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BEFORE THE SOLE ARBITRATOR,
ANKUR RAHEJA MCA FCS LLB

.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD – VOLVOSAFAR.IN

DATED: June 20, 2019

Aditya
20.06.19

IN THE MATTER OF:

VOLVO Trademark Holding AB

... Complainant

versus

KMC Industry Co. Ltd.

... Respondent

ARBITRATION AWARD

Dispute Domain Name: www.volvosafar.in

1. The Parties:

- a. **Complainant:** The Complainant in this arbitration proceedings is: M/s. Volvo Trademark Holding AB C/o AB VOLVO, having an office at SE-405 08 Goteborg, Sweden represented by Ms. Vaishali Mittal, Ms Siddhant Chamola and Mr Vivek Ayyagari of Anand and Anand, Sector 16-A, Noida, India.
- b. **Respondent:** The Respondent in this arbitration proceeding is KMC, KMC Industry Co. Ltd. No. 169, Science (Kexue) Avenue, Zhengzhou, China, Zhengzhou - 450007, China.

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.volvosafar.in.
- b. Disputed Domain Name is registered with Endurance Domains Technology LLP.

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings 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 28th June 2005 in accordance with the Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and

Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceeding commenced on 06 May 2019 in terms of INDRP Rules; Relevant Dates are as follows:

Sr No	Particulars	Date
1.	Arbitration Case referred to Arbitrator & Acceptance given	29th April 2019
2.	Date of Handover of Complaint by NIXI	05th May 2019
3.	Soft copy of Complaint served upon Respondent by the Registry	06th May 2019
4.	Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	06th May 2019
5.	Second Notice to the Respondent	21 May 2019
6.	Award Passed	20 June 2019

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 06th May 2019, with the instructions to file his reply / response by 18th May 2019.

- That Respondent failed to file any response to the complaint, final opportunity was provided to the Respondent on 21 May 2019, to file the response by 29 May 2019. In the interim, NIXI informed that the Hard Copy sent to the Respondent through courier was delivered successfully.
- No response was filed by the Respondent to the second notice as well, therefore, an order for ex-parte proceedings was issued on 7 June 2019. The various notices were successfully delivered upon the Respondent at various stages including soft copy of the complaint, therefore, service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. The Complainant Volvo Trademark Holding AB, is a company organized under the laws of Sweden with its registered office at Goteborg, Sweden. The Complainant is the exclusive and sole proprietor of the trade mark/name VOLVO.

B. The Complainant is involved in maintaining, owning the proprietary rights, protecting and preserving the VOLVO brands including but not limited

to Volvo, Volvo devices and Volvo Penta, on behalf of their respective owners to license these rights to other Volvo companies such as Aktiebolaget Volvo and Volvo Car Corporation.

C. The Complainant's licensee Aktiebolaget Volvo incorporated on May 05, 1915, is an internationally renowned automotive and transport vehicle group employing approximately 115,000 persons across the world. Aktiebolaget Volvo is known for its wide range of well-known transportation related products and services, with superior quality and high standards of safety with safe environmental standards. In addition to their core activity involved in production, distribution of trucks, buses and construction equipment, Aktiebolaget Volvo also is involved in marine and industrial drive systems and financial services. From its inception almost a century ago, the Complainant and its licensees are now the world leader in heavy commercial vehicles such as buses, trucks and construction equipment including but not limited to a wide range of ancillary products, services and businesses.

D. The Complainant's predecessor in title, Aktiebolaget Volvo, adopted VOLVO as a trademark and corporate name on May 5, 1915. Tracing its origin to a non-English word, the trademark Volvo is not found in any English dictionary, thereby providing it an inherently distinctive trademark solely associated with the Complainant. The goods and services under the Complainant's trademark VOLVO have grown by leaps and bounds, such that the trademark VOLVO is now a reputable and well-known trademark for various goods and services.

E. The mark "VOLVO" forms a key, essential and dominant part of the corporate name and trading style of the majority of the Volvo Companies. All subsidiaries of the Volvo Companies in India were incorporated with "VOLVO" forming the key, essential and dominant portion of the corporate name. VOLVO continues to be the essential and conspicuous part of the corporate name of Volvo India Private Limited, which is the flagship company of Aktiebolaget Volvo in India.

F. In order to establish its stronghold and prior rights in the trademark, the Complainant has sought and been granted numerous registrations in its VOLVO trademarks all over the world including multiple registrations in India in classes including but not limited to 3, 4, 5, 6, 7, 8, 9, 11, 12, 18, 20, 21, 22, 24, 25, 27, 34, 35, 36, 37, 38, 39, 40, 41 and 42. In fact, the earliest registration of the complainant's trademark VOLVO in India dates back to the year 1975. Apart from the Complainant's registrations in India, the Complainant has obtained multiple registrations for the trademark "VOLVO" in numerous countries worldwide. Extracts of the trademark registrations secured by VOLVO in India and also across the world are annexed with the Complaint.

