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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No.1583

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*K Seth*

**.IN REGISTRY**  
**(NATIONAL INTERNET EXCHANGE OF INDIA)**  
**.IN Domain Name Dispute Resolution Policy (INDRP)**

Disputed Domain Name: www. bollore-energy.in

Dated: 7<sup>th</sup> OCTOBER 2022

**IN THE MATTER OF:**

BOLLORE SE

Odet

29500 ERGUE GABERIC

FRANCE

..... Complainant

Vs.

Jimmy Coutance

RTE DE LECUNE 417

Paris, IledeFrance 75010

FRANCE

..... Respondent

**1. Parties**

1.1. The Complainant in the arbitration proceeding is BOLLORE SE, having address at Odet, 29500 Ergue Gaberic, France. The Complainant's authorised representative is **NAMESHIELD** of FRANCE.

1.2. The Respondent's name in this administrative proceeding as per the 'Whois' record is Jimmy Coutance having address at RTE DE LECUNE 417, Paris, IledeFrance 75010, France. Registrant has registered the disputed domain name with Hosting Concept B.V. d/b/a Open Provider.

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2. **The Dispute-** The domain name in dispute is BOLLORE-ENERGY.IN registered by the Respondent on June 30<sup>th</sup> 2022 (As per **Annexure 1** of the Complaint).

3. **Important Dates**

S. No	Particulars	Dates (All Communication done in electronic mode)
1.	Date of Appointment as Sole Arbitrator on receiving due consent from Arbitrator.	21 July, 2022
2.	Soft Copy of complaint and annexures were received from NIXI through email.	21 July, 2022
3.	Date on which notice was issued to the Respondent	25 July, 2022
4.	Date on which Complainant filed & proof of completed service of complaint on Respondent	29 September, 2022
5.	Date on which Award passed	7 October, 2022

4. **Procedural History**

- 4.1 This is mandatory arbitration proceeding 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 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on

<https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution. The Arbitrator issued notice to the Respondent on 25 July, 2022 at the email address [j.coutance55@gmail.com](mailto:j.coutance55@gmail.com), [postmaster@bollore-energy.in](mailto:postmaster@bollore-energy.in) calling upon the Respondent to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed complaint and annexures and served respondent on 22 September, 2022 by post, proof of which was filed on 29 Sept 2022. Complainant was directed to serve the respondent copies of complaint on [j.coutance55@gmail.com](mailto:j.coutance55@gmail.com). A fresh notice was also sent to respondent on [j.coutance55@gmail.com](mailto:j.coutance55@gmail.com), the email address in the Whois record on 3 October 2022 giving 2 days to file its response or seek extension based on any justifiable grounds. However, the respondent did not file any response nor sought any extension.
- 4.4 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration

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proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

## **5. Factual Background**

- 5.1 The Complainant Bollore Group, was founded in the year 1822. The company is in the Transportation and Logistics, Communication and Media, Electricity Storage and solutions. The Complainant is among the 500 biggest businesses in the world. The Group also oversees a variety of financial assets, including plantations and investments, in addition to its operations. (The Complainant has filed **Annexure-2** to support its claim). The Complainant has its subsidiary BOLLORE ENERGY that is a key player in oil distribution and oil logistics in France, Switzerland and Germany (The Complainant has filed **Annexure-3** to support its claim).
- 5.2 The Complainant has been using BOLLORE trade mark continuously and extensively for use in connection with Transportation and Logistics, Communication and Media, Electricity Storage and solutions. The Complainant continues to use the mark "BOLLORE" and "BOLLORE ENERGY" marks that incorporate "BOLLORE" as trademarks in relation to its Transportation and Logistics, Communication and Media, Electricity Storage and solutions. The Complainant is the owner of several international trademarks including the term "BOLLORE" (Reg. no. 704697 dtd 11 Dec 1998) and "BOLLORE ENERGY" (Reg. No.1303490 dtd 22 Jan 2016) (hereinafter referred to as "BOLLORE Marks"). Proof of the same is filed as Annexure 4 and 5 of the Complaint respectively. The Complainant also owns various domain names, such as <bollore-energy.com> registered since September 29<sup>th</sup>, 2015 (The Complainant has filed **Annexure 6** to support its claim).

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The Respondent's name in this arbitration proceeding as per the 'Whois' record is Jimmy Coutance. The email Id of the Respondent is j.coutance55@gmail.com, postmaster@bollore-energy.in.

- 5.3 The Respondent registered the disputed domain name with Hosting Concept B.V. d/b/a Open Provider. However, as per the Complainant, it has neither granted any authorisation to the Respondent register the disputed domain name nor has any association with the Respondent.

