

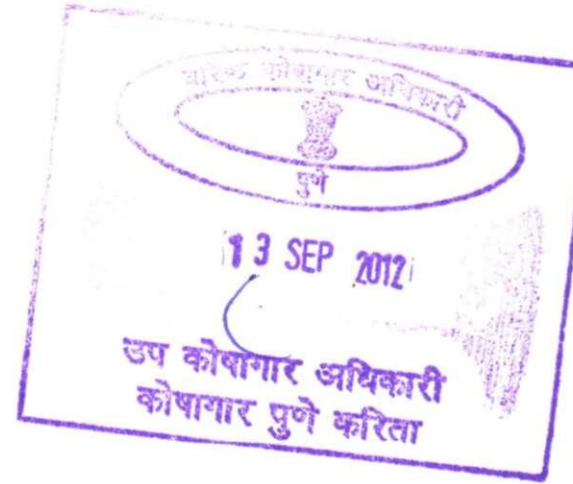
महाराष्ट्र MAHARASHTRA सदरचा मुद्रांक लिक्व्ह अॅण्ड लायसेन्ससाठी नाही.

GE 962503

अनुक्रमांक... 6388... दिनांक 9/9/12... रुपये... १०००/-  
द्वारा कोणत्या कारणासाठी वापरण्यात आला... डायमिटर मध्ये  
मुद्रांक अधिनियम १९५८ च्या अर्थाने  
द्वारा वापरणाऱ्याचे संपूर्ण नाव... डायमिटर मधील इनाम  
संपूर्ण पत्ता... २५०४, २/३, म.ि.ड.स. चकान, पुणे-४१०५०१  
ज्येष्ठ व्यक्तीचे संपूर्ण नाव... ज्येष्ठ व्यक्तीचे नाव... माने  
पत्ता... मुंबई, जुन्नर, पुणे, महाराष्ट्र

मुद्रांक धारकाची/ज्येष्ठ व्यक्तीची सही

कार्यालय (मुद्रांक विक्रीसाठी)  
(सी. कोषागार मि. केलासही)  
नेमणूक क्र. २२०१०११/१९९९  
परतारणी क्र. १५/२/२० १३  
पत्ता: ४२५, व, मंगळम पेठ, पुणे-३०.



### AWARD IN ARBITRATION

**DAIMLER AG**  
Mercedesstr, 137, 70327, Stuttgart, Germany  
With  
**Mercedes-Benz India Pvt. Ltd.**  
E-3, M.I.D.C. Chakan, Phase III  
Chakan Industrial Area, Taluka Khed, Pune. 410501.

**THE COMPLAINANT**



AND

**MR.MACHANG**  
HUA AN HOLDINGS (H.K.) LTD.  
Room 14-05-301, West Block, North Hong Kong.

**THE RESPONDENT /  
THE REGISTRANT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - daimler.in**

**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.  
SOLE ARBITRATOR**

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**DELIVERED ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER TWO THOUSAND  
TWELVE AT PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

**01. Names and addresses  
Of the Complainant: -**

**Daimler AG.**  
Mercedesstr, 137, 70327, Stuttgart,  
Germany.

With

**Mercedes-Benz India Pvt. Ltd.**  
E-3, M.I.D.C. Chakan Industrial Area  
Phase III, Chakan, Taluka Khed,  
Pune. 410501.

Through its authorized  
representative

Salman Waris  
HAS Advocates.  
81/1, Adchini, Sri Aurobindo Marg  
New Delhi. 110017.

