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M 905305

ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure**

IN THE MATTER OF:

Dorma GmbH+Co.KG
Dorma Platz 1,
D-58256 Ennepetal
Germany.

First Complainant

Dorma India Private Limited
No. 14, Pattullous Road
Chennai- 600 002
India

.....Second Complainant

VERSUS

Mr. Steven Polgar
M/s Linx Technology Pry Ltd
Suite 63, 20-28 Maddox Street
Alexandria, New South Wales- 2015,
Australia.

Respondent

1 **The Parties:**

The First Complainant in this administrative proceeding is Dorma GmbH+Co.KG a company incorporated under the laws of Germany having its address at DORMA Platz 1, D-58256 Ennepetal, Germany;

The Second Complainant is the First Complainant's wholly owned subsidiary company operating in India under the name and style as Dorma India Private Limited registered under the Companies Act, 1956 and has its registered office at No. 14, Pattulous Road, Chennai - 600 002, India. Represented through **Surana & Surana** International Law Centre 61-63, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004 Ph: 2812 0000 Fax: 2812 0001 Email: iplaw@lawindia.com

The Respondent is Mr. Steven Polgar, M/s Linx Technology Pty Ltd., Suite 63, 20-28 Maddox Street, Alexandria, New South Wales- 2015, Australia.

2. **The Domain Name and Registrar**

The disputed domain name <**DORMA.CO.IN**> is registered with GoDaddy.com Inc. 14455 N. Hayden Rd.Suite 219 Scottsdale, AZ 85260

3. **Procedural History**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. Steven Polgar, M/s Linx Technology Pty Ltd., Suite 63, 20-28 Maddox Street, Alexandria, New South Wales- 2015, Australia. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **10th November, 2010** The parties



were notified about the appointment of Arbitrator on **10th November, 2010.**

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on **10th November, 2010** In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

3.3 The Respondent by its e-mail dated November 11, 2010 submitted that he has never received any documentation from NIXI and requested Panel to forward the information to them for perusal.

The Panel vide its e-mail dated November 11, 2010 directed the registry to take necessary steps for serving the complaint along with paper book to the Respondent and submit the proof of delivery thereof.

3.4 The Respondent vide its e-mail dated November 17, 2010 again submitted that he has not received any document relating to domain name DORMA.CO.IN instead has received documents relating to DORMAININDIA.CO.IN.

3.5 The Complainant's Representatives Deepak Vaid, Advocate, Surana & Surana replied to the contentions of the respondent and submitted that they have initiated three domain name disputes vis-a-vis

- (i) DORMA.CO.IN
- (ii) DORMA.IN and
- (iii) DORMA INDIA.IN

The Panel directed the Complainant(s) through their representatives on November 17, 2010 to serve the copy of the complaint along with annexures to the respondent and furnish the proof thereof within three days.



- 3.6 The Complainant(s) through their representatives vide e-mail dated November 17, 2010 submitted that as per INDRP rules of procedure, the complaint and paper book was submitted to the registry and that, registry shall be in a position to furnish the proof of delivery and requested NIXI to forward the proof to the Panel.
- 3.7 The Panel vide its e-mail dated November 22, 2010 requested the Registry to send the proof of delivery of the documents delivered to the Respondent in respect of the disputed Domain Name DORMA.CO.IN.
- 3.8 By the e-mail dated November 23, 2010, the Complainant(s) through their representatives forwarded copy of the complaint to the Respondent, Registry as well as to the Panel.
- 3.9 By the e-mail dated November 29, 2010, the Registry informed the Panel that the paper book has been dispatched to the Respondent at his known and registered address and the documents are presumed to have been duly served on the respondent in respect of the domain name DORMA.CO.IN.
- 3.10 The Panel vide its e-mail dated **December 2, 2010**, informed the respondent about proof of service furnished by NIXI and in the interest of justice granted another opportunity of ten days time to file his response to the complaint, if any, even though the period of time earlier granted had already expired. The Panel further informed the Respondent that if the response was not filed within the extended stipulated time, the matter would be decided on the basis of the material available on record in accordance with the provisions of law, as applicable. The Panel further advised the Respondent that no further extension of time shall be granted in the matter after the expiry of ten days from the date of the notice.
- 3.11 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within 10 days as was granted to him by the notice dated **December 2, 2010**. The respondent did not raise any dispute about the proof of service furnished by NIXI.



