

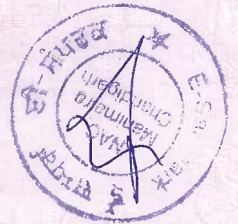
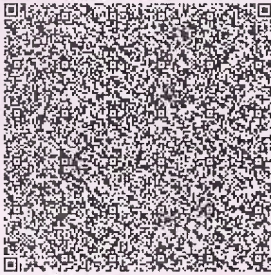


सत्यमेव जयते

# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

Certificate No. : IN-CH11635316791784Q  
Certificate Issued Date : 22-Mar-2018 03:16 PM  
Certificate Issued By : chvandani  
Account Reference : IMPACC (GV)/ chimpsp07/ E-SMP MANIMAJRA/ CH-CH  
Unique Doc. Reference : SUBIN-CHCHIMPSP0723221870980154Q  
Purchased by : NITIN KUMAR  
Description of Document : Article 12 Award  
Property Description : KOTHI NO 6 SHIVALIK ENCLAVE NAC MANIMAJRA CHD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : DR ASHWINIE KUMAR BANSAL  
Second Party : Not Applicable  
Stamp Duty Paid By : DR ASHWINIE KUMAR BANSAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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

### ARBITRATION AWARD

(On Stamp Paper)

*Ashwinie*

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UP 0004007778

#### 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 duty of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF**

**SOLE ARBITRATOR:**

**DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.**  
**Advocate, Punjab & Haryana High Court, Chandigarh**

**In the matter of:**

M/s Nexus Automotive International S.A., Chemin de Chateau-Bloch  
11, 1219 Le Lignon – Geneva, Switzerland.

**...Complainant**

**VERSUS**

ShopZok, Dominance Internet Pvt. Ltd  
83, 5<sup>th</sup> Block, Koramangala Industrial Layout, Bangalore – 560095,  
Karnataka. Email: [domain@shopzok.com](mailto:domain@shopzok.com)

Also at: Nexus Automotive' # 5/B, Ground Floor, 1<sup>st</sup> Cross, 1<sup>st</sup> Main, GEF  
Block, Industrial Town, Rajajinagar, Bengaluru – 560010, India  
Email: [info@nexusauto.in](mailto:info@nexusauto.in)

**...Respondent/Registrant**

**REGARDING: DISPUTED DOMAIN NAME: NEXUSAUTO.IN**

**1. The Parties:**

**Complainant:**

M/s Nexus Automotive International S.A., Chemin de Chateau-Bloch  
11, 1219 Le Lignon – Geneva, Switzerland

**Respondent:**

*Ashwini B.*



ShopZok, Dominance Internet Pvt. Ltd

83, 5<sup>th</sup> Block, Koramangala Industrial Layout, Bangalore – 560095,

Karnataka, Phone No: 8050700707

Email: [domain@shopzok.com](mailto:domain@shopzok.com)

Also at: Nexus Automotive' # 5/B, Ground Floor, 1<sup>st</sup> Cross, 1<sup>st</sup> Main, GEF Block, Industrial Town, Rajajinagar, Bengaluru – 560010, India

Email: [info@nexusauto.in](mailto:info@nexusauto.in)

**2. The Domain Name and the Registrar:**

The disputed domain name <nexusauto.in> is registered with Endurance Domains Technology Pvt. Ltd. (R173-AFIN), Unit no. 501, 5<sup>th</sup> floor and unit no. 402 4<sup>th</sup> floor, IT Building, NESCO IT Park, NESCO complex, Western Express Highway Goregaon (East), Mumbai, Maharashtra 400063, India (the "Registrar").

**3. Procedural History [Arbitration Proceedings]**

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the Registrar verification in connection with the disputed domain name <nexusauto.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI has intimated that it had sent the complaint with Annexures by courier to the two addresses of the respondent as mentioned in the INDRP complaint. The consignment relating to one of the address was returned by the courier agency to NIXI office for the reason 'COMPANY SHIFTED' however courier sent to the other address was delivered to the Respondent on 20.02.2018 as per information received from NIXI.

