



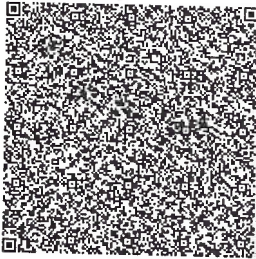
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e-Stamp

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Certificate Issued Date	: 17-Oct-2017 12:44 PM
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Unique Doc. Reference	: SUBIN-DL84530388495324558136P
Purchased by	: SONAL KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SONAL KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: SONAL KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Rolls-Royce Motor Cars Ltd.
Summit One, Summit Avenue, Farnborough,
Hampshire, GU14 0FB, Great Britain

...Complainant

Vs.

Amy Hill
c/o Amy Hill
77 Massachusetts Avenue, Cambridge
Massachusetts 02139 United States of America

...Respondent

Statutory Alert:

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The Parties

The Complainant in this arbitration proceeding is Rolls-Royce Motor Cars Ltd, a company incorporated under the laws of England and Wales, having its registered office at Summit One, Summit Avenue, Farnborough, Hampshire GU14 OFB, Great Britain.

The Respondent in this arbitration proceeding is Amy Hill, c/o Amy Hill, 77 Massachusetts Avenue, Cambridge, Massachusetts 02139, United States of America.

The Domain Name

The disputed domain name is **WWW.ROLLSROYCEMOTORCARS.IN**

Procedural History

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the disputed domain name **WWW.ROLLSROYCEMOTORCARS.IN**

On 02.08.2017, NIXI sent the soft copy of the complaint along with the annexures to the respondent.

Accordingly the Tribunal entered upon the reference.

On 04.08.2017, the Tribunal sent an email to the Complainant directing it to supply the copy of the complaint with annexures to the Respondent and to provide the details of the service record to the Tribunal. The said e-mail was sent to the respondent on the address mentioned in the Complaint.

In accordance with INDRP Policy read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 04.08.2017 through e-mail, with the instructions to file her reply within 15 days from the receipt of the said email or the receipt of the copy of Complaint, whichever is later.



On 04.08.2017, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

On 09.08.2017, NIXI informed the Tribunal that the courier containing the Complaint and the annexures could not be delivered to the respondent at the address as mentioned in the Complaint and also in the WHOIS details due to incomplete/incorrect address. NIXI vide the said email also sought advice on how to proceed further in the matter.

On 17.08.2017, the Tribunal informed NIXI that if any other address is available, an attempt to serve the complaint be made on the said alternate address.

On 18.08.2017, NIXI sought an alternate address of the respondent from the complainant, if the same was available.

On 18.08.2017, the counsel for the Complainant submitted that they do not have any alternate address of the respondent apart from the one available in the WHOIS details.

On 18.08.2017 NIXI informed the Tribunal that no alternate address is available with it or with the Complainant. It was further informed that service of the Complaint along with the annexures has already been done to the respondent's email address on 02.08.2017.

On 05.09.2017, NIXI informed the Tribunal that the courier agency has returned the consignment containing the complaint and the annexures. NIXI sought advice on how to proceed on the same.

On 09.09.2017, the Tribunal informed NIXI and the parties that the soft copy of the complaint and the annexures has been duly served on the respondent's email address on 02.08.2017, thus, the complaint has been duly served on the respondent. The Tribunal also informed that the time granted to the respondent to file her reply has expired. However, no reply was received from the respondent.

In the interest of justice, the tribunal granted the respondent another 7 days to file her reply after which the tribunal would proceed with the



matter on the basis of the pleadings and the documents already on record and will pass the award accordingly.

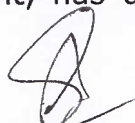
The Tribunal feels that enough opportunities have been given to the Respondent and genuine efforts have been made to make her a part of this proceeding. Since she has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and IN Registry. Award has been passed after 60 days time period due to ill health of Arbitrator.

