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IN-DL28058411737969U

NATIONAL INTERNET EXCHANGE OF INDIA

B Wing, 9th Floor, Statesman House Building
148, Barakhamba Road,
New Delhi-110001

KARL STORZ SE & Co, KG

V/s

DOUBLE FIST LIMITED

Double Fist

Statutory Alert:

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AWARD

1. THE PARTIES

The Complainant is KARL STORZ SE & Co, KG Address: Dr.-Karl-Storz-Straße 34, 78532 Tuttlingen Germany, by its authorized representative Ms. Malavika T Vikram, of M/s. DePenning & DePenning, E-mail: domain@depenning.com Address: 120 Velachery Main Road, Guindy, Chennai-600032 Telephone: +91 44 4221 3444 Fax: +91 44 4221 3402.

The Respondent is **Double Fist Limited**, Wisconsin US.,

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name www.karlstorz.co.in

The disputed Domain name is www.karlstorz.co.in

The abovesaid domain registered particulars in detail is provided along with the complaint.

Registrar Name: DYNADOT LLC

IANA ID : 472

Date of creation: 13.05.2013

Date of Expiry : 13.05.2023

Registrant Client ID : C-666403

Registrant ROID: CCDB2DCF8658C42C5A03327B261C6A36B.IN

Email: ymgroup@msn.com

Phone: +86 17172121151

3. PROCEDURAL HISTORY

(a) The Complainant has filed a complaint on 22.03.2022 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-A to I**. The exchange verified the complaint, satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.

(b) The NIXI has appointed Sh. R.K. Kashyap, Advocate as the Sole Arbitrator in this matter vide mail dated 01.04.2022. The Arbitrator has submitted his Statement of acceptance and Declaration of

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Impartiality and Independence on 01.04.2022, as required by the Exchange.

- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 04.04.2022 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice, it has also been mentioned that the respondent to file the reply/response within 10 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with and the complainant sent the notice to the respondent, through respondent e-mail on 05.04.2022 and through courier dated 06.04.2022 which is duly being mentioned in his mail dated 06.04.2022, till date the respondent has not filed any reply/response within the stipulated time, hence, the respondent proceeded Ex-parte and Ex-parte Award is being passed.

4. **Factual Background:**




The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

- i) The Complainant's trademark **KARL STORZ** has been derived from the name of the founder "Dr. Karl Storz" and was incorporated in the year 1945. The Complainant was the first to introduce an endoscope that delivered light using fiber optics. It also licensed the patent for the Hopkins relay lens and introduced endoscopes including such lenses in 1965. In order to expand the business has pursued an aggressive growth strategy which has led to the business of the Complainant growing organically and through acquisitions with extensive market exposure.
- ii) In 1998, the Complainant opened a marketing company (i.e., **KARL STORZ endoscope Private Limited**) in Delhi, India, with an objective to provide Indian customers with competent consultation and support. The subsidiary also maintains a service center offering excellent **KARL STORZ** service that meets the specification and quality standards of the Complainant. The other material details qua complainant is available in 'Annexure D'.
- iii) **Trade Mark registrations of the Complainant**
The Complainant has secured statutory protection for the trade mark **KARL STORZ** in several jurisdictions including in India,

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Japan, Germany and USA etc. The details of few such registrations is listed below:

S. No	Country	TM NO	TRADEMARK	CLASS	Status
1	Germany	DE39951893	KARLSTORZ	9,38,41	Renewed
2	India	840562		10	Renewed
3	India	840563		10	Renewed
4	India	840564		10	Renewed
5	India	2552729	KARL STORZ OR1 FUSION CONTROL	10	Renewed
6	United States	75907095	KARL STORZ	41	Renewed
7	United	75907099		42	Renewed

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	States		KARL STORZ		
8	Japan	2011-362222	KARLSTORZ	10	Renewed
9	Japan	2008-357900	KARLSTORZ	10	Renewed
10	Japan	2008-357898	KARLSTORZ	10	Renewed
11	Japan	1999-073024	KARLSTORZ	9,10,16	Renewed
12	Japan	1980-052809	KARLSTORZ	1,5,9,10, 12	Renewed

The aforesaid entire detail is available in "Annexure-E". The Complainant has devoted an enormous amount of time, effort and energy in promoting and advertising the mark **KARL STORZ** in the print and online media and the said mark is consequently identified solely with the Complainant. The Complainant has built a strong on-line retail business. Further, several of **KARL STORZ** products are available on several e-commerce sites, The details are provided in 'Annexure F'.

iv) **DOMAIN NAMES**

The following domain registration secured by the Complainant are duly provided in 'Annexure G', which are as under:-

S.No.	Domain Name	Country	Date of Registration	Expiry Date
1	karlstorz.co	Coloumbia	22 nd July 2010	22 nd July 2022
2	karlstorz.com	Global	20 th October 1995	19 th October 2022
3	karlstorz.net	Global	12 th June 2000	12 th June 2022
4	Karlstorz.org	Global	12 th June 2000	12 th June 2022
5	karlstorz.in	India	10 th May 2005	10 th May 2022

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5. **DISCUSSION AND FINDINGS:**

The Rules instructs this Arbitrator as to the Principles to be used in rendering its decision. It says that, "a panel shall decide a Complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable".