G. By virtue of its numerous registrations granted to the VOLVO trademarks worldwide, the Complainant's trademark has acquired immense statutory and common law rights to its VOLVO trademarks. The trademark "VOLVO" has been recognized by the Trade Marks Registry as a well-known mark pursuant to the Judgment of the Division Bench of the Bombay High Court in an appeal titled Aktiebolaget Volvo vs. Volvo Steel Ltd. [1998 PTC

(18) 47]. Resultantly, the trademark VOLVO' is entitled to the highest degree of protection conferred under law, across all classes. Pursuant to this, the well-known status of the Complainant's trademark VOLVO in India was recognized by the Trade Marks Registry and the VOLVO trademark has been inserted in the list of well-known marks maintained by the Registry. The list of well-known trademarks maintained by the Trade Marks Registry along the Judgment of the Division Bench of the Bombay High Court in an appeal titled Aktiebolaget Volvo vs. Volvo Steel Ltd. [1998 PTC (18) 47] is enclosed along with the Complaint. As a result, the Complainant's VOLVO trade mark is entitled to the highest degree of protection conferred under law, across all classes and including against disparate goods and services.

H. In addition to acquiring statutory rights for its multiple trademarks registered under the well-known trademark and tradename VOLVO, the Complaint group has actively safeguarded and their rights vested in their VOLVO trademarks and trade names against misappropriation by third party entities in Courts of Law across the world including in India. Various judicial forums have recognized the sole and exclusive, statutory and common law rights enjoyed by the Complainant in their VOLVO Trademarks.

I. Further, in addition to the recognition accorded by Courts of Law in the aforesaid decisions, the Complainant has initiated INDRP Complaints with NIXI against the registration and use of such domain names in India and the NIXI panels constituted to preside over these matters have consistently ordered for the transfer of disputed domain names, after recognizing the extensive proprietary rights exercised by the Complainant -

www.volvoce.co.in, www.volvobus.co.in, www.volvo-bus.in and
www.volvobus.in.

J. The VOLVO trademark as such has been used intensively for more than 80 years for a wide variety of products and services such as cars, trucks, buses, construction equipment and marine engines and industrial power systems and have through this use acquired a global reputation for products and services of high quality and safety. This has been recognized in several previous UDRP decisions such as in Volvo Trademark Holding AB v. Unasi, Inc., WIPO case no. D2005-0556, (<vlovo.com>, <volvoautomobile.com>, <volvogroup.com> and <volvomasters.com>) wherein it is stated that the "notoriety has been strengthened over the years considering the excellent proven quality attached to Complainant's products bearing the VOLVO mark, and accordingly this trademark has become today indubitably famous and universally renowned".

K. The Complainant and the Volvo companies operate a website www.volvo.com through which they provide information of products or services offered by the Volvo Companies, with its creation tracing back to December 9, 1995. The primary website is an online gateway to the interested consumers and members of the trade about the various activities and initiatives undertaken by the VOLVO group of companies. It is further pertinent to note that the Complainant is a registered domain name holder to the website www.volvobuses.in and www.volvobuses.com, www.volvoce.com; catering to its segment of customers in India with the .in domain name and the latter to their international customers. In addition to

their primary website, the VOLVO group is home to various other domain names and registrations including widely accessible ones such as www.volvocars.com, www.volvotrucks.in and so forth.

L. In addition to the sky-rocketing sales of the Complaint's group, the Complainant has invested significantly in the goods and services under the VOLVO trademarks and trade names all across the world, including promotional activities across a wide expanse of print, audio-visual media to ensure widespread name of the VOLVO trademark and tradename. An approximate estimate of expenditure incurred globally since the year 2001 and in India since the year 2007.

M. The Complainant by virtue of their painstaking efforts taken to ensure that the trademark and tradename VOLVO is well-known, the Complainant has invested in wide-ranging business activities, extensive sales network so much such that the Complainant's goods and services have now acquired innate distinctiveness, a well-known status in India and a reputation which pervades across goods and services across multiple classes.

5. The Dispute

The Complainant contends as follows:

A. The Respondent in the present dispute has registered the disputed domain name www.volvosafar.in (hereinafter referred to as the "Impugned Domain Name") of which "VOLVO" forms an essential part of the Impugned

Domain Name, which is the exclusive property of the Complainant, thereby misappropriating illegally and without securing any authorization from the Complainant. A search conducted by the Complainant regarding the contact details of the Respondent on the website www.whois.com revealed that the Respondent / Registrant is an entity named KMC Industry Co. LTD situated in China. It is submitted that the Respondent by registering the Impugned Domain Name appears to be misappropriating the Complainant's statutory and common law rights arising out of its well-known trademark VOLVO.