The Tribunal has perused the pleadings of the Complainant and the documents placed on record. The analysis of the same is as under:

A. COMPLAINANT

The relevant submissions of the Complainant as per the Complaint are as under:

1. The complainant is a company incorporated under the laws of England and Wales. It is engaged in the business of designing, manufacturing, selling, customizing, repairing and maintaining automobiles, and parts thereof. The Complainant's automobiles are sold under the mark ROLLS-ROYCE.
2. The Complainant submits that the mark ROLLS-ROYCE is derived from the surnames of Sir Fredrick Henry Royce, an English engineer and car designer, and Charles Rolls, also an Englishman, who was an aviation and motoring pioneer. Sir Royce and Mr. Rolls came together sometime in the late 1800s to form a company whose trading name included ROLLS-ROYCE. The Complainant further submits that the surnames ROLLS and ROYCE are not common Indian surnames, the mark ROLLS-ROYCE is inherently distinctive and entitled to the highest level of protection under the law of trademarks.
3. The Complainant submits that they first used the ROLLS-ROYCE as trade mark and in relation to automobiles in the early 1900s. Since then the Complainant, has used, and continues to use, the mark



ROLLS-ROYCE and marks that incorporate the mark ROLLS-ROYCE on and in relation to automobiles and related goods and services, in the Complainant's promotional and advertising materials, such as brochures, Internet websites, and in other ways.

4. The Complainant submits that they use ROLLS-ROYCE mark as part of its trade name, and the trade name of its affiliated companies around the world. The Complainant also provides some examples such as Rolls-Royce Motor Car GmbH and Rolls-Royce Motor Cars NA LLC.
5. The Complainant submits that they sold 3630 cars bearing the Complainant's ROLLS-ROYCE marks in the year 2013, 4,063 in the year 2014, 3,785 cars in the year 2015 and 4,011 cars in the year 2016 through 140 dealerships located worldwide.
6. The Complainant submits that they have an impressive revenue figure. The Complainant has placed on record the printout of its Annual Report 2016 evincing that in the year 2015, the Complainant's gross revenue was in excess of GBP 300,500,000 and in the year 2016, the Complainant's gross revenue was in excess of GBP 440,000,000. The Complainant further submits that majority, if not all, of the revenue earned by the Complainant is attributable to one or more of the complainant's ROLLS-ROYCE Marks.
7. The Complainant submits that they invest large amount of resources in advertising and publicizing its goods and services under the Complainant's ROLLS-ROYCE Marks. The goods and services on and in relation to which the Complainant uses Complainant's ROLLS-ROYCE Marks, have been, and continue to be, advertised in various media around the world, including India.
8. The Complainant submits that it registered its domain name ROLLS-ROYCEMOTORCARS.COM in the year 1996, and for numerous years, this domain has resolved to an active web site on which the Complainant's ROLLS-ROYCE Marks are prominently displayed. The Complainant further submits that the web site located at www.rolls-roycemotorcars.com



roycemotorcars.com is extremely well-known to customers, the trade and other segments of the public and provides an enormous amount of information with respect to the Complainant and its car under the Complainant's ROLLS-ROYCE Marks.

9. The Complainant submits that in addition to the top-level domain name, ROLLS-ROYCEMOTORCARS.COM, the Complainant owns domain names such as ROLLS-ROYCEMOTORCARS.INFO (registered in 2002), ROLS-ROYCEMOTORCARS.NET (registered in 2002), ROLLS-ROYCEMOTORCARS.BIZ (registered in 2003), and country-code top level domain names such as ROLLS-ROYCEMOTORCARS.IN (registered in 2009), ROLLS-ROYCEMOTORCARS.CO.UK (registered in 2003), ROLLSROYCEMOTORCARS.CO.UK (registered in 2004), ROLLS-OYCEMOTORCARS.UK (registered in 2014), ROLLSROYCEMOTORCARS.ASIA (registered in 2008), ROLLSROYCEMOTORCARS.COM.FR (registered in 2003), ROLLS-ROYCEMOTORCARS.DK (registered in 2002) and ROLLS-ROYCEMOTORCARS.FR (registered in 2004).
10. The Complainant submits that given the fame of the ROLLS-ROYCE Marks, the marks have received extensive media coverage over the years in renowned publications that have a worldwide circulation and on the internet. The Complainant further submits that the media coverage has left an indelible impression in the minds of the public that the ROLLS-ROYCE Mark is exclusively associated with the complainant and none other.
11. The Complainant submits that they own registrations for one or more of the ROLLS-ROYCE Marks, in numerous countries and jurisdiction, including India, the United Kingdom, the European Union, Germany and the United States of America. The Complainant further submits that its earliest worldwide registration for the mark ROLLS-ROYCE dates back to 1907.