3.12 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

4. **FACTUAL BACKGROUND**

4.1 The First Complainant in these administrative proceedings is Dorma GmbH+Co.KG Dorma Platz 1, D-58256 Ennepetal Germany

The Second Complainant in these administrative proceedings is Dorma India Private Limited No.14, Pattullous Road Chennai- 600 002 India.

4.2 The First Complainant is a world leader in production and supply of door technology products and systems, including glass doors of all kinds; separation walls, movable walls and automatic door systems etc., which are marketed under the well-known brand, corporate name and the trade mark "DORMA".

The First Complainant is in the said business for more than 100 years and operates on an international scale with 71 wholly owned companies in 47 different countries around the world, including Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, Czech Republic, Denmark, Dubai, Finland, France, Great Britain, Greece, Hong Kong, Hungary, Ireland, Italy, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Singapore, Sweden, Switzerland, Slovakia, Slovenia, Spain, Turkey, U.S.A. and India. The First Complainant has major production plants in several European countries, Singapore, Malaysia, China and North and South America.

The Second Complainant is a wholly owned subsidiary of the First Complainant in India and has an established



presence in the production and supply of door technology products and systems, including glass doors of all kinds; separation walls, etc., which are marketed under the well-known brand, corporate name and the trade mark "DORMA". The Second Complainant services markets of India and SAARC regions providing support to infrastructure projects. The Second Complainant is authorized to use DORMA marks of the First Complainant in India as determined and permitted by the First Complainant.

The First Complainant is the registered proprietor of the trademarks DORMA and many other marks, variants/combinations thereof, in Classes 6, 7, 9, 16, 19, 35, 37 & 42 in India. The trademarks are valid and subsisting on the records of the Trade Marks Registry.

- 4.3 The Respondent in these administrative proceedings is Mr. Steven Polgar M/s Linx Technology Pty Ltd Suite 63, 20-28 Maddox Street Alexandria, New South Wales- 2015, Australia, who has obtained registration of domain name DORMA.CO.IN.

5A Complainant(s)

5A(1) The First Complainant is a world leader in production and supply of door technology products and systems, including glass doors of all kinds; separation walls, movable walls and automatic door systems etc., which are marketed under the well-known brand, corporate name and the trade mark "DORMA".

5A(2) The First Complainant is the registered proprietor of the trademarks DORMA and many other marks, variants/combinations thereof, in Classes 6, 7, 9, 16, 19, 35, 37 & 42 in India. The trademarks are valid and subsisting on the records of the Trade Marks Registry.

Likewise the First Complainant is the registered proprietor of the trademarks DORMA in many jurisdictions across the world, *inter alia*, including European Union, International

Registration under Madrid Protocol, Germany, USA, Ireland, Australia, Hong Kong, and has been using the said marks in respect of its aforesaid goods and services, continuously and uninterruptedly on an extensive scale across the globe for more than 80 years now.

5A(3) The Complainant(s) submits that the word DORMA is not only a trade mark/brand of the Complainant but also the trading/corporate name of the Complainant widely recognized and internationally well known.

5A(4) The Complainant further submits that the term "DORMA" has no definite meaning in any of the languages and has no resemblance or significance to any geographical origin or Individual. It is coined and invented by the Complainant. Therefore the Complainant is the exclusive proprietor of the invented mark "DORMA".

5A(5) The Complainant(s) further asserts that by virtue of the extensive use of the word and said trademarks, since 1970 and the quality of goods and services provided over a period of time, the Complainant(s) has acquired considerable market share and created a niche in the market and class of customers. In the 2008-09 (June 30) fiscal, the Complainant(s) Dorma Group posted consolidated sales of €882.2 million.