B. A perusal of the website bearing the Impugned Domain Name evinces details about an entity named Liming Heavy Industry, Shanghai, engaged in the business of manufacturing, marketing and heavily advertising various range of products which include grinding mills, stone crushing & screen, manufactured sand and other crushing & grinding equipments and other goods and services.

C. Further, the services being offered under the Impugned Domain Name are of the entity named Liming Heavy Industry, Shanghai. A search on the internet revealed that the said entity, advertises similar contents through its other domain names www.limingco.com; www.crusherindustry.com; www.break-day.com. Therefore, clearly this particular entity that is Liming Heavy Industry, Shanghai has no legitimate interest whatsoever in advertising its services through the Impugned Domain Name i.e. www.volvosafar.in, especially when this entity has no relation with the following:

- a. Complainant; and

b. Automobiles, Buses or the travel industry.

D. Therefore, the Complainant has a strong apprehension that Liming Heavy Industry through the said actions are trading upon the goodwill of the Complainant through the Respondent who is the registrant of the Impugned Domain Name. The Complainant reserve their rights to implead Liming Heavy Industry (Shanghai) and accordingly amend the scope of its claims at a later stage in the present proceedings.

E. The Complaint rests on the following grounds:

a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.

b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant further contends as follows as Grounds for the present Complaint

THE RESPONDENT'S DOMAIN NAME Is IDENTICAL AND CONFUSINGLY SIMILAR TO A NAME, TRADEMARK OR SERVICE MARK IN WHICH THE

**COMPLAINANT HAS RIGHTS AS STIPULATED UNDER PARAGRAPH 3 (VI) (1)
OF THE INDRP POLICY**

- A. The Complainant has immense statutory and common law rights in its well-known trademark VOLVO worldwide including in India. As elaborated herein above, the Complainant by virtue of its recognition and immense reputation has become a brand which is regarded as a well-known mark across jurisdictions. The Respondent's registration of the Impugned Domain Name i.e. www.volvosafar.in incorporates the well-known and famous VOLVO trademarks of the Complainant in its entirety. It is submitted that this Impugned Domain Name comprises of the identical well-known and registered VOLVO trademarks, in which the Complainant has statutory rights as well as rights in common law, by virtue of being a long-time and continuous user and a registered proprietor thereof. Moreover, the Respondent is using the Impugned Domain Name www.volvosafar.in which is identical to Complainant's registered domain name www.volvosafar.com.
- B. The well-known trade mark VOLVO is exclusively identified with the Complainant and the goods and services of the Volvo companies acting for an on its behalf. As a result, the use of the Complainant's registered and well known trade mark/ name VOLVO as a domain name by the Respondent, with or without the suffix "safar", will undoubtedly be understood as a reference to the Complainant and the Volvo Group of companies, thereby resulting in confusion among consumers who wish to access the Complainant's web page.

- C. As a result, the use of the Complainant's registered and well known trade mark/ name VOLVO as a domain name by the Respondent, with or without the suffix "safar", will undoubtedly be understood as a reference to the Complainant and the Volvo Group of companies, thereby resulting in confusion among consumers who wish to access the Complainant's web page.
- D. The instant case is apprehended by the Complainant to be a classic case of domain name squatting wherein the Respondent by using the Complainant's well-known trademark in the Impugned Domain Name in an unauthorized manner is thereby portraying to the general public that the Respondent are associated with the Complainant.
- E. The Complainant does not have any control whatsoever over the activities of the Respondent. The Complainant would be held responsible and accountable for any loss that may be caused to such unwary internet users due to the activities of the Respondent. On this count alone, it is imperative that the Impugned Domain Name and the fraudulent website parked on the said domain should immediately be taken down.
- F. The Respondent might even in future try to sell the Impugned Domain Name to the Complainant or any other third party at an arbitrary and astronomical price. One cannot rule out the possibility of the Respondent putting up objectionable material on the website parked on the Impugned Domain Name thereby forcing the Complainant to heed to their unlawful demands and might even force the Complainant to pay an exorbitant sum to have the domain transferred to the Complainant.

G. In order to prevent cyber-squatting or trading in domain names or marks, trademark law has been stretched to cover the Internet and consequently domain names can be protected just like trademarks. The mark "VOLVO" along with its formative marks, fall within the category of marks that have acquired a distinctive connotation or identity of its own. Therefore, due to its distinctive nature and popularity in several fields, the mark VOLVO has become a well-known trademark, thus enabling the Complainant to restrain others from using its said well-known trademark.

H. Hence, it is submitted that the Respondent's Impugned Domain Name wholly contains the Complainant's VOLVO trademarks and is identical to the trademarks in which Complainant has extensive statutory rights as well as common law rights.

**THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTEREST IN
RESPECT OF THE DOMAIN NAME AS STIPULATED UNDER PARAGRAPH 3
(VI) (2) OF THE INDRP**

I. The Complainant states that Respondent does not have any rights or legitimate interests in respect of the Impugned Domain Name i.e. www.volvosafar.in. Since the Impugned Domain Name comprises of the well-known and famous VOLVO trademarks in its entirety, it is evident that the Respondent can have no right or legitimate interest in the domain name. Further, it does appear that the purpose of registering the Impugned Domain Name is to misappropriate the reputation associated with the Complainant's famous VOLVO trademarks to cash in on the

goodwill attached to the Complainant's trademarks by selling the domain name for profit or, in the alternative, preventing the Complainant from registering a domain name in which it has full legal rights.

- J. In addition to the impugned and unauthorized use of Complainant's well-known trademark and trade name VOLVO, as mentioned earlier, the services being offered under the Impugned Domain Name are that of the entity named Liming Heavy Industry, Shanghai, who also advertises similar contents through its other domain names www.limingco.com: www.crusherindustry.com: www.break-day.com. Therefore, clearly Liming Heavy Industry, Shanghai has no legitimate interest whatsoever in advertising its services through the Impugned Domain Name i.e. www.volvosafar.in, especially when this entity has no relation with the following: (a) Complainant; and (b) Automobiles, Buses or the travel industry. Therefore, as mentioned earlier the Complainant has a strong apprehension that Liming Heavy Industry through the said actions are trading upon the goodwill of the Complainant through the Respondent who is the registrant of the Impugned Domain Name.
- K. As mentioned earlier, the instant case is apprehended by the Complainant to be a classic case of domain name squatting wherein the Respondent by using the Complainant's well-known trademark in the Impugned Domain Name in an unauthorized manner is thereby portraying to the general public that the Respondent are associated with the Complainant. Thus, the Complainant apprehends that the sole purpose of registering the Impugned Domain Name is to misappropriate the reputation associated with the Complainant's famous VOLVO trademarks to cash in on the goodwill attached to the Complainant's

trademarks by selling the domain name for profit or, in the alternative, preventing the Complainant from registering a domain name in which it has full legal rights. Such an act by the Respondent indicates their intention of riding upon the goodwill and reputation of the Complainant, without any prior authorization from the Complainant.

- L. Given the worldwide prior use and registration of the distinctive VOLVO trademarks by Complainant, the Respondent should be held to have actual or at a minimum constructive knowledge of such use. The Respondent could not have established legitimate rights in the domain name, which was undoubtedly registered in order to capitalize on the fame and reputation of Complainant's mark VOLVO.
- M. Further, the Respondent's Impugned Domain Name does not appear to be bona fide and the Respondent seems to be trading on the fame and recognition of the Complainant's well-known trademark in order to cause initial interest, confusion and bait internet users to accessing its website and coerce the Complainant to buy the Respondent out in order to avoid the said confusion as is typically the strategy of such cyber squatters. The Respondent is known by the name of 'KMC Industry Co. LTD' and the entity mentioned in the impugned website is Liming Heavy Industry (Shanghai), thereby reliance is placed on *The Chip Merchant Inc. v. Blue Star Electronics, d/b/a Memory World* (WIPO Case No. D2000-0474), where it was held that the "only reason for the use of specific domain names that are virtually identical to the Complainant's name, for a commercial website bearing its own name that bears no relation to the domain names, would be to

divert online consumers seeking one of its successful competitors, thereby trading on its goodwill and reputation".

- N. There could be no plausible explanation for the use of the Impugned Domain Name by the Respondent since the Complainant's trademark VOLVO and its formative marks, of which "VOLVO" forms an essential part, are exclusively being used by the Complainant, its group companies, its subsidiaries, and other companies promoted by it.
- O. Therefore, it is submitted that the Respondent is motivated by the intention of capitalizing upon the goodwill and reputation vested in the Complainant's VOLVO trademarks and it has accordingly registered the Impugned Domain Name only for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation, resulting in dilution of the Complainant's trademark and / or service mark.
- P. Hence the Respondent has no rights or legitimate interest in the domain name.

THE DOMAIN NAME SHOULD BE CONSIDERED AS HAVING BEEN REGISTERED AND USED IN BAD FAITH AS STIPULATED UNDER RULE 3 (VI) (3) OF THE INDRP.

- Q. The Complainant submits that the Respondent was well aware of the well-known trademark and trading name VOLVO including its wide range of goods and services, by virtue of their stellar reputation across the industry worldwide.