12. The Complainant submits that with specific reference to India, they are the proprietor of a valid and subsisting registration for the mark ROLLS-ROYCE, namely, Registration No. 1240512.
13. The Complainant submits that owing to the ubiquitous use of the ROLLS-ROYCE Marks, consumers have come to associate these marks solely and exclusively with the complainant. It further submits that the Complainant's ROLLS-ROYCE marks have acquired the status of well-known marks under Article 6*bis* of the Paris Convention and section 2(1)(zg) of the Trademarks Act, 1999.

B. RESPONDENT

1. Respondent in this proceeding is Amy Hill, c/o Amy Hill, 77 Massachusetts Avenue, Cambridge, Massachusetts 02139, United States of America.
2. Even after repeated opportunities, the Respondent has failed to file any reply to the Complaint within the given/stipulated time. The Arbitrator in the interest of justice, suo moto extended the time for the Respondent to file her reply to the Complaint but the Respondent has neglected to file any reply even within the extended time.

C. PARTIES CONTENTIONS

- i. Complainant

The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.



ii. Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

D. Discussions and Findings:

The present proceedings have been conducted in accordance with Rule 8 (b) of the INDRP Rules of Procedure which states that *"In all cases, the Arbitrator shall ensure that the parties are treated with the equity and that each Party is given a fair opportunity to present its case."*

Rule 12 (a) of the INDRP Rules of procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

Under paragraph 4 of .IN Domain Name Dispute Resolution Policy, the Complainant is required to satisfied three conditions outlined below:

- i. The Respondent's domain name is identical or confusingly similar to the name, trade mark or service mark in which Complainant has rights;
- ii. The Respondent has no rights or legitimate interest in respect of the domain name; and
- iii. The domain name has been registered or is being used in bad faith.

In the present proceedings, considering the fact that the Respondent has failed or neglected to file any reply to the complaint even after various opportunities given to her, the decision of the Arbitrator is based upon the statements and documents submitted by the Complainant. Also, the conduct of the Respondent for not filing any reply even within the extended time infers that she has accepted the contentions of the



Complainant and intentionally has chosen not to rebut the same by filing any reply.

(i) The Domain name is identical or confusingly similar to a Mark in which the Complainant has rights

Complainant's Submissions:

- a) The Complainant submits that Complainant owns registrations for the Complainant's ROLLS-ROYCE Marks in various countries and jurisdictions around the world, including India. The Complainant further submits that the Complainant has used the Complainant's ROLLS-ROYCE Marks for a number of years around the world, including in India. On the other hand, the Registrant has registered the disputed name only recently in the year 2016.
- b) The Complainant submits that the disputed domain name, ROLLSROYCEMOTORCARS.IN, incorporates the Complainant's ROLLS-ROYCE mark in its entirety. The mere removal of the hyphen (-) between the words ROLLS and ROYCE does not serve to distinguish the disputed domain name from the Complainant's ROLLS-ROYCE Mark. The addition of the words MOTORCARS in the disputed domain name also does not serve to distinguish the domain name from the Complainant's ROLLS-ROYCE mark in as much as these words allude to the complainant's very business. The Complainant further submits that the domain name wholly incorporates the Complainant's trading name. And further, the Complainant has registered various domain names that incorporate the element ROLLSROYCEMOTORCARS.IN in the disputed domain name.
- c) The Complainant submits that .IN is a country code and non-distinctive. It is an essential part of every domain name. The .IN part of the domain name does nothing to distinguish the disputed domain name from the complainant's ROLLS-ROYCE Marks.



The above submissions of the Complainant have not been specifically rebutted by the Respondent, as such they are deemed to be admitted by her.

Keeping the above submissions in view the Tribunal finds that the complainant has adopted and used the mark "ROLLS-ROYCE" for its trade name and trade marks and thus have established its rights under this policy. The Complainant has satisfied this condition that the disputed domain name is confusingly similar to the trade mark of the complainant.

(ii) The Registrant has no rights or legitimate interest in the Domain Name

According to paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii).

- i. before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii. the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

Complainant's Submissions:

- a) The Complainant submits that as of August 22, 2016, the date of registration of the disputed domain name, the Complainant was the proprietor of the registration for the Complainant's ROLLS-ROYCE

Marks. In fact, the Complainant's earliest registration for the Complainant's ROLLS-ROYCE Marks predates the registration of the disputed domain name by more than one century. Further more, the complainant has had common law rights in the complainant's ROLLS-ROYCE Marks much prior to August 22, 2016. These common law rights also predate the registration of the disputed domain name by more than one century. The complainant has not authorized the Registrant to use the Complainant's ROLLS-ROYCE marks or to register the disputed domain name, nor is the registrant a licensee of the complainant. Infact, the registrant has no relationship with the complainant.