*Ashwinie Bansal*

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed the Respondent on 25.01.2018, with copy to Complainant and NIXI, through the email, to give his Reply within 10 days. Arbitrator had also sent the notice dated 25.01.2018 by speed post to the Respondent at his two addresses but same were returned undelivered with observation left 'R/S' on one letter and 'left' on the other letter respectively. Section 3 of the Arbitration and Conciliation Act, 1996 provides as under:

"3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

In view of provisions of section 3 of the Arbitration and Conciliation Act, 1996 regarding receipt of communications, Respondent is deemed to have been duly served.

Respondent has failed to give any response to the Complaint inspite of expiry of stipulated period given to him. As per section 25 of the Act the arbitrator is competent to make the award if Respondent fails to file the reply before him. Section 25 is reproduced below for ready reference:

*Asme B*

25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,----

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

In view of above, arbitrator proceeds to make the award in accordance with provisions of the rules read with section 25 of the Arbitration and Conciliation Act, 1996.

#### **4. Factual Background**

The Complainant is a company organized under the laws of Switzerland. The Complainant has obtained registrations of its trademarks NEXUS/ NEXUS AUTOMOTIVE/ NEXUS AUTOMOTIVE INTERANATIONAL across various jurisdictions of the world across all continents and regions, including Europe, Latin America, Africa, USA, Asian countries.

The Respondent has registered the disputed domain name <nexusauto.in> on February 15, 2017 and Complainant has recently became aware of the same. Hence, present Complaint has been filed by the Complainant against the Respondent.

*Abhinav B.*



## **5. Parties Contentions**

### **A. Complainant**

That the Complainant is an international automotive group having its headquarters at Geneva, Switzerland and is engaged in the business of providing distributorship and supply of automotive parts and accessories, service delivery, commercial and financial transactions relating to the automotive sector and allied/related goods and services. The Complainant consists of 25 shareholders that are the leading independent car parts distributors in multiple markets. The Complainant aims and has successfully achieved its said goods and services and in major countries across the globe.

The trademark NEXUS - word per se, stylized and formative is a coined, unique, arbitrary and fanciful trademark which was adopted by the Complainant in relation to its goods and business in the year 2014 in the course of its trade.

As a result of the continuous and non-interrupted use of the said trademarks NEXUS/ NEXUS AUTOMOTIVE/ NEXUS AUTOMOTIVE INTERNATIONAL, the Complainant have built up its valuable goodwill in the trade among the other sellers as well as among the consumers.

The Complainant is represented in 118 countries, including in India and has attained by July 2017 a total consolidated turnover of 14.36 billion Euros. The Complainant has an infrastructure that enables effective local support delivery across the world. This in turn has caused the association of the Complainant with one-twenty-one (121) member organization across the jurisdictions. The Complainant has participated in various International Automotive Exhibitions and Events.

*Abhinav B*

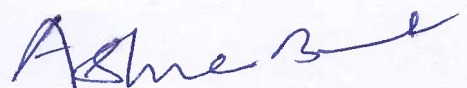
The Complainant has obtained registrations of its trademarks NEXUS/ NEXUS AUTOMOTIVE/ NEXUS AUTOMOTIVE INTERANATIONAL across various jurisdictions of the world across all continents and regions, including in Europe, Latin America, Africa, USA, Asian countries. The Complainant has also filed for registrations in many countries which are pending at the various stages. List of the international registrations owned by the Complainant along with some Registrations Certificates has been produced as Annexure A-6 with the Complaint.

The Trade Mark Nexus Automotive features prominently on the Complainant's website [www.nexusautomotiveinternational.eu](http://www.nexusautomotiveinternational.eu). The said website contains extensive information about the services rendered by the Complainant under its said Trade Mark/ Trade Name.