- R. The Respondent had constructive notice of the Complainant's rights in the trade mark VOLVO, much prior to January 8, 2019 i.e. the date on which the Impugned Domain Name was registered, by virtue of the Complainant's widespread use and reputation worldwide and global registrations. The Complainant's mark VOLVO is a well-known trademark, and the Respondent is presumed to have had knowledge of Complainant's mark at the time it registered the Impugned Domain Name i.e. 8 January 2019. Thus, this is prima facie evidence of the Respondent's bad faith use and registration. Therefore, it is submitted that the domain name has only been registered in bad faith for monetary gains.
- S. It is further reiterated and submitted that the Respondent's use of the Impugned Domain Name, wherein the services being offered under the Impugned Domain Name and those of the other websites i.e. www.liminqco.com: www.crusherindustry.com: www.break-dav.com are that of the entity named Liming Heavy Industry, Shanghai, (having similar contents), who as mentioned earlier, has no legitimate interest whatsoever in advertising its services through the Impugned Domain Name i.e. www.volvosafar.in. especially when this entity has no relation with the following: (a) Complainant; and (b) Automobiles, Buses or the travel industry. The said actions clearly goes on to highlight the Respondent's deliberate, willful and intentional adoption of the Impugned Domain Name to carry out their business and activities. Further, and as mentioned earlier the Complainant's apprehension on the fact that Liming Heavy Industry are trading upon the goodwill of the Complainant through the Respondent who is the registrant of the Impugned Domain Name cannot be ruled out.

- T. The proposition that the registration of a domain name incorporating a well-known trademark of the Complainant is bound to be in bad faith has been upheld by numerous UDRP decisions. Some notable cases which have upheld this proposition are Marie Claire Album v. Marie-Claire Apparel Inc. (WIPO Case No. D2003-0767), Veuve Clicquot Vonsardin, Ma/son Fondée en 1772 v. Herreveld. (WIPO Case No. D2000-0776), Adidas-Salomon AG v. Domain Locations (WIPO Case No. D2003-0489), wherein it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith. Therefore, it is submitted that the domain name has been registered in bad faith.
- U. The Complainant submits that the Respondent was well aware of the well-known trademark and trading name VOLVO including its wide range of goods and services, by virtue of their stellar reputation across the industry worldwide. Moreover, it is also pertinent to note that the Impugned Domain Name was registered on January 8, 2019 which is a recent act by the Respondent, the use of the VOLVO trademarks by the Respondent for its domain name is clearly subsequent to the use of these trademarks by the Complainant itself.
- V. Such registration of the Impugned Domain Name without legitimate authorization from the registered proprietor for commercial gain further reveals intention of the Respondent and is in bad faith. Further, there is a likelihood that a potential visitor to the Respondent's webpage will be induced to believe that the Complainant has licensed their trademark VOLVO to the Respondent or has authorized the Respondent to register the Impugned Domain Name, creating initial interest confusion in the mind of the consumer.

- W. Reliance is placed on the case on the case of Volvo Trademark Holding AB v. Rigou Ding (INDRP225), wherein it was held that "registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use". The Respondent's act of registering the Complainant's trademark / name VOLVO as a domain name is perhaps calculated to encash the Complainant's reputation and goodwill attached to the said mark or to sell the Impugned Domain Name either to the Complainant or its competitors for exorbitant amounts of money.
- X. There is a further possibility that the potential visitor to the Respondent's website will be duped into believing that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant. This falls squarely within the circumstances iterated in Para. 6 (iii) of the Policy, which confirm the registration and use of the domain name in bad faith.
- Y. The Complainant's mark was already registered and recognized as a well-known trade mark at the time the Impugned Domain Name was registered by the Respondent in January 8, 2019. Therefore, the Respondent is deemed to have had knowledge of the Complainant's statutory and common law rights at the time that the impugned domain name was registered. Despite this, the Respondent proceeded to get an identical or confusingly similar domain name registered, an act which clearly depicts bad faith and crass opportunism.

Z. The Respondent's intention of confusing the unassuming public to believe that the Respondent's Impugned Domain Name and the goods it sells or the services it provides on its domain, is also evident from the fact that the Respondent advertises its products / services under the domain name, thereby drawing association with the Complainant's well-known trademark VOLVO. Further, there is a great likelihood that an actual or potential visitor to the Respondent's web page that the Impugned Domain Name resolves to, will be induced to:

(i) Believe that the Complainant has licensed the VOLVO trademarks to the Respondent or has authorized the Respondent to register the Impugned Domain Name,

(ii) Believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant. It is therefore submitted that the Impugned Domain Name has been registered and is being used in bad faith.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 6 May 2019 and 21 May 2019 respectively.

B. However, Respondent has failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which 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.

II. Respondent's Default

Several domain dispute decisions have established that once a complainant has made a prima facie case that the Respondent lacks legitimate interest or right, the burden shifts to the Respondent to prove its right or legitimate interest in the domain name (**F. Hoffman-La Roche AG v. Steven Pratt, WIPO Case No. D2009-0589** and **Canadian Tire Corporation Limited v. Swallowlane Holdings Ltd., WIPO Case No. D2009-0828**). That is, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's un rebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [**Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221**].

