



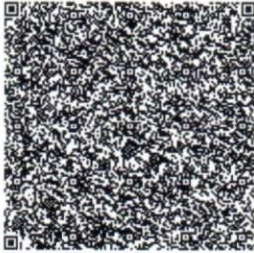
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL62754289824866P
Certificate Issued Date	: 12-Dec-2017 02:08 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SAKET/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1728427006487571P
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.herohousingfinance.in

between

HERO INVESTCORP PRIVATE LIMITED

AND

MUZAFFAR HUSSAIN BARCHIWALE

...COMPLAINANT

...RESPONDENT

AWARD

1

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 16/11/2017. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the hard copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That NIXI vide their email dated 17/11/2017 stated that they have already sent the complaint by courier giving dispatch receipts of the same.
3. This Tribunal had seen the tracking of the Courier slip supplied by NIXI and the delivery of the hard copy of the complaint duly received by the Respondents on 13/11/2017.



4. That vide its order dated 18/11/2017 this Tribunal directed the Respondent to send their Statement of Defense to the Complainant by soft as well as hard copy to the Tribunal by 28/11/2017 as the Respondent was in receipt of the hard copy of the complaint.
5. This Tribunal vide the same order also directed the Complainants to comply with the earlier order dated 16/11/2017 and gave them 2 days time for the same.
6. This Tribunal observed vide its order dated 29/11/2017 that the Respondents had not complied its earlier order dated 18/11/2017 to send their SOD within the time frame. In view of the above the Complainants were directed to file their Evidence by way of Affidavit as soft copy by email and hard copy by courier in 7 days so that it reaches this Tribunal by 06/12/2017.
7. The Complainants on 4th December, 2017 sent the soft copy of their Evidence by way of Affidavit with a note that the hard

copy of the said affidavit would be sent to the Tribunal by 06/12/2017. Hence, this Tribunal vide its order dated 09/12/2017 reserved its award clarifying that incase the respondents send their response /evidence in support thereof, the same would be taken into consideration by this Tribunal at the time of making the award. The hard copy of the Affidavit of Evidence of the complainants was received on 11/12/2017.

8. This Arbitral Tribunal notices that till 12/12/2017 there is no communication from the side of the Respondent and hence, it proceeds to examine the claim statement of the Complainant and the Evidence including documentary evidence filed in the present proceeding.

CLAIM

9. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant is a company incorporated under the Companies Act, 1956 and its address is Hero C.R.



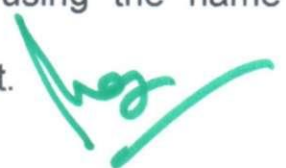
Division, Sua Road, Hero Nagar, Ludhiana 141003 Punjab,
India.

- B. It is claimed that the Complainant was incorporated on December 4, 1981 with the object of *"to apply for, register, own, develop, create, purchase or by other means acquire and protect, prolong and renew any trademarks, patents, copyrights, industrial designs, trade secrets, confidential information or any other intellectual property rights (IPR), goodwill, licenses, secret processes or let on lease or otherwise mortgage, charge, or encumber the same and to disclaim, alter, modify, use by itself including through its licensees and turn to account and to manufacture under or grant license, right of use, privileges or enter into such other arrangements in respect of the same, for consideration or otherwise, or to assign, dispose off or convey or sell, all or any part of the same, and to expend money for any of the above, directly or indirectly including on research and development, experimenting upon, testing and improving any patentable or*



non-patentable invention or other IPR which the company may acquire or propose to acquire.”

- C. It is claimed that the Complainant is a part of the HERO group of companies, the earliest of which was established in the 1950s for the manufacture and sale of bicycles and parts thereof. It is claimed that the group companies are engaged in diverse business activities including but not limited to financial solutions, insurance, investments, planning, advisory, execution and monitoring of investments, manufacture and sale of automobiles, parts and fittings.
- D. It is claimed that the word HERO forms the forepart and most distinguishing feature of the Complainant's corporate name and trading style and the name of some of the Complainant's other group companies, all of whom are using the name HERO with the permission of the Complainant.




- E. It is claimed that one of the Complainant's group companies is named **Hero Housing Finance Limited**, which was incorporated on June 16, 2016. The said group company of the Complainant is authorised by the Complainant to use the mark HERO. Reliance is placed on **Annexure – I**.
- F. It is claimed that as a part of reorganization of its group companies, the Complainant became the owner of the trade marks HERO and HERO GROUP. It is claimed that all the other group companies of the Complainant are using the trade mark / trade name / domain name HERO under license and / or authority from the Complainant.
- G. By relying on **Annexure – II** it is claimed that the Complainant is the proprietor of the trade mark HERO either by itself or in conjunction with other words/devices/logos in India and several jurisdictions of the world including Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Benelux, Benin, Bermuda, Cambodia, Canada, China, Egypt, France, Germany, Hong Kong,



Indonesia, Japan, Malaysia, Mexico, New Zealand, Pakistan, Portugal, Republic of Korea, Scotland (UK), South Africa, Spain, Switzerland, Thailand, UAE, UK, Vietnam, Zimbabwe etc.

