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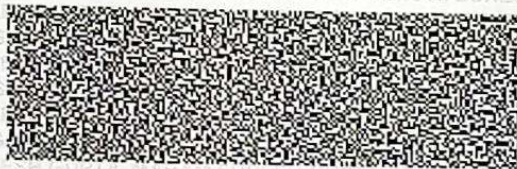
INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No. : IN-KA90804145889147U
Certificate Issued Date : 09-Apr-2022 01:40 PM
Account Reference : NONACC/ kakscsa08/ VIJAYANAGAR2/ KA-BA
Unique Doc. Reference : SUBIN-KAKAKSCSA0812784958153031U
Purchased by : MARAM SURESH GUPTA
Description of Document : Article 12 Bond
Description : ARBITRATION AWARD
Consideration Price (Rs.) : 0
 (Zero)
First Party : MARAM SURESH GUPTA
Second Party : N A
Stamp Duty Paid By : MARAM SURESH GUPTA
Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

**.IN Domain Name Dispute Resolution Policy
 INDRP Rules of Procedure**

Disputed Domain Name: < schneiderelevator.in>

INDRP Case No. 1522

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.sholestamp.com' or using e-Stamp Mobile App of Stock Holding Corporation of India. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <schneiderelevator.in>

INDRP Case No. 1522

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

Inventio AG

Seestrasse 55 6052, Hergiswil, Switzerland,

Ostfach, 6052 Hergiswil,

Switzerland.

.....Complainant

Versus

Pradhan T

Bhopal,

Bhopal – 462 008,

Karnataka, India.

.....Respondent

1. The Parties

- a) The Complainant in the present arbitration proceedings is **INVENTIO AG** (hereinafter referred as '**Complainant**'), with its office at Seestrasse 55 6052, Hergiswil, Switzerland, Ostfach, 6052 Hergiswil, Switzerland. The Complainant is represented by Shri. Ranjan Narula, RNA, Technology and IP Attorneys, 401-402, 4th Floor, Suncity Success Tower, Sector-65, Golf Course Extension Road, Gurgaon-122005, Haryana, India, Telephone: +91 124 4296999 / +91 124 2841222, Fax: +91 124 4296960, Email: rnarula@rnaip.com.



- b) The Respondent in the present arbitration proceedings is **Pradhan T** (hereinafter referred as '**Respondent**') having postal address: Bhopal, Bhopal – 462 008, Karnataka, India, email id as: pradhan@lynkxuz.com and contact phone number as +91 99 1602 4549. These contact details of the Respondent were provided by the Complainant in its complaint dated 16th March 2022, wherein the Complainant obtained the same from .IN registry.

2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting annexures.
- b) The disputed domain name is **<schneiderelevator.in>** and was created on 2nd April 2018. It was set to expire on 2nd April 2022. Based on information from WHOIS database, the registrant client ID is CR363567674 and registrant ROID is C85BC6B78AD504476A7E7A08F3BB572B7-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is GoDaddy (GoDaddy.com, LLC), USA.

3. Procedural History

- a) The present arbitration proceeding is as per the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India [NIXI] and the INDRP Rules of Procedure (the "Rules"), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 23rd March 2022 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same



day, I have indicated my availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.

- c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 23rd March 2022, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on the same day, 23rd March 2022, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication to the Arbitrator with a copy to NIXI.
- d) The Complainant served copies of the Complaint and its supporting annexures only via email to the Respondent on 31st March 2022. The confirmation copies of the email sent to the respondent were submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 4th April 2022. It is pertinent to state that the Complainant was unable to send hard copies to the Respondent as the address provided by the Respondent while registering the disputed domain name were incorrect (*see Exhibit 1*). Accordingly, hard copies of the complaint and its copies were not served via courier to the Respondent.
- e) On 5th April 2022, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 10th April 2022, the award would be passed on merits. The additional time granted to the Respondent lapsed and no



Response was received by the panel. In reality, there has been absolutely no communication from the Respondent till today.


4. Factual Background and Parties Contentions

The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) The Complainant is a wholly owned subsidiary of Schindler Holding AG, Switzerland, the parent company of the Schindler Group (hereinafter “Schindler Group” and “Schindler”) and owner of the Schindler Group’s intellectual property worldwide. The Schindler Group was established in Switzerland in 1874 and is in the domain of providing elevators, escalators, moving walkways, and their maintenance and modernization services. It has branch offices in many countries in the world. In support, the Complainant provided **Exhibit 2** – annual report for the years 2018 to 2021.

A perusal of **Exhibit 3** indicates different registered trademarks of the Complainant outside India. Similarly, a perusal of **Exhibit 4** clearly indicates that the Complainant has trademark rights in India as well. Particularly, Schindler is the registered proprietor of the trade mark ‘SCHINDLER’ in various classes in India. Details of the trademark registrations in India are provided in below table (*see Table 1*) and copy of these registration certificates are provided under **Exhibit 4**. Most importantly, the Complainant has also renewed the marks and are all valid.