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint. The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the

complaint remain un rebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

In the matter of **Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067]**, it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because various notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of **Talk City, Inc. v. Robertson, WIPO Case No D2000-0009**, it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit a finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of paragraph 10 of the INDRP Policy will be available or not:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 4(i) of INDRP Policy]

- A. The Complainant has been using the name "VOLVO" extensively and continuously for a wide variety of products and services such as cars, trucks, buses, construction equipment and marine engines and industrial power systems, since its roll out of the first car in 1927, while it was first listed on the Stockholm Stock Exchange in 1935 and even its earliest Trademark registration in India was in 1975. The mark "VOLVO" is an inventive and not a dictionary word, that is, an inherently distinctive trademark solely associated with the Complainant.
- B. Complainant contends that the mark "VOLVO" forms a key, essential and dominant part of the corporate name and trading style of the majority of the VOLVO Companies. The popularity of the Complainant's trademark has grown tremendously and such that the trademark VOLVO is now a reputable and well-known trademark for various goods and services worldwide. The same has also been included in the list of well known Trademarks at the website of Indian Trademark Registry at <https://ipindiaonline.gov.in>,

- C. Apart from the Complainant's multi-class registrations in India, the Complainant has obtained Trademark registrations for the mark "VOLVO" in numerous countries worldwide. Some illustrative certificates of registration and applications for registration made by the Complainant in India and Abroad have been annexed with the Complaint. 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.
- D. The dispute domain name <VOLVOSAFAR.IN> has been registered recently on 08 January 2019 and incorporates the Complainant's mark entirely along with a generic word 'Safar'. Indeed, numerous courts and UDRP panels have recognized that "if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark." [ITC Limited v Travel India (INDRP Case No. 065); Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMECQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)].
- E. Further, honorable Supreme Court of India in the matter of Satyam Infoway Ltd vs Sifynet Solutions Pvt. Ltd held that "A domain name, is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial as we have earlier noted. Therefore a deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought for services... The doubtful explanation given by the respondent for the choice of the word 'Sify' coupled with the reputation of the appellant can

rationality lead us to the conclusion that the respondent was seeking to cash in on the appellant's reputation as a provider of service on the internet." [2004 Supp(2) SCR 465]

- F. Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's mark VOLVO, it is quite obvious that an Internet User would likely mistakenly believe that a website accessible by the URL: <VOLVOSAFAR.in> (*i.e. Disputed Domain*) is managed or endorsed by Complainant, or enjoys the benefit of Complainant's resources. And no doubt, Disputed Domain Name is confusingly similar to Complainant's Mark. The Complainant places reliance on Canon Kabushiki Kaisha v. Price-Less InkJet Cartridge Company (WIPO Case No. D2000- 0878), where it was held that "when the dominant feature of an impugned domain name is the Complainant's trade mark and a generic term indicating goods or services offered by the Complainant has been added to it, the resultant domain name would still be deemed as identical or confusing similar".
- G. Further, the Complainant contends that the instant case is apprehended by the Complainant to be a classic case of domain name squatting wherein the Respondent by using the Complainant's well-known trademark in the Impugned Domain Name in an unauthorized manner is thereby portraying to the general public that the Respondent are associated with the Complainant. The Complainant's domain names such as Volvo.com, Volvo.in and VolvoBuses.in have been registered since 1995, 2005 and 2005 respectively, while the Complainant company has been into business since 1927. Since then the Complainant has spent a substantial amount in sales / promotion,

advertisement and marketing activities of their products and services in the name of VOLVO along with various prefixes and suffixes. The details as to advertisement / promotion expenses in India and worldwide has been annexed by the Complainant.

- H. In the matter of Volvo Trademark Holding AB v. Soekwan Park [Case No. D2005-0448 <myvolvo.com>], the Complainant has submitted evidence of having trademark registrations for the term VOLVO, which were registered decades before Respondent obtained registration for the disputed domain name. The only difference between "myvolvo" and Complainant's trademark is the addition of "my" at the beginning of Respondent's domain name. The term "my" lacks distinctiveness and therefore has little impact when comparing the terms at issue.
- I. Lastly, it was held in the matter of V-Guard Industries Limited v. Taesong Chong, that the first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a straightforward comparison between the complainant's trademark and the disputed domain name". See *WIPO Overview 3.0, section 1.7. [Case No. D2018-2116 - vguard.com]*.
- J. Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [INDRP/289 - Hersheys.co.in].

K. Thus, the Arbitrator finds that Complainant has proven that the domain name in dispute is confusingly similar to the registered trademark in which Complainant has rights. Therefore, it concludes that the Complainant has satisfied the requirement of paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(ii) the Registrant has no rights or legitimate interests in respect of the domain name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes 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; or

- (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
- (iii) 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.

- A. Complainant contends that Respondent does not have any rights or legitimate interests in respect of the Impugned Domain Name i.e. <VOLVOSAFAR.in>. The Complainant has been into automobile industry since eight to nine decades, while it started using the mark VOLVO in the year 1927, when no such mark was in use. The trademark VOLVO is an inventive term, first adopted by the Complainant only.
- B. Further, complainant submits that the registration of the VOLVO trademarks preceded the registration of the disputed domain name for decades. WIPO Panels under UDRP Proceedings have found that in the absence of any licence or permission from the Complainant to use such widely known trademarks, no actual or contemplated bonafide or legitimate use of the domain name could reasonably be claimed (WIPO Case No D2013-0188, Groupe Auchan v. Gan Yu; WIPO Case No D2010-0138, LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host Master).