The Complainant has applied for the trademark registration of its trademark NEXUS AUTOMOTIVE INTERNATIONAL under the International Trademark Registration Number 1203233 designating India as a country for protection under number 2749034 in Classes 7 to 12. The said application is under the examination process with the authorities.

That the formative artwork involved in the Complainant's trademark NEXUS AUTOMOTIVE INTERNATIONAL is the original creation and artistic work, in which the Complainant holds Copyrights therein. The Complainant has been so dealing with its Copyright within the meaning of Section 14 and related provisions of the Copyright Act, 1957 in respect of its said goods and services. The said Copyrights is enforceable within the ambit of the Copyright Act 1957. All references to the said trademark/tradename include the respective artwork/ Copyright involved. By virtue of India being a member of the Berne Convention 1887, the Complainant has copyright protection in its work.

The Complainant has an exclusive domain name registered namely, [www.nexusautomotiveinternational.eu](http://www.nexusautomotiveinternational.eu). The word/mark NEXUS and/or NEXUS AUTOMOTIVE forms a material part of the Complainant said



domain. The Complainant has been using its said domain in the course of trade in relation to its said goods and services under its said trademark/tradename and enjoy proprietary rights therein. The said domain name is accessible by the consumers worldwide, including in India.

Consequently, the Complainant's trademark reputation has spilled over in the Indian Territory and as a result, has attained a trans-border reputation/goodwill among the Indian traders and consumers who are part of the trade and commerce.

The Complainant has been regularly and continuously conducting its said activities under its said trademark/tradename and has acquired extensive goodwill and reputation through years of hard work, skill, labour and which has been reflected in the visual print and electronic media, in leading newspapers, trade literature & magazines, books, word of mouth, over the internet, etc. and all of which have tremendous reach, availability and circulation world over including in India. The Complainant has acquired a distinct brand reputation that speaks for itself.

The Complainant's said trademark/tradename NEXUS/ NEXUS AUTOMOTIVE/ NEXUS AUTOMOTIVE INTERNATIONAL have become distinctive associated and acquired secondary significance with the Complainant said goods and services. The quality of the goods and services thereby provided by the Complainant under its said tradename/trademark NEXUS/ NEXUS AUTOMOTIVE/ NEXUS AUTOMOTIVE INTERNATIONAL depicts the source and the origin of the said goods and services exclusively in relation to the Complainant. By virtue of the aforesaid, the Complainant's said trademark/tradename has become well known within the meaning of well-known Trademark as defined under Section 2 (1) (zg) of the Trademarks Act, 1999.

*Abhinav*



The market and trade worldwide and in India is aware of the Complainant and its said goods and business under the said trademark/tradename and does business with the Complainant with reference thereto. The Complainant is the proprietor of its said trademark/tradename including of its goodwill and reputation both under the statutory and under the common law. By virtue of its said rights, the Complainant has the exclusive rights to use and exploits its said trademark/tradename and to interfere with any rival/unauthorized third party use/filings thereof. In view of the Complainant's proprietary rights both statutory and common law in its said Trade Mark/Domain Name, its goodwill & reputation, and its copyrights, the Complainant has the exclusive rights to the use of thereof and nobody can be permitted to use the same or any other deceptively similar Trade Mark/Trade Name/Copyrights/Domain Name thereto in any manner whatsoever in relation to any specification of goods without the leave and license and license of the Complainant.

#### **B. Respondent**

The Respondent has not filed the Response to the Complaint.

#### **6. Discussion and Findings**

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

#### *"4. Types of Disputes*

*Ashme B. J.*

*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:*

*(i) the Registrant's domain name is identical or confusingly similar to a name, Trademark or service mark in which the Complainant has rights;*

*(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and*

*(iii) the Registrant's domain name has been registered or is being used in bad faith.*

*The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."*

The Arbitrator will address the three aspects of the Policy listed above.

