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Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

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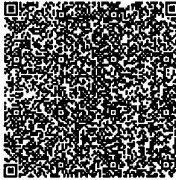
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: AJAY GUPTA ARBITRATOR
: Article 12 Award
: Not Applicable
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: AJAY GUPTA ARBITRATOR
: Not Applicable
: AJAY GUPTA ARBITRATOR
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: (One Hundred only)



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INDRP ARBITRATION CASE No. 1441

THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: AJAY GUPTA

ARCELORMITTAL(CSA)

vs.

ALOYT

DISPUTED DOMAIN NAME; MITTALSTEEL.CO.IN

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THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

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ARCELORMITTAL(SA)

Vs.

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DISPUTED DOMAIN NAME :MITTALSTEEL.CO.IN

Angel

INDRP ARBITRATION CASE NO.1441
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

ARCELORMITTAL(SA)
24-26, boulevard d' Avranches,
1160 Luxembourg
LUXEMBOURG

...Complainant

Vs.

Aloyt
F 103 b 13 Vasant Leela Complex,
Hiranandani Estate,
Thane, Maharashtra 400607
India

...Respondent

Disputed Domain Name : mittalsteel.co.in



The Parties

The **Complainant** in this arbitration proceedings is ARCELORMITTAL (SA), is a Luxembourgish steel manufacturing company having its principal place of business at 24-26, boulevard d' Avranches, 1160 Luxembourg. The complainant in this proceeding is represented by NAMESHIELD, 79, rue Desjardings 49100Angers , France.

The **Respondent**, in this arbitration proceeding, is Aloyt, located at f 103 b 13 Vasant Leela Complex, Hiranandani Estate, Thane, Maharashtra 400607, India 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 mittalsteel.co.in. The Registrar with which the disputed domain name is registered is Endurance Domains Technology LLP.

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 28th 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 there under.

The history of this proceeding is as follows:

In accordance with the Rules,2(a) and 4(a) , NIXI on 01.10.2021 formally notified the Respondent of the complaint, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under . That on 01.10.2021 Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

That commencing the arbitration proceedings an Arbitration Notice Dated 01.10.2021 was sent to the respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. The Copy of the Notice was also mailed to the Complainant. That on the direction of this panel the proof of service of Complaint to the respondent was supplied to this panel by complainant vide their mail dated 11.10.2021. That no reply of the notice and complainant was received from the respondent within stipulated time of 10 days. However, this panel in the interest of justice granted further period of 7 days to the respondent to file the reply and same was communicated to respondent by mail dated 11.10.2021. The Respondent again failed to file the reply of the Arbitration notice and complaint even within the further extended period of 7 days despite the receipt of mail dated 11.10.2021 of this panel and subsequently the respondent was proceeded ex parte on 20.10.2021.

The Respondent's Default

The Respondent failed to reply to the notice regarding the complaint. It is a well established principal 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. The disputed domain name in question is "mittalsteel.co.in"

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."

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

The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file reply of the Complaint if any but Respondent neither gave any reply to notice nor to the complaint. The 'Rules' paragraph 12 provides that "In event any party breaches the provisions of INDRP rules and / or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidences, inferences and merits only as the Respondent has not replied and is proceeded ex parte.

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

The Complainant in this arbitration proceedings is ARCELORMITTAL (SA), is a Luxembourgish Steel Company. That according to complainant, the company is specialized in steel producing in the world It further claims that the company is the market leader in steel for use in automotive, constructions, household appliances and packaging. It holds sizeable captive supplies of raw materials and operates extensive distribution networks. The Complainant is also present in India through numerous entities. The Complainant further claims that it owns several trademarks including the wording "MITTAL STEEL" in several countries, including in India, such as :

Trademark	Registration Territory	Number	Registration Date	Classes
MITTAL STEEL	INDIA	1353634	27.04.2005	39
MITTAL STEEL	INDIA	1352337	21.04.2005	06,40

The Complainant also owns and communicates on Internet through various domain names, such as <mittalsteel.com> registered on January 3rd, 2003 and <mittalsteel.in> registered on November 20th, 2018.