- C. There is no showing that 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. That is, the webpage at the disputed domain name <VOLVOSAFAR.in> does not resolve to the website as on date in June 2019, though Complainant contends that web page at the dispute domain name made references to Liming Heavy Industry, Shanghai, screenshots of the same have been annexed with the Complaint. In any case, Complainant denies of having assigned, permitted, licenced, transferred or in any way authorized the Respondent to use the distinctive mark VOLVO or to register the domain name containing its mark. That is, in no case any legitimate use of the disputed domain could have been made by the Respondent, which contains inherently distinctive trademark VOLVO, solely associated with the Complainant.
- D. Complainant rightly refers to the same as the case for squatting, wherein the Respondent by using the Complainant's well-known trademark in the Impugned Domain Name in an unauthorized manner is thereby portraying to the general public that the Respondent are associated with the Complainant. Further, nothing in the WHOIS information indicates that the Respondent is known by the mark "VOLVO". In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is commonly known by the disputed domain name" as one factor in determining that Policy

paragraph 4(c)(ii) does not apply. Also in the matter of Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) "finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that Respondent is not commonly known by the disputed domain name under Policy paragraph". This proves that the Respondent is not known by the Domain Name, but it is evidence of bad faith on behalf of the Respondent, as it is trying to pass off as Complainant. The said misuse further proves malafide intention on behalf of the Respondent to misleadingly divert consumers and to tarnish the complainant's trademark.

- E. At the time the disputed domain name was registered, the Complainant had widespread, already well known and extensive use of its mark VOLVO for numerous years. This has been recognized in several previous UDRP decisions such as in Volvo Trademark Holding AB v. Unasi, Inc., WIPO case no. D2005-0556, (<vlovo.com>, <volvoautomobile.com>, <volvogroup.com> and <volvomasters.com>) wherein it is stated that the "notoriety has been strengthened over the years considering the excellent proven quality attached to Complainant's products bearing the VOLVO mark, and accordingly this trademark has become today indubitably famous and universally renowned". The notoriety of the mark, coupled with its registration in the jurisdiction, where the Respondent is presumed to be located, make it highly unlikely that the Respondent would not have known of

the Complainant's rights in the mark prior to acquiring the disputed domain name.

F. It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such a showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]. Also Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221]. Many prior panels have found that complainants only need to establish a prima facie case in relation to the second element of the test under paragraph 4 of the Policy (see Mahindra & Mahindra Limited v. RV ABC Consulting Inc., Roy Smith, WIPO Case No. D2010-1576).

G. Complainant contends that the sole purpose of registering the Impugned Domain Name is to misappropriate the reputation associated with the Complainant's famous VOLVO trademarks to cash in on the goodwill attached to the Complainant's trademarks by selling the domain name for profit or, in the alternative, preventing the

Complainant from registering a domain name in which it has full legal rights. This is evident by the fact that the said domain name is completely unused by the Respondent as on the date of the decision, though as per Complainant, it seems some unrelated use was attempted by the Respondent in March 2019. In the WIPO matter of American Home Products Corporation vs. Ben Malgioglio, [WIPO Case No. D2000-1602], it was held that the Respondent's website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use to constitute a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. Further in the WIPO matter of Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill."

- H. Given the long and widespread reputation of the Complainant's mark, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the

Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com].

- I. Complainant has made sufficient allegations to support its contention that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not responded to the Complaint or these allegations. Since the Complainant's allegations appear well-founded and reasonable on the basis of the case record before the Arbitrator, and are undisputed by the Respondent.
- J. Given the duration and extent of the Complainant's use of VOLVO, it clearly enjoys an extremely high level of goodwill and reputation in the same in India and abroad, and has both statutory and common law rights in the same. The rights and reputation of the Complainant in its VOLVO mark has also been recognised many a time by the Honourable Courts and other fora. The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark VOLVO of the Complainant with the intention to create an impression of an association with the Complainant.

K. Thus, the Arbitrator finds that Respondent has no Rights or Legitimate Interests in the Domain Name <VOLVOSAFAR.in>. Therefore, it concludes that the Complainant has satisfied the requirement of paragraph 4(ii) of the IN Domain Name Dispute Resolution Policy.