According to the Policy, the Complainant must prove that:-

- a) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;
- b) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- c) The Registrant's Domain name has been Registered or is being used in bad faith.

(A). **Identical or Confusingly Similar:**

- 1 The Respondent's domain name www.karlstorz.co.in is confusingly similar to the Complainant's trademark **KARL STORZ**. The Complainant has overwhelming common law as well as statutory rights in its trade/service marks **KARL STORZ**. Therefore, the Complainant is the sole legitimate owner of the trade/service mark **KARL STORZ**.
- 2 Respondent's registration and use of the domain www.karlstorz.co.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship or approval of the Complainant, when it is not so.
- 3 The distinctive and the dominant element in the Respondent's domain is the word **KARL STORZ** hence, the domain www.karlstorz.co.in is confusingly similar to the trade/service mark **KARL STORZ** in which the Complainant has statutory and common law rights.

The disputed domain name clearly incorporates the famous trademark **KARL STORZ** of the Complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the **INDRP**. In this regard,

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refer INDRP/642 MOZILLA FOUNDATION Vs Mr. CHANDAN, referred 'Annexure H'.

(B). Rights or Legitimate Interests :

1. The Complainant is the sole legitimate owner of the trade mark **KARL STORZ**. The Complainant has not licensed or otherwise permitted the Respondent to use trade/service mark **KARL STORZ** or to apply for any domain name incorporating the said trade/service marks.
2. The Respondent has not made any legitimate use of the domain name www.karlstorz.co.in since the date of its registration and is prejudicially blocking the domain register. It is pertinent to note that the impugned domain name is a mere copy of the Complainant's trademark **KARL STORZ**. Whereas, the associated webpage carries an identical trade mark **KARL STORZ** in a prominent manner. The Respondent has no plausible reason to adopt the domain www.karlstorz.co.in other than to exploit the commercial goodwill and reputation of the Complainant's trade mark **KARL STORZ**. The malafide intent of the Respondent to infringe the Complainant's trade mark rights is apparent. Further, in view of the popularity and the well-known status of the Complainant's trade mark **KARL STORZ**, the disputed domain name www.karlstorz.co.in is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship or approval of the Complainant.
3. Considering the blatant infringement caused to the Complainant's trade mark rights, it is obvious that the sole purpose of the Respondent maintaining the Registration of the disputed domain www.karlstorz.co.in is to misappropriate and usurp the reputation and goodwill of the Complainant's trademark **KARL STORZ**.

(C). Registered and Used in Bad Faith:

- 1 The Respondent is fraudulently offering endoscopy equipment for sale under the domain name www.karlstorz.co.in. The said products will have a common customer base with that of the Complainant's products. It is obvious that the Respondent is making monetary gains by attracting unwary customers by misrepresenting an association with the Complainant. Further, considering the incessant use, reputation and the well-known status of the Complainant's marks, the illegitimate use of the

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impugned domain name is amounting to brand dilution which cannot be compensated monetarily. Apart from the above, the sale of medical equipment under the KARL STROZ trade mark on the Respondent's website is contrary to public interest.

- 2 The very use of a domain name by someone with no connection with the Complainant suggests opportunistic bad faith as stated in the case of **JD SPORTS FASHION PLC Vs DOUBLE FIST LIMITED INDRP case No. 1167**, referred "**Annexure I**"

In view of the above, it is clear that the Domain Name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

6. **DECISION**

On the basis of the averments in the complaints, citation, documentary evidence and other substantiating points, the arbitrator has reached to the following conclusions:-

- a.) The disputed Domain name contains registered trade/service mark of the Complainant in its entirety and is totally identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.
- b.) The Respondent has no rights or legitimate interests in respect of the domain name. He has not been authorised, licensed/ permitted to use the said domain name, nor has he been known individually or by his business by the name of disputed domain name or any closely resembling term to it.
- c.) The disputed domain name is registered in bad faith by the Respondent and allowing him to continue to own the same would make injustice and loss to the Complainant as also it may pose serious threats to innocent people anywhere in the world.
- d.) Allowing a stranger to trade on someone else's goodwill or reputation is injustice on legitimate person having spent efforts and money in building his brand, goodwill and reputation, because it results in allowing unscrupulous persons to gain

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monetarily to the disadvantage of the person who is legitimately entitled to it.

AWARD

In light of the foregoing findings on issues, foregoing discussions, conclusions and as per the remedies requested by the complainant, the Sole Arbitrator passes the following Award:-

The disputed domain name www.karlstorz.co.in, be transferred to the complainant

This award is passed at New Delhi on this 06th day of MAY, 2022.



**R. K. KASHYAP
SOLE ARBITRATOR**