**02. Name and address of  
The Respondent: -**

**Mr.Machang**  
HUA AN Holdings (H.K.) LIMITED  
Room 14-05-301, West Block  
North Hong Kong.

**03. Name and address of  
The Registrar**

**Business Solutions**  
Adarsh Palace, First Floor,  
118, Old Hanuman Lane, Kalbadevi  
Road, Mumbai. MH. IN 400002.

**04. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me	23/08/2012
02	Acceptance given by me	23/08/2012
03	Hard copy of the complaint received	29/08/2012
04	Notice of Arbitration issued with the instructions to file reply latest by 09.09.2012	30/08/2012
04	Reminder notice sent to the Respondent to file reply within extended period upto 14.09.2012	11/09/2012
05	Notice of closure of evidence sent	17/09/2012
06	Award passed	18/09/2012

**I] PRELIMINARY: -**

- 1) M/s Daimler AG, a company founded and registered in Germany, having its subsidiary company in India - Mercedes-Benz India Private Limited, is an automobile giant company. Its corporate office is at Mercedesstr, 137, 70327, Stuttgart, Germany. The registered office of its subsidiary company is at E-3, M.I.D.C. Chakan, Phase III, Chakan Industrial Area, Taluka Khed, Pune 410501, Maharashtra, India. Both the companies have joined **(The Complainant)** in filing the present complaint with National Internet Exchange of India (NIXI), disputing the registration of domain name **'daimler.in'** (the disputed domain name / domain name), through its authorised representative **Mr.Salman Waris**, HAS Advocates, 81/1, Adchini, Sri Aurobindo Marg, New Delhi 110017, India. **(Authorised Representative).**
- 2) The Complainant has disputed registration of domain name **'daimler.in'** in the name of **Mr.Machang, HUA AN HOLDINGS (H.K.) LIMITED**, having its office at Room 14-05-301, West Block, North Hong Kong. **(The Respondent).**
- 3) Major events took place as enumerated in the above table.

### II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 30<sup>th</sup> August 2012 with the instructions to file his reply / say latest by 9<sup>th</sup> September 2012.
02. The Respondent did not file reply to the Complaint within the stipulated period.
03. On the basis of principles of natural justice and as the last opportunity to the Respondent, the arbitration panel extended *suo moto*, time to file his say / reply latest by 14<sup>th</sup> September 2012. However the Respondent failed / neglected to file any say / reply even within the extended period.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

### III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- A) The domain name 'daimler.in' is confusingly similar to the trademarks 'Daimler' in which the Complainant has rights. (Policy Para 4(i), Rules 3(b)(vi)(1))**
- a) The disputed domain name fully incorporates and is identical to the trademark 'DAIMLER' of the Complainant.
  - b) The Complainant owns several trademark registrations (as per Annexure) all over the world, including in India. In India the Complainant's mark 'Daimler' was registered on 29<sup>th</sup> August 1955 under Trademark No.109829. It also owns, either by itself or through its subsidiary companies, domain name registrations like [www.daimler.com](http://www.daimler.com), [www.damiler.info](http://www.damiler.info), [www.mercedes-benz.oc.in](http://www.mercedes-benz.oc.in) and so on.
  - c) The disputed domain name gives rise to enormous confusion as to its origin as the domain name used by the Respondent is identical to the corporate name of the Complainant. The utmost malafide intention of the Respondent is evident from the fact that not even a single letter differs from the Complainant's corporate name.

- d) The name / mark DAIMLER is distinctive, unique and an invented mark. The mere mention of the said name / mark establishes an identity and connection with the Complainant only.
- e) It is well established that the specific top level of a domain name such as .com, .org etc. may be disregarded when determining whether it is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant has provided many citations of WIPO cases decided previously, in support of its contentions.

**B) The Respondent has no rights or legitimate interests in respect of the domain name `daimler.in`. (Policy Para 4(ii) Rules Para 3(b)(vi)(2)**

- a) The business and brand of the Complainant has been established since 1926.
- b) The Respondent has no proprietary or contractual rights in any registered or common law trade mark, corresponding in whole or in part, to the disputed domain name. The Respondent is not authorised or licensed by the Complainant to use its trade / service mark/name or to use the disputed domain name. The Respondent is not running any website on the disputed domain name, nor doing any business from it.
- c) The mere act of registration by the Respondent of the disputed domain name containing the entire corporate name of the Complainant in it constitutes passing off.