Financial Year	Turn over details (In Million Euros)
2003	662.0
2004	647.9
2005	698.3
2006	766.4
2007	838.0
2008	893.9
2009	882.2

The turnover details of the Second Complainant(s) for the last 6 years is:

Financial Year	Sales (Net) Turn over In Rupees
2003 - 2004	18,87,74,772/-
2004 - 2005	24,00,09,750/-
2005 - 2006	47,88,37,361/-

2006- 2007	68,92,87,309/-
2007- 2008	1,04,99,50,729/-
2008- 2009	1,30,20,32,214/-

5A(6) The Complainant(s) submits that on account of extensive usage and promotions of the mark DORMA through various media including internet, the said mark DORMA is identified, recognized and associated only with the Complainant(s) and none other. The Complainant(s) also submit Statement of expenses towards advertisement **and** publicity spent by the First Complainant for the last 7 years.

Financial Year	Advertisement/publicity Expenses (In Million Euros)
2002-2003	16.3
2003 -2004	14.8
2004-2005	15.3
2005-2006	12.7
2006-2007	14.3
2007-2008	15.2
2008-2009	15.9

The Statement of expenses towards advertisement and publicity spent by the Second Complainant for the last 6 years is:

Financial Year	Advertising / Marketing Expenses In Rupees.
2003 - 2004	1,28,80,009/-
2004- 2005	3,11,02,977/-
2005- 2006	4,56,16,265/-
2006- 2007	5,04,57,674/-
2007 - 2008	11,96,06,688/-
2008-2009	12,26,36,348/-

5A(7) The Complainant(s) submits that they are proprietor and registrant of the domains DORMA.COM, DORMAINDIA.COM, DORMA.NET, DORMA.DE, DORMA.COM.AU, DORMA.BR, DORMAUSA.COM, DORMA.COM.CN, DORMA-GULF.COM, DORMA-UK.CO.UK and many others for its goods and services aforementioned.

5A(8) The Complainant(s) submit that there has been an ever-increasing demand of its goods and services by the public, trade, patrons and customers and the Complainant(s) has earned considerable revenues using the mark DORMA and its domain names. On an average in the year 2010, DORMA websites of the Complainant(s) on the internet has 16,37,978 number of visitors and Dorma India websites of the

Complainant(s) on the internet has 24,569 number of visitors. A recent search conducted on October 20, 2010 through the internet search engine Google for the word DORMA revealed 55,10,000 hits predominantly showing results of the ones belonging to the Complainant(s). By such continued efforts and huge investments of the Complainant(s), the said name and Trade Mark of the Complainant(s) has acquired a distinctive character and extensive use and the Complainant(s) has earned enormous reputation and goodwill in the market, globally, by use of the said mark and corporate name.

B. Respondent

5B (1)The Respondent has been given repeated opportunities to file his response to the Complaint by the panel by its notices dated November 10, 2010, November 16, 2010 & December 2, 2010.

5B(2) The Respondent has, however, failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant(s).

5B(3) The Panel, 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.

6. Discussions and Findings

6.1 The Complainant(s), while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference)



unless, the Arbitrator, in his sole discretion and as an exceptional circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant(s) on merit. However, in view of the fact that preliminary onus is on the Complainant(s) to satisfy the existence of all conditions under the policy to obtain the reliefs claimed, the panel feels it appropriate to deal with the averments made by the Complainant(s) in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

The Complainant(s) has filed evidence by way of Annexures 1 to 11 with the Complaint.

The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged.



- 6.5 The onus of proof is on the Complainant(s). As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <DORMA.CO.IN> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the annexures filed by the Complainant(s) along with the Complaint.
- 6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof, (see Section 58 of the Indian Evidence Act, 1872).
- 6.8 The Panel therefore accepts the case set up and the evidence filed by the Complainant(s) and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.9 Paragraph 10 of the Policy provides that the remedies available to the Complainant(s) pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant(s).
- 6.10 Paragraph 4 of the Policy lists three elements that the Complainant(s) must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant(s) or cancelled:

A. Identical or Confusingly Similar

- 6A.1 The Gomplainant(s) contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant(s) has rights.