## **6. Parties Contention**

### **6.1 Complainant's Submissions**

- 6.1.1. The Complainant has been using its BOLLORE Marks extensively and continuously for its Transportation and Logistics, Communication and Media, Electricity Storage and solutions, not only in India but across various other countries since 1822. The Complainant has established its reputation across various countries including India, the word "BOLLORE" and "BOLLORE ENERGY" has been exclusively associated with the Complainant and no one else. Complainant also has an office in India. (Proof filed as **Annexure 2** to the Complaint.)
- 6.1.2. The Complainant also owns valid and subsisting international registrations of several trademarks, such as "BOLLORE" with vide Reg. No. 704697 registered since December 11<sup>th</sup>, 1998. And also owns international trademark registration of "BOLLORE ENERGY" with vide reg. no.1303490 registered since January 22<sup>th</sup>, 2016 (The Complainant has filed **Annexure 4 & 5** to support its claim).

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- 6.1.3. The Complainant owns various domain names, such as <bollore-energy.com> registered since September 29<sup>th</sup>, 2015 (The Complainant has filed **Annexure 6** to support its claim). The Complainant also asserts that the disputed domain name resolves to a parking page (**Annexure 7**) and MX servers are configured (**Annexure 8**).
- 6.1.4. The disputed domain name is identical to and is clear imitation of "BOLLORE ENERGY" trademark and the Respondent has used it with an intention to pass it off as its own.
- 6.1.5. The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers and thereby pass off / infringe the "BOLLORE ENERGY" trademarks and deceive consumer as to affiliation, connection or association of the dispute domain name with the Complainant, where there is none and injures the Complainant's interests.
- 6.1.6. Further, the Complainant has never granted any authorization, license or any rights to the Respondent to use the trademark. However, to make unfair commercial gain and to tarnish the trademark of the Complainant, the Respondent registered the disputed domain name www.bollore-energy.in using the trademark "BOLLORE" in its entirety. The Respondent has not shown its registration and use of disputed domain name in connection with any bona fide offering of goods and services.

## 6.2 Respondent's Defence

- 6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

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6.2.2 The INDRP Rules of Procedure require under Rule 13(b) that the arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 13(b) reads as follows:

*"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."*

6.2.3 Further the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

*"In the 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 with law."*

6.2.4 In present arbitration, despite due service, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.

## **7. Discussions and Finding**

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right

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- b) The Respondent has no rights or legitimate interest in the domain name and
- c) The Respondent's domain name has been registered or is being used in bad faith.

**7.2 The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))**

The Complainant submitted that it owns the international trademark registrations using the word "BOLLORE" and "BOLLORE ENERGY" (vide application no. 704697 and 1303490 respectively) and has filed documents of its registered trademark to prove its right in the trademark "BOLLORE" and "BOLLORE ENERGY" (as per **Annexure 4 & 5** of the complaint). The Complainant further submits that BOLLORE Marks are well recognized trademarks amongst the consumers in various countries and have immense goodwill on internet as well. Thus, the trademark has popularity and has been continuously associated with Complainant and is extensively used with regard to its transportation and logistics, communication and media, electricity storage and business solutions.

The Arbitrator finds that the disputed domain name www. bollore-energy.in is clearly identical and deceptively similar to Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted documentary evidence to prove its rights and ownership in BOLLORE marks. A cursory glance at the disputed domain name <bollore-energy.in> makes it obvious that the Respondent has exactly incorporated the essential elements of the Complainant's BOLLORE ENERGY mark

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and thus the disputed domain name is identical/ deceptively similar to the Complainant's mark. The Complainant has relied on Case No. INDRP/776, *Amundi v. GaoGou <amundi.co.in>* ("The disputed domain name incorporates the trademark "AMUNDI" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark")

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for the purposes of UDRP standing. {*Wework companies, Inc. V. Michael Chiriac various Concepts Inc.*, WIPO Case No. D2016-1817, *Compagine Generale des Establishments Michelin v. Pacharapatr W.*, WIPO Case No. D2016-2465, *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000)}.

The disputed domain name consists of "BOLLORE ENERGY", the Complainant's trademark in entirety, followed by ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. {*LEGO Juris A/S v. Robert Martin*, INDRP/125(2010); *Viacom International Inc. v. MTV ALBUMS-Mega Top Video Albums Peter Miadshi*, WIPO case No. D2002-0196 (April 16, 2002); *Wal Mart Stores Inc. v. Kuchora Kal*, WIPO case no. D2006-0033 (March 10, 2006)}. The Complainant has relied on *Accenture Global Services Private Limited v. Sachin*

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*Pandey*, INDRP/828 (November 28, 2016). However, the relied *Accenture case* is different in facts as name of Respondent in Whois is shown as Jimmy Coutance in present complaint and has no similarity with disputed domain name.