- b) The Complainant submits that ROLLS ROYCE /ROLLSROYCEMOTORCARS are not part of the registrant's personal name. A copy of the WHOIS record associated with the disputed domain name shows that the registrant's name is AMY HILL. Accordingly, the registrant cannot be known as ROLLS ROYCE /ROLLSROYCEMOTORCARS, or her name cannot incorporate the complainant's, ROLLS-ROYCE Marks. This further evidences the registrant's lack of rights or legitimate interest in the disputed domain name.
- c) The Complainant submits that the Registrant registered the disputed domain name on August 22, 2016, which, as stated above, is more one (1) century after the date on which the Complainant first used and obtained a registration for the Complainant's ROLLS-ROYCE Marks. The Complainant's ROLLS-ROYCE Marks are famous and are registered in many countries including in India. The Complainant further submits that it is unlikely that the Registrant did not know about the Complainant's rights in the Complainant's ROLLS-ROYCE Marks. The magnitude and length of Complainant's commercial activities and use of the Complainant's ROLLS-ROYCE Marks could not have passed the registrant unnoticed.
- d) The Complainant submits that the Registrant also does not have any rights or legitimate interest in the disputed domain name

because the domain name resolves to a website that displays links to third-party websites. The complainant further submits that this not legitimate non-commercial or fair use because the Registrant is attempting to generate revenue from consumers who mistakenly visit the web site believing that is the Complainant's web site.

- e) The Complainant submits that the Registrant's lack of rights and legitimate interest is also evident because the Registrant has offered to sell the disputed domain name through Sedo and that there is no monetary limit set for the bids to purchase the domain name. This is evidence of no rights or legitimate interests in the domain name.
- f) The Complainant submits that it is amply clear that the Registrant has blatantly copied the Complainant's trade name, trademarks, and domain name. Therefore, the Registrant appears to be engaged in a planned campaign to methodically misappropriate the Complainant's ROLLS-ROYCE Marks. The complainant further submits that the Complainant's rights in the Complainant's ROLLS-ROYCE Marks predate the Registrant's registration of the domain name more than one century, coupled with the facts that the Complainant's ROLLS-ROYCE Marks are well known and are universally recognized, lead to one, and only one conclusion, namely, that the Registrant does not have any rights and legitimate interest in the disputed domain name.
- g) The Complainant submits that in any case, it is established that the Complainant's ROLLS-ROYCE Marks had become famous at the time the Registrant registered the disputed domain name. The use of the Complainant's ROLLS-ROYCE marks in the disputed domain name is likely to mislead the public and Internet users. Internet users may falsely believe that the Respondent's domain name is owned by the Complainant. Misleading users by incorporating other's trademarks in a domain name gives a false impression to the users and does not constitute a bona fide offering goods and services under the policy.



- h) The complainant submits that the illegality of the Registrant's registration of the disputed domain name arises from the fact that, today, domain names are part and parcel of a company's corporate identity. In this case the complainant has a history of registering country code top level domain names that include the Complainant's ROLLS-ROYCE marks, and is using some of these domain names that include the Complainant's ROLLS-ROYCE marks, and is using some of these domain names to resolve to active web sites that feature its goods and services offered under these marks. The Complainant further submits that by registering the disputed domain name, the Registrant is preventing the Complainant from using the disputed domain name for the intended purpose.
- i) The Complainant submits that the Registrant's registration of the disputed domain name is a clear case of cyber-squatting. The Registrant's intention is to take advantage of the Complainant's substantial reputation and prominent presence on the Internet, divert business, tarnish the reput and goodwill of the Complainant and unduly gain in all aspects to the detriment of the Complaint.

Under this condition, the Complainant is required to make a prima facie case that the Respondent lacks rights or legitimate interest in respect of the disputed domain name. From the contentions and the evidence produced, the Complainant has made a prima facie case against the Respondent and the burden of proving the rights or legitimate interest in respect of the disputed domain name shifts to the Respondent.

The Respondent has failed or neglected to file any reply to the contentions of the Complainant and as such they are deemed to be admitted by her

Even otherwise, it is clear that the Respondent is not carrying on any business under the disputed domain name and has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name.