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 :-

1. The disputed domain name is identical or confusing 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.

The Respondent is required to submit to 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

1. **The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.**

Complainant

The Complainant submits that the disputed domain name <mittalsteel.co.in> is confusingly similar to the trademark MITTAL STEEL®, as it incorporates the trademark in its entirety. The Complainant further submitted that the addition of the ccTLD ".IN" is not sufficient to escape the findings that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

Panel Observations

The Complainant "ARCELORMITTAL (SA) being the largest steel producing company is known worldwide including India. The disputed domain name "mittalsteel.co.in" will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the complainant and further the addition of "in" is not sufficient to escape the finding that the domain is confusingly similar to complainant's trademark.

Therefore, the panel is of opinion that disputed domain name "mittalsteel.co.in" being confusingly similar to the trade mark of complainant will mislead the public and will cause unfair advantage to respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "MITTAL STEEL®" of the Complainant.

It has to be noted that the paragraph no.4 of the INDRP policy starts with following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises." This is a positive assertion and sentence. Further paragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(i) is upon complainant. To succeed he must prove them."

It has been proved by the Complainant that it has trademark rights and other rights in the mark "MITTAL STEEL" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering the trademark "MITTAL STEEL" in its entirety, the disputed domain name "mittalsteel.co.in" is confusingly similar to the trade mark of complainant.

Paragraph 3 of the INDRP states that, 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 reproduce 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 :

1. the statements that the Respondent made in the Respondent's Application form for Registration of Domain Name are complete and accurate;
2. To the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
3. The respondent is not registering the domain name for an unlawful purpose; and
4. 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 has not replied to the complainant contentions.

Therefore, the Panel comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks . Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDR Policy.

2. The Respondent has no rights or legitimate interests in respect of the domain

Complainant

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in anyway with the Complainant.



The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the complainant.

The Complainant has given the precedent of Case No. INDRP/776, Amundi Vs. GaoGou stating that the Complaint is required to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(ii) of the INDRP Policy.

The Complainant further contended that the Respondent has registered the disputed domain name in order to benefit of its notoriety and to divert the clients to competitive products.

That based on the above based arguments, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name.

Panel Observations

This Panel holds that 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 prime facie case showing that the respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The respondent despite every opportunity failed to provide evidence to rebut the contention of complainant that neither licence nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by complainant. The respondent further failed to rebut the contention of the complainant that Respondent has nor rights or legitimate interests in respect of the domain name and respondent is not related in any way with the Complainant.

Respondent

The respondent has not replied to the complainants contentions.

For these reasons, the Panel holds that the Complainant has proved that the respondent does not have any rights or legitimate interests in the disputed domain name.

3. The Domain name(s) was /were registered and is / are being used in bad faith.

Complainant

The Complainant submits that the disputed domain name <mittalsteel.co.in> is confusingly similar to its trademark MITTAL STEEL®. The Complainant further submit that prior UDRP panels have established that the trademark MITTAL® is well known and refer to WIPO Case No.D2018-1086, ArcelorMittal S.A. Vs. Registrant of laskshmittal.org, C/o WHOIS trustee.com Limited/Zeus Holding Market Ltd. ("The Domain Name wholly incorporates a well-known mark [MITTAL];

WIPO Case No.D2010-2049, Arcelormittal Vs. Mesotek Software Solutions Pvt. Ltd. ("the Complainant's marks MITTAL and MITTAL STEEL have been widely used and are well-known).

The Complainant submits that given the distinctiveness of the Complainant's trademarks and reputation, it is inconceivable that the Respondent could have registered the disputed domain name <mittalsteel.co.in> without actual knowledge of Complainant's rights in the trademark, which evidences bad faith.

The Complainant further submits that domain name is used by Respondent to intentionally divert internet users away from Complainant's website in order to sell goods in competition with Complainant for commercial gain. The complainant relies on Xylem Inc. And Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi, FA 1612750(Forum May 13, 2015)("The Panel agrees that Respondent's use of the website to display products similar to Complainant's imputes intent to attract Internet users for commercial gains , and find bad faith per Policy4(b)(iv); the Complainant further relies on CNA Financial Corporation v.William Thomson/CNA Insurance , FA 1541484(Forum Feb.28 2014) (Respondent intentionally attempted to create a likelihood of confusion with Complainant. Respondent offers competing insurance services via the disputed domain name , and any sales allows Respondent to profit from improper association{.....}This is bad faith under Policy 4(b)(iv)

That on these facts the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

Panel Observation

Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that 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 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 Registrar's 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 internet user 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 services on its website or location."