The Complainant has furnished various citations of decided cases by WIPO in support of each of its contentions.

**C) The Domain name `daimler.in` was registered and is being used in bad faith. (Policy Para 4(iii), Rules Para 3(b)(vi)(3)**

- a. The fact that the Respondent registered the disputed domain name fourteen years after the registration of the Complainant's domain name [www.Daimler.com](http://www.Daimler.com) is a prima facie evidence of malafide intentions and bad faith.
- b. The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interests in the said domain name.
- c. By activating the website, the Respondent may be able to represent itself as the Complainant or its authorised representative and cause damage to some third party, by entering into transactions or contracts with them, under the garb of being associated with the Complainant.**

d. The Respondent can transfer or sell the domain name to some entity competing with the Complainant, who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant Company.

**IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Thus the Respondent has failed / neglected to file any say / reply.

**V] REJOINDERS OF THE PARTIES: -**

In view of non-reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

**VII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of the Complainant, I have framed following issues. My finding on each issue is also mentioned against it respectively.

<b>SR. NO.</b>	<b>ISSUE</b>	<b>FINDING</b>
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	<b>Yes</b>
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	<b>Yes</b>
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	<b>No</b>
04	Whether the Registrant has commonly been known by the domain name?	<b>No</b>
05	Whether the Registrant has any legitimate interests in the disputed domain name?	<b>No</b>
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	<b>Yes</b>

07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	Yes
08	Has the Registrant 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?	Yes
09	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

**VIII] BASIS OF FINDINGS: -**

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word DAIMLER is an integral / prominent component of subject domain name which is also an integral / prominent component of the corporate name of the Complainant and its registered Trademarks world over. Apart from trademarks registered in many other countries, the Complainant has registered trademark in India, under No. 109829 dated 29<sup>th</sup> August 1955. Thus it exists for 57 years or more in India. It is thus unbelievable that the Registrant was unaware of the Complainant's corporate name, its websites, products and reputation in the global market.

Against this the Respondent has no registered trade mark or service mark consisting of the word 'DAIMLER'.

*Therefore my finding on the first issue is affirmative.*

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.

*Therefore my finding on this issue is in affirmative.*

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

*Therefore my finding on this issue is in negative.*



4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as available in the records is Mr.Machang. As such, he is **not** commonly been known by the name 'DAIMLER'.

*Therefore my finding on this issue is in negative.*

5. Whether the Registrant has any legitimate interests in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words DAIMLER. He is not commonly been known by that name. He has not established that he has taken all reasonable steps to use the registered domain name. He has not bothered even to file reply to the Complaint.

*Therefore my finding on this issue is negative.*

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant is not using the website at all. Thus it has not been used actively, much less for bona fide business purpose or non-commercial use.

*Therefore my finding on this issue is affirmative.*

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

The Registrant has not taken any step to use the domain name, though the domain name was registered on 8<sup>th</sup> July 2011. Hence it is apprehended that the same would be sold by him to the Complainant or to any of its competitors for valuable consideration.

*Therefore my finding on this issue is affirmative.*

8. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. Though at present the website has not been activated, it has lead to depriving the owner of registered trademark, from using the same.

*Therefore my finding on this issue is in affirmative.*

On the basis of submissions in the complaint, evidence submitted by the Complainant and findings on the issues framed, it can be concluded that the Registrant has registered domain name in which he does not have any legitimate interest, nor does have any plan to use the same for bona fide business purpose and he has registered the same with the purpose of selling the same for unlawful monetary benefits.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.daimler.in and hence the same be transferred to the Complainant immediately.
02. The Respondent shall pay documented costs to the Complainant in respect of these arbitral proceedings and transfer of disputed domain name.

Dated: - 18/09/2012  
Place: - Pune



**(S.C.INAMDAR)**  
**SOLE ARBITRATOR**