Thus, the above facts and evidence establish that the Respondent has no right or legitimate interests in the disputed domain name under INDRP paragraph 4 (ii).

(iii) The Registrant domain name has been registered or is being used in bad faith

Complainant's submissions:

- a) The Complainant submits that the Registrant has offered to sell the disputed domain name through Sedo/ESCROW.COM. The Complainant further submits that there is no monetary limit set for the bids to purchase the domain name. The registrant is attempting to attract the highest possible bid. The Complainant submits that this is evidence of the Registrant's bad faith.
- b) The Complainant submits that the Registrant is a habitual cyber-squatter and has registered a number of domain names which incorporate third-party marks such as PARISHILTON.IN, MSDN.IN, BURTON.CO.IN etc.
- c) The Complainant submits that more than coincidence that the Registrant chose and registered a domain name that is identical/confusingly similar to the Complainant's ROLLS-ROYCE Marks. The Complainant has a long and well-established reputation in the Complainant's ROLLS-ROYCE Marks through its exclusive use throughout the world, including in India. There can be no doubt that the registrant was aware of the Complainant's ROLLS-ROYCE Marks when it chose and registered the disputed domain name which was confusingly similar to the Complainant's ROLLS-ROYCE Marks, and intended to capitalize on that confusion. The Complainant further submits that registration of domain name that incorporates a well known mark by an entity that has no



relationship to the owner of the mark is in itself evidence of bad faith.

- d) The Complainant submits that there has been no active use of the disputed name since its registration. The absence of use and passive holding of domain name has been recognized to constitute that a domain name has been registered and used in bad faith. The Complainant further submits that by registering the domain name, the registrant has prevented the Complainant from using the ROLLSROYCEMOTORCARS.IN domain name in connection with its goods/services in India.
- e) The Complainant submits that the Registrant's use of the disputed domain name is bound to lead to confusion and deception in the minds of the public. The Complainant's ROLLS-ROYCE Marks have been used extensively by the Complainant and understood by consumers, including those in India, as marks that identify the Complainant's goods. The Complainant further submits that on account of the high reputation attributable to the Complainant's ROLLS-ROYCE Marks, use of the disputed domain name would lead to confusion and deception in the trade.
- f) The Complainant submits that the goods/services under the Complainant's ROLLS-ROYCE Marks are offered in various countries, including India. To facilitate consumer access to these goods, the Complainant has registered domain names such as ROLLS-ROYCEMOTORCARS.COM and ROLLS-ROYCEMOTORCARS.IN. By registering the disputed domain name, the Registrant is preventing the Complainant from using the ROLLSROYCEMOTORCARS.IN domain name in connection with its goods/services for consumers in India.
- g) The Complainant submits that the Registrant uses the disputed domain name in connection with a web site on which it provides links to web sites, including, through which goods

similar to the goods bearing the Complainant's ROLLS-ROYCE Marks are sold. The Complainant further submits that the registrant is generating revenue or attempting to generate revenue through consumers who visit this web site. This is evidence of the Registrant's bad faith registration and use.

- h) The Complainant submits that the Registrant's intention is to take advantage of the Complainant's reputation in order to make illegal gains to the detriment of the Complainant, prevent the Complainant from reflecting the Complainant's ROLLS-ROYCE Marks in a corresponding domain name and create a likelihood of confusion amongst the public as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

After perusing the contentions of the Complainant and the evidence filed by it, the Tribunal finds the arguments of the Complainant persuasive. The tribunal would again like to point out that the above submissions of the Complainant have not been specifically rebutted by the Respondent, as such they are deemed to be admitted by her.

The tribunal finds that the complainant has no reasonable explanation for the registration and use of the disputed domain name except that the respondent seeks to exploit the complainant's business to attract internet traffic to the respondent's website and to mislead customers to believe that the complainant and the respondent are associated with each other. This is further evinced from the fact that the respondent has offered to sell the domain name and also that there is no active use of the disputed domain name. Even otherwise the respondent has failed to provide any plausible explanation for her adoption of the disputed domain name, or establish her bonafide intention to start a business under the disputed domain name and/or also has failed to file any reply to the



submissions or allegations of the Complainant even after being provided with ample number of opportunities.

For the reasons discussed above the Tribunal finds the disputed domain name has been registered and used in bad faith under the policy.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. ROLLSROYCEMOTORCARS.IN to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this day of 17th October 2017.



Sonal Kumar Singh

Sole arbitrator

Date: 17th October 2017