#### **A. Identical or Confusingly Similar**

The Respondent had adopted the disputed domain name <nexusauto.in> on February 15, 2017 as per WHOIS report.

The Complainant has established that its trademarks NEXUS, NEXUS AUTOMOTIVE and NEXUS AUTOMOTIVE INTERNATIONAL are subject of many trademark registrations in many countries worldwide. In the year 2014 itself, the Complainant adopted the word/mark NEXUS as a material part of its corporate name. Since its inception in the year 2014, the Complainant has been using the aforementioned word/mark NEXUS/ NEXUS AUTOMOTIVE / NEXUS AUTOMOTIVE INTERNATIONAL as a trademark and as an essential part of its trade name.

The Complainants earliest registration for trademark NEXUS dates back to the year 2014. The Complainant has also produced list of Trademarks which are registered or for which it has made applications for

*Ashme B*

registrations.

The Trademarks of the Complainant have become associated by the general public exclusively with the Complainant. The Complainant also has domain name registrations as well as website incorporating the Trademark.

A trademark registered with the Registrar of Trademarks is *prima facie* evidence of trademark rights for the purposes of the Policy.<sup>1</sup> Internet users may be confused about the association or affiliation of the disputed domain name with the Complainant.

The Respondent has registered the disputed domain name <nexusauto.in> wholly incorporating the Trademark NEXUSAUTO of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy<sup>2</sup>. Internet users who enter the disputed domain name <nexusauto.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <nexusauto.in> is confusingly similar to the website and Trademark NEXUSAUTO of the Complainant.

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<sup>1</sup> See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.1.

<sup>2</sup> See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

*Ashne B.*



## **B. Rights or Legitimate Interests**

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name<sup>3</sup>. The Respondent has registered the disputed domain name consisting of the Trademarks owned by the Complainant. The Complainant has been using the Trademark NEXUSAUTO since 2014. The Complainant has not authorized or permitted the Respondent to use the Trademark NEXUSAUTO.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <nexusauto.in> as per Paragraph 7 of the Policy.

In view of above, the Arbitrator finds that the Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <nexusauto.in>.

## **C. Registered and Used in Bad Faith**

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

*"6. Evidence of Registration and use of Domain Name in Bad Faith*

*For the purposes of Paragraph 4(iii), the following circumstances, in*

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<sup>3</sup> See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

*Ashne B*

*particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(i) circumstances indicating that the Registrant has registered or 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 Registrant's documented out-of-pocket costs directly related to the domain name; or*

*(ii) the Registrant 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 Registrant has engaged in a pattern of such conduct; or*

*(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."*

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

*Ashne B*

The Respondent has registered the disputed domain name <nexusauto.in> and he also maintains a website 'www.nexusauto.in'. The Complainant has not granted the Respondent permission, or, a license of any kind to use its Trademark and register the disputed domain name <nexusauto.in>. Such unauthorized registration of the Trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <nexusauto.in> which incorporates the Trademark NEXUSAUTO of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <nexusauto.in> has been registered by the Respondent in bad faith.

The Trademark NEXUSAUTO has been a well-known name. The domain disputed name <nexusauto.in> is confusingly similar to the Complainant's Trademark NEXUSAUTO, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <nexusauto.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <nexusauto.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <nexusauto.in> be transferred in favour of the Complainant.

**7. Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <nexusauto.in> is similar to the Trademark NEXUSAUTO in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.nexusauto.in> be transferred to the Complainant.

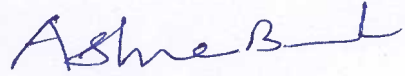
*Ashne B*



The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 22.03.2018



**Dr. Ashwinie Kumar Bansal**  
**Sole Arbitrator**

Advocate, Punjab and Haryana High Court  
Arbitration House 6, Shivalik Enclave, NAC, Manimajra,  
Chandigarh, India-160101

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