Table 1: Registered Trademarks of the Complainant

Trade mark	Class/es	Reg. No.
SCHINDLER	6	900237
SCHINDLER	7	445065
SCHINDLER	9	445066
SCHINDLER	35, 37, 42	1240883
SCHINDLER	6,7,9,37,38,42,45	1265628 (IRDI-3194359)
	6; 7; 9; 37; 38; 45	1421377



- b) Further, the Complainant also owns domain names under the mark SCHINDLER and is associated with active internet presence. A perusal of **Exhibit 5** substantiates the aspects recited in this paragraph and also the aspects pertinent to domain name (www.schindler.com, schindler.in and schindler.co.in) ownership. The business activities of Schindler are provided under **Exhibit 6**.
- c) The Complainant is actively enforcing its intellectual property rights and has relied on some of its decided UDRP cases (Case No. D2021-1261, Case No. D2018-0916, Case No. D2018-0609, Case No. D2018-0091, Case No. D2016-0195, Case No. D2016-0740, Case No. D2012-2230 and Case No. D2012-1944).
- d) The Complainant contends that the disputed domain name (**schneiderrelevator.in**) subsumes its registered trademark SCHINDLER thereby amounting to infringement. The Complainant submitted that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word **SCHNEIDER**.
- e) The Respondent did not reply to the Complainant's contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received any response from the Respondent's.

5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark SCHINDLER is registered under different classes (*see Table 1*) and has been used much before the Respondent. In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods for sale under its registered trademark. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee



nor has it otherwise obtained the authorization of any kind whatsoever to use or misappropriate the registered trademark. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.

- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to Paragraph 8 (b) of the Rules I have given a fair opportunity to the parties to present their case. Though sufficient time (10 days + 5 days) was offered, the Respondent failed to file any response to the Complaint. Accordingly, under Paragraph 12 of the Rules, the proceedings are set to award *ex parte*.
- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/ submit a Response despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?



- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves a comparison between the registered trademark and the disputed domain name.

Disputed domain name	Registered Trademark of the Complainant
schneiderelevator.in	SCHINDLER (also see Table 1 for other registered trademarks of the Complainant)

The disputed domain name is a combination of two terms namely “schneider”, a German word and “elevator” an English word. In order to assess confusing similarity, it is permissible for the Panel to ignore the code Top-Level Domain (“ccTLD”) “.in”. From the above table it is evident that the typosquatted disputed domain name contains what appears to be a deliberate misspelling of Complainant’s SCHINDLER mark, with the term “SCHNEIDER” to confuse the consumers. Finding of similarity cannot be avoided by adding a common or generic term “elevator” to the disputed domain name (see WIPO Case No. D2000-1065, D2001-0489 (<disneychanel.com>, <disneywolrd.com>, <walddisney.com>). The disputed domain name is deceptively and confusingly similar to the Complainants registered trademark – SCHINDLER.

In addition, the Complainant has furnished sufficient evidence (registration certificate/ renewal certificate) in support of its registered trademark SCHINDLER (*see Exhibit 4*) arising out of its use. Therefore, given the Complaint and its accompanying annexure documents and cited case laws, I am convinced beyond any ambiguity that the disputed domain name is sufficiently confusingly similar to a trademark in which the Complainant



has rights in accordance with paragraph 4 (a) of the Policy. Accordingly, the complainant has satisfied the first essential element.

Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

Firstly, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark for a domain name registration. Besides, it appears that the Respondent is an individual by the name **Pradhan T** with rather strange address. It appears to the Panel that the Respondent has provided fake address while registering the disputed domain name. There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the individual/ Respondent has any rights. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.

Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with annexures and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest. Accordingly, the complainant has satisfied the second essential element.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

Because of the well-known and characteristic nature of Complainant's registered SCHINDLER mark, the Respondent is thought to have been aware/ on notice of the existence of Complainant's mark at the time of registering the disputed domain name.

Further, exhibit 7 provides sufficient evidence to prove that the Respondent using the



disputed domain name has intentionally attempted to attract customers and make commercial gain by creating a likelihood of confusion with the complainant's mark as to the source/ affiliation or endorsement of the disputed domain name/ the products and/or the services offered. From Exhibit 7 it is evident that the Respondent employed marks that are based on the nature of Complainants business of offering elevators, escalators and related equipments thereof with an intent to deceive customers. The fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith. Accordingly, the complainant has satisfied the third essential element.

7. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy.

In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <**schneiderelevators.in**> to the Complainant with a request to NIXI to monitor the transfer.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.



Maram Suresh Gupta

Sole Arbitrator

Date: 11th April 2022