The panel is of the view that from the evidence put before it, which establish that Respondent has 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 trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. It is very unlikely that

Respondent before registering the domain name mittalsteel.co.in had no knowledge of Complainant's rights in the trade mark MITTAL STEEL, which evidences bad faith.

It is also a well settled principle that the registration of a domain name that incorporates 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 vs. Nelton Brands Inc., INDRP/250, December 30, 2011]

By registering the disputed domain name with actual knowledge of the Complainant's 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 case is the Complainant ARCELORMITTAL(SA).

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith.

Respondent

The respondent has not replied to the complainants contentions.

Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

Decision

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

The complainant being the largest steel producing company has its presence world wide and it owns trademarks in several countries including India. The Respondent has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.

Taking into account the nature of the disputed domain name and in particular the ".in" extension alongside the Complainant's mark which is confusingly similar, 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 disputed Domain Name by the Respondent is and would be illegitimate.

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: Graco Children's Products Inc. V. Oakwood Services Inc. WIPO Case No.2009-0813; Ville de Paris V. Jeff Walter, WIPO Case No.D2009-1278}.

It is Registrant's/Respondent's duty under Para 3 of the .IN Dispute Resolution Policy to warrant and prove to the contrary that :

- "(a) the Registrant/ Respondent has accurately and completely made the Application Form for registration of the domain name;

- (b) to the Registrant's Knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful purpose; and
- (d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

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

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 done in bad faith.


This panel is of the view that it is for the Complainant 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 has registered the disputed name and is using it in bad faith.

{Relevant decisions: INDRP/776, Amundi V. Gao Gou, INDRP Case No.999, Accenture Global Services Limited V. Vishal Singh, Case No.INDRP 1037, BOLLORE V. Mr. Karthikeyan, OCEAN SOFTWARES. WIPO Case No.D2018-1086, Arcelor Mittal S.A. V. Registrant of Lakshmimittal.org, C/o WHOIS Trustees.Com Limited/ Zeus Holding Market Ltd., WIPO Case No.D2010-2049, Arcelormittal V. Mesotek Software Solutions Pvt. Ltd., Case No.INDRP/1037, Trivago N.V. V. Shiv Singh, HSBC Holdings plc V. Hooman Esmail Zaedh (INDRP/032), Telstra Corporation Limited V. Nuclear Marshmallows, WIPO Case No.D2000-0003, Aktiegesellschaft V. Hybo Hindustan, 1994 PTC 287, HONDA Case No.2004(28) PTC 332, TATA Case (27) PTC422, Ferrero S.P.A. V. Jacques Stade, Case No.DBZ2003 (WIPO August 25, 2003, Ferrari S.P.A V. American Entertainment Group, Inc, Case No.D2004-0673 WIPO October 10, 2004, Sony Ericsson Mobile Communications AB V. Salvatore Morelli, INDRP/030, Orange Brand Services Limited V. PRS Reddy, INDRP/644; International Business Machines Corporation V. Zhu Xumei, INDRP/646, January 30, 2015, Jaguar Land Rover V. Yitao, INDRP/641, (January 4, 2015), Statoil ASA V. Bright AK, D2014-1463 WIPO October 14, 2014, Satyam Infoway Ltd. V. Siffynet Solutions (P) Ltd. 2004 (6) SCC 135, The Ritz Carlton Hotel Company LLC V. Nelton Brands Inc., INDRP /250, December 30, 2011}

RELIEF

The Respondent's registration and use of the domain name [mittalsteel.co.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In accordance with Policy and Rules, the Panel directs that the disputed domain name [mittalsteel.co.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi
Dated : October 26, 2021


AJAY GUPTA
Sole Arbitrator