Nevertheless, as the Respondent's disputed domain name incorporates entire mark of Complainant's registered trademark "BOLLORE" and "BOLLORE ENERGY", the Arbitrator finds that the Respondent's domain name is identical or confusingly similar to Complainant's registered trademark and is likely to deceive the customers. Adding a '-' between 'Bolllore' and 'energy' and adding a ccTLD .IN will not change the legal position.

**7.3 The Registrant has no rights or legitimate interest in respect of the domain name (Para 4(b))**

Under para 6 of the INDRP policy, a Respondent can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to 'BOLLORE ENERGY' trademark, in which the Complainant enjoys substantial reputation and goodwill including international registration of trademark (annexed as **Annexure 4** and **Annexure 5** in the complaint).

Despite service of notice to file its reply, the Respondent failed to file its reply to the averments and claims made in the Complaint. Further, the Respondent has failed to prove any rights or legitimate interests in the disputed domain name. Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. Complainant has also submitted that it has not authorized nor

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licensed Respondent to use its "BOLLORE ENERGY" mark and Respondent has failed to rebut the same. The Complainant has relied on INDRP/776, *Amundi v. GaoGou*, INDRP/999, *ARCELORMITTAL (SA) v. AJAY GUPTA* <laskshminiwasmittal.in>, INDRP 1413 (**Annexure 9**).

The Arbitrator is of the view that unlicensed and unauthorized use of domain name incorporating complainant's trademark proves Respondent has no legitimate rights nor interest in the domain name pursuant to ICANN Policy 4(b).

Moreover, the Disputed Domain Name currently points to a website that offers identical services as the Complainant and that the public is likely to be confused of connection of the Disputed Domain Name with the Complainant and that there is a likelihood of confusion as to source, sponsorship, affiliation, or endorsement.

In addition, it is the Respondent's responsibility to determine whether the Respondent's domain name registration is likely to infringe or violate someone else's rights. The Respondent has failed to discharge this burden as well. Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

Thus, for the aforesaid reasons, the Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

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**7.4 The Registrant's domain name has been registered or is being used in bad faith (Para 4(c))**

For the purpose of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant submitted that "BOLLORE" and "BOLLORE ENERGY" trademarks have considerable amount of goodwill with respect to transportation and logistics, communication and media, electricity storage and solutions on account of its long and continuous use. The Complainant has secured international registration of the mark "BOLLORE" and "BOLLORE ENERGY" (proof annexed as **Annexure 4 & 5** with the Complaint). The Respondent has produced no evidence of authorization from Complainant or other justification for registering the disputed domain name. The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.bollore-energy.in despite prior knowledge to make unfair gains which amounts to bad faith registration. The Complainant has relied on case CAC Case No. 103414, *BOLLORE SE v. Pierre David* and Case No. INDRP/1037, *Trivago N.V. v. Shiv Singh Trivago* ("Substantial number of precedents establish that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use [...] Considering that the current status of the webpage corresponding to the domain name 'trivagoholiday.in' is non-operational/inaccessible and the WHOIS records do not indicate the domain being available for sale, this would constitute

*passive/parked holding of the domain name/website, which further contributes to bad faith [See: HSBC Holdings plc v. Hooman Esmail Zadeh (INDRP/032), Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003]. ”).*

The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case No. D2012-2395 and *Carige Vita Nuova S.P.A. v. Vita Nuova Public Organization, Domain Management / Whois Privacy Services by Domain Protect LLC*, WIPO Case No. D2010-1912, *Burberry Limited v. Ruo Chang*, WIPO Case No. D2010-1304).

Moreover, disputed domain name was registered only on 30-06-2022 whereas complainant's trademark BOLLORE is being used since 1822. Respondent ought to have discharged burden of checking if such domain registration would infringe mark of any entity.

WIPO Overview 3.0 notes in Section 3.14 “panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. The same principle is relied on in *Adobe Inc. v. Amin Mohammad Salehi, Uranos*, case no. DIR2020-0006, June 30, 2020.

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Despite notice, Respondent failed to submit its response and evidence to claim bonafide registration of disputed domain name in respect of its offering of goods/services. Such registration and use is likely to mislead the consumers of an affiliation with Complainant which amounts to bad faith registration under .IN policy.

Thus, Arbitrator finds that Respondent's disputed domain name is likely to mislead the consumers by creating a likelihood of confusion with the Complainant's name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). It is a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012, *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395).

For the aforesaid reasons, the Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name

For the aforesaid reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

## 8. DECISION

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.

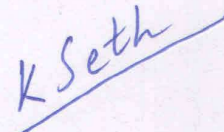
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- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.bollore-energy.in to the Complainant.

The Award is passed on this 7<sup>th</sup> October 2022

Place: Noida



Dr. Karnika Seth

Sole Arbitrator