discussion and Findings**

The Rules instructs this Arbitrator as to the principles to be used in rendering its decision. It says that, "an arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"

According to the .In Domain Name Dispute Resolution Policy, the Complainant must prove that:

- (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 Respondent 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;

### **A. Identical or Confusingly Similar**

DORMA is the registered trademark of the Complainant. It is registered in many countries. The Complainant is also the proprietor and registrant of the domains DORMACOM; DORMAINDIA.COM; DORMADE; DORMACOMAU; DORMA.BR; DORMA.USA.COM; DORMA-UK.CO.UK; etc. The Complainant is a very old and established company in many countries. The Complainant's trademark DORMA has acquired a distinctive character and extensive use and is very well known in many countries of the world. The disputed domain name <[www.dorma.in](http://www.dorma.in)> is very much similar to the trade mark of the Complainant.

The trademark of the Complainant "DORMA" is also registered in India under various registration numbers on different dates for services of classes 6, 7, 9, 16, 19, 35, 37, & 42. The said registration is valid and subsisting till today.

In the case of *Montari Overseas v. Montari Industries Limited* (1996 PTC 142) it has been held that "when a defendant does business under a name which is sufficiently close to the name under which the plaintiff is trading and that name has acquired a reputation and the public at large is likely to be misled that the defendant's business is the business of the plaintiff or the branch or department of the plaintiff, the defendant is liable for an action in passing off."

The Complainant has business interests in many countries and it uses the trade name DORMA in these countries. The Respondent's domain name is of such a nature that it is likely to make the public believe that the domain name is either owned by the Complainant or sponsored by or affiliated to the Complainant. Thus, the consumers looking for D O R M A may instead reach the Respondent's website. Therefore, I hold that the domain name <[www.dorma.in](http://www.dorma.in)> is confusingly similar to the Complainant's trademark.

#### **B. Rights or Legitimate Interests**

According to the Policy, the Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed name 'dorma' anywhere in the world. The visitors to the domain <[www.DORMA.IN](http://www.DORMA.IN)> are routed/directed to the website of the respondent viz. [LINUXINDLA.COM](http://LINUXINDLA.COM). "Dorma" is the mark of the Complainant. The Registrant/Respondent is known as "Steven Polgar" of Linx Technology Pvt. Ltd. Therefore, it is evident that the Respondent can have no legitimate interest in the domain name.

Further, the Complainant has not licensed or otherwise permitted the Registrant to use the Complainant's name or trademark or to apply for or use the domain name incorporating said name. Based on the default and the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. I, therefore, find that the Respondent has no rights or legitimate interests in the domain names,

#### **C. Registered and Used in Bad Faith**

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent 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 documented out of pocket costs directly related to the domain name; or

- (ii) 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
- (iv) By using the domain name, the Respondent has intentionally attempted to attract internet users to the Respondent'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 Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. The registration of the domain name and its subsequent use by the Respondent is a deliberate attempt by the Respondent to attract, divert for commercial gain the internet users and customers to the disputed website by creating confusion with Complainant's mark

The Arbitrator finds that there are circumstances indicating that the Respondent has intentionally attempted to attract, Internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites. Further, the domain name apparently has been registered for misuse and causing loss to the Complainant.

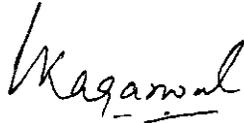
The use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*"; In the case of Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 it has been held that passive holding, non-use of a domain name or the use of a domain name to direct to another website is evidence of bad faith. A similar finding has been given in a large number of other cases including the case of Bayer Aktiengesellschaft v. Henrik Monssen, WIPO Case No. D2003-9275.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. As the Respondent has failed to rebut this presumption, I conclude that the domain name was registered and used in bad faith

## 7. **Decision**

In light of the foregoing findings, namely, that the domain name is confusingly

similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.dorma.in> be transferred to the Complainant.



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Vinod K. Agarwal  
Sole Arbitrator

December 8, 2010