- H. By relying on **Annexure – III** the Complainant claims to be the proprietor of at least 21 registrations consisting of the word HERO either by itself or in conjunction with other words / devices / logos spread over 9 classes.
- I. It is further claimed that there are several applications pending in various classes for the trade mark HERO and HERO formative marks in the name of the Complainant and the same are detailed as under:

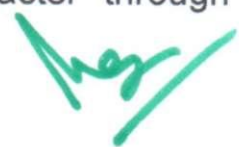
Trade Mark	Application No.	Class/es	Date of Application
	2176174	36, 9,12, 16, 25, 25, 37, 41 and 42	15/07/2011

 hero	2176175	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
 HERO	2176176	41, 9, 12, 16, 25, 35, 36, 37 and 42	15/07/2011
 HERO	2176177	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
 HERO	2176178	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
 hero	2176179	9, 12, 16, 25, 41, 35, 36, 37 and 42	15/07/2011
 HERO	2176180	12, 9, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
 hero	2176181	41, 42, 9, 12, 16, 25, 35, 36 and 37	15/07/2011
 HERO	2176182	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011



	2176183	41, 9, 12, 16, 25, 35, 36, 37 and 42	15/07/2011
	2176184	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
	2176185	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
	2176186	9, 12, 16, 25, 35, 36, 37, 41 and 42	15/07/2011
	2176187	12, 16, 37, 41, 42, 9, 25, 35 and 36	15/07/2011
HERO	1682343	12	30/04/2008
HERO GROUP	2047368	12	01/11/2010

- J. Based upon the aforesaid it is claimed that the trademark HERO is well-known on a global footing and enjoys goodwill and reputation of international character through publicity,



dissemination of knowledge/information about the mark and products and services traded. It is claimed that the Complainant has spent millions of dollars on the publicity of their goods and sales promotion activities and as a result of such expenditure in terms of time, money and effort, the mark HERO today has become synonymous with the products and services of the Complainant and is also a market leader in its field.

- K. It is further claimed that Hero MotoCorp, is a permitted user of the trade mark HERO in respect of *inter alia* automobiles and their parts. The Complainants have also given a list of awards won by them.
- L. Further the complainants have relied upon **Annexure – IV** to fortify their claims w.r.t. the revenue and advertising figures related to the sale of products under the trademark HERO by the Complainant's permitted user Hero MotoCorp in India for the years 2012-13 to 2016-17.



- M. By relying on **Annexure – V** it is claimed that the word HERO forms the forepart of the following domain names of various group companies of the Complainant –

S. No.	Domain Name	Date of Creation
1.	www.heromotocorp.com	17.05.2011
2.	www.herofincorp.com	27.06.2011

- N. It is alleged that the Respondent herein has registered a domain name www.herohousingfinance.in which is similar to the well-known mark HERO of the Complainant as well as the corporate name of its group company HERO HOUSING FINANCE LIMITED.

- O. It is also alleged that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant who have the rights w.r.t. the same.

- P. The Complainant has relied upon the following judgments



- 1) **3M Company v. Machang INDRP/856** (decided on 06.02.2017)
- 2) **Charmin Charlie LLC v. Normand Clavet INDRP/859**
(decided on 17.03.2017)
- 3) **Ducati Motor Holding S.p.A. v. Abhishek Chordia INDRP/ 834** (decided on 20.02.2017)
- 4) **Bharti Airtel Limited v. Sunita Bhardwaj INDRP/837**
(decided on 03.02.2017)
- 5) **Zippo Manufacturing Company v. Zhaxia INDRP/840**
(decided on 27.01.2017)

Q. It is vehemently contended that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Reliance is placed on:

- a) **Velcro Industries B.V. v. Velcro Technologies INDRP/858** (decided on 10.03.2017)
- b) **ALLIANZ SE v. Yang Nianyong INDRP/ 816** (decided on 29.09.2016)
- c) **QRG Enterprises Limited and Havells India Limited v**

Zhang Micase no. INDRP/852 (decided on 31.01.2017)

d) Dell Inc. v. Mani, Soniya INDRP/ 765(decided on 05.04.2016)

- R.** It is also contended that the Respondent had registered the disputed domain name in bad faith to mislead and divert the consumers or with the intention of selling the said domain name to the Complainant for a profit.
- S.** It is also contended that there is no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization for the Respondent to use or sale its products under the HERO mark or the corporate name HERO HOUSING FINANCE LIMITED.
- T.** Further the Respondent is not running any website on the infringing domain name and the sole purpose of registering the impugned domain name by the Respondent is to either disrupt the business of the Complainant by blocking it from registering

the said domain name or to sale the said domain name to the Complainant for profit.

U. It is also alleged that the Respondent is trying to exploit the goodwill, reputation and fame of Complainant's HERO trade mark and the corporate name of its group company HERO HOUSING FINANCE LIMITED in bad faith in order to improperly deceive internet users and benefit the Respondent financially.

V. The Claimants again rely upon the following cases:

a) ***Velcro Industries B.V. v. Velcro Technologies INDRP/858*** (decided on 10.03.2017)

b) ***Lego Juris V Robert Martin [INDRP/125 lego.co.in]***

c) ***Pentair Inc. v. Bai Xiqing INDRP 827*** (decided on 10.11.2016)

d) ***Exxon Mobil Corp. v. Prop. Mgmt. Prof'l, FA 1059655***

e) ***Exxon Mobil Corp. v. Exxon Mobil c/o Internet Coordinator, FA 1220454.***



**f) *Homer TLC v. Kang, FA 573872, (Nat. Arb. Forum
Nov. 22, 2005)***

ORDER

10. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been controverted by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.herohousingfinance.in hence this Tribunal directs the Registry to transfer the domain name www.herohousingfinance.in to the complainants.
11. The Complainants too are free to approach the Registry and get the same transferred in their name.
12. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint nor have the complainants disclosed their revenue figures.

13. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 14th day of December, 2017.

NEW DELHI
14/12/2017



V. SHRIVASTAV
ARBITRATOR