(iii) the Registrant's domain name has been registered or is being used in bad faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain Name in Bad Faith:

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

- A. The Complainant contends that the Respondent was well aware of the well-known trademark and trading name VOLVO including its wide range of goods and services, by virtue of their stellar reputation across the industry worldwide. The registration of the disputed domain name <VOLVOSAFAR.in> by the Respondent containing the well known mark of the Complainant, clearly indicates that the Respondent has registered the domain name in bad faith. Some notable cases which have upheld this proposition have been quoted by the Complainant - Marie Claire Album v. Marie-Claire Apparel Inc. (WIPO Case No. D2003-0767), Veuve Clicquot Vonsardin, Ma/son Fondée en 1772 v. Herreveld. (WIPO Case No. D2000-0776), Adidas-Salomon AG v. Domain Locations (WIPO Case No. D2003-0489), wherein it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith.

- B. The complainant contends that the Respondent has clearly attempted to use the popularity of the Complainant's well-known VOLVO brand for his own personal benefits. No doubt, this action of the Respondent clearly constitutes an attempt to free-ride on the Complainant's goodwill and reputation. The Respondent has sought to squat/hoard the said domain name with mala fide intent and to the Complainant's detriment and prejudice. Thus, such an action on the part of the Respondent clearly prevents Complainant from reflecting the mark in a corresponding domain name and further intentionally attempted to attract Internet users to the Respondent's website 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.
- C. It is impossible that the Respondent was not aware of the Complainant's rights to the mark as the Complainant's Domain names VOVLO.com and VOLVO.in were registered in the year 1995 and 2005 respectively and a simple Google search could reveal the popularity of the Complainant's mark as well. Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. [LEGO Juris

AS V. Robert Martin - INDRP/125 - 14 February 2010]. Further, Complainant places reliance on the INDRP precedent of Volvo Trademark Holding AB v. Rigou Ding (INDRP/225), wherein it was held that "registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use".

- D. Given the popularity of the VOLVO mark, the Respondent is deemed to be aware of Complainant's business under the mark. The registration of the disputed domain name in 2019 is 25 years later than the adoption of the VOLVO mark by the Complainant. The Respondent has no right or genuine interest in the mark VOLVO. Hence, registering the impugned domain name which is identical to Complainant's mark is in bad faith and the Respondent cannot be allowed to continue to retain the same in his name.
- E. The disputed Domain Name <VOLVOSAFAR.in> incorporates the said Complainant's mark in its entirety. The paragraph 3 of the INDRP policy clearly states that it is the responsibility of the Respondent to find out before registration that the domain name that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. And a simple google search for the keyword VOLVO, throws the google results referring to the Complainant only. Therefore, it can be safely presumed that Complainant's use of the

mark was in the knowledge of the Respondent at the time of registration of the said domain name.

- F. In the matter of Nat'l Patent Servs. Inc. v. Bean, FA 1071869 (Nat. Arb. Forum Nov. 1, 2007) "Constructive notice does not support a finding of bad faith registration.". However, the Panel finds that Respondent's registration of a domain name identical to Complainant's VOLVO mark is evidence of Respondent's actual knowledge of Complainant's rights in the mark and consequently finds that Respondent registered and used the disputed domain name in bad faith under the Policy.
- G. The Complainant had registered domain names VOLVO.com and VOLVO.in in 1995 and 2005, having active and official website on the same. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark VOLVO along with a generic hindi term SAFAR (meaning: journey), in order to capitalize / profit from the goodwill associated with the famous mark. Only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar. Arbitrator agrees with Complainant's assertion that it is inconceivable that Respondent was unaware of Complainant's VOLVO trademark.
- H. In the UDRP matter of PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov, WIPO Case No. D2002-0562, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements

of the Policy. And given the popularity of the Complainant's VOLVO.com website, the Complainant's mark VOLVO is now acknowledged as a well known mark, and is as such exclusively associated with Complainant's services. In the matter of HSBC Holdings plc v Hooman Esmail Zadeh, [INDRP Case No 032], it was held that non-use and passive holding are evidence of bad-faith registration. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from or exploit the trade marks of another.

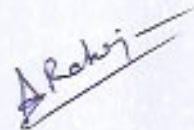
- I. The Respondent has registered the disputed domain name <VOLVOSAFAR.in> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark VOLVO. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark VOLVO in any manner. The disputed domain name clearly incorporates the Complainant's Trademark VOLVO in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <VOLVOSAFAR.in> which incorporates the Trademark VOLVO of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

- J. Thus, the Arbitrator finds that the Domain Name <VOLVOSAFAR.in> was registered and is being used in Bad Faith. Therefore, it concludes that the Complainant has satisfied the final requirement of paragraph 4(iii) of the IN Domain Name Dispute Resolution Policy.

8. Decision:

In the light of the circumstances and facts discussed above, the Arbitrator decides, "The disputed domain name is identical and confusingly similar to the VOLVO mark / trade name in which Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent's Domain Name has been registered and is being used in Bad Faith".

Consequently the Arbitrator orders that the Domain Name <VOLVOSAFAR.in> be transferred from the Respondent to the Complainant with no orders as to costs.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 20th June 2019

Place: Agra, UP