6A.2 The Complainant(s) is the registered proprietor of the following marks in India:

#	Appl #	Class	Representation of Mark
1	740858	9	DORMA
2	740859	16	DORMA
3	740863	7	DORMA
4	740866	16	DORMA
5	740862	6	DORMA
6	740868	20	DORMA
7	740867	19	DORMA
8	740864	8	DORMA
9	740855	6	DORMA
10	740856	7	DORMA
11	740857	8	DORMA
12	740860	19	DORMA
13	740861	20	DORMA
14	1512626	6	
15	1471232	9	
16	1751028	6	DORMA XL-E [Packaging]
17	1751029	19	
18	1751030	37	
19	1751031	6	DORMA XL-C [Packaging]
20	1751032	7	
21	1751033	9	
22	1751034	19	
23	1751036	6	DORMA XL-P [Packaging]
24	1751038	9	
25	1751039	19	

Photocopy of the registration certificates have been marked as **Annex [6]** to the complaint.

The Complainant (s) are also the proprietor of the following trademarks in India which have been advertised in the Trade Marks Journal and are due Registration in its favour.

S#	App#	Class	Representation of mark	Status
1	1751035	37	DORMA XL-C [Packaging]	Published in TMJ 1426
2	1751037	7	DORMA XL-P [Packaging]	Published in TMJ 1426
3	1751040	37		
4	1751041	6	DORMA XL-E [Packaging]	
5	1751042	19		Published in TMJ 1445
6	1751043	37		

Copy of the journal extract has been marked as **Annex [6]** to the complaint.

The above apart, the following are the marks that are applied by the Complainant(s) for registration-

S#	App#	Class	Mark
1	1929647	6	
2	1929648	7	
3	1929649	9	



4	1929650	19	
5	1929651	37	
6	1929652	42	
7	1929653	6	
8	1929654	7	
9	1929655	9	
10	1929656	19	
11	1929657	37	
12	1929658	42	
13	1929659	35	DORMA CDP Services
14	1929650	37	DORMA CDP Services
15	1970555	6	DORMA XL-H [Packaging]
16	1970556	7	
17	1970557	9	
18	1970558	19	

6A.3 The Respondent's domain name is not distinctive and is not adaptable to distinguish his goods and/or services from those of the Complainant(s). The Respondent's domain name is phonetically, visually and conceptually similar to the trade marks, trade name and domain name of the Complainant(s). The Respondent's domain name is of such a nature, which would likely lead public to believe that the Respondent and the disputed domain name is either owned by the Complainant(s) or sponsored by or affiliated to the Complainant(s).

6A.4 The Respondent's domain name is nothing but an exact copy/imitation and/or arrangement/combination of the Complainant's corporate name, prior and registered said trademarks as well as domain names as a swap-link to the Respondent's sites for an identical and similar goods and services which would likely lead persons to believe that the goods and services are provided or rendered by the Complainant(s) and not by the Respondent, whose services they really are.

6A.5 There is absolutely nothing in the disputed domain name identifiable so as to belong to or be the proprietorship of the Respondent. The Respondent's domain name without any due cause are taking or would take unfair advantage of and/or be detrimental to the distinctive character and repute of the Complainant's earlier said trademarks, corporate name and domain names.

6A.6 The Respondent's domain name is liable to be prevented by Courts for unauthorized/deceptive usages of the Complainant's registered marks, corporate name, infringement and passing off of goods and services thereby by the Respondent.

6A.7 The Respondent is not the bonafide owner, honest adopter or true/actual user of the disputed domain name and has been created on being aware of the Complainant(s), their said trade marks, domain names and business so as to trade and unduly benefit under the Complainant's repute and goodwill. The Respondent has created and registered the disputed domain names subsequent to the Complainant's conception, adoption and usage of the said trademarks, service marks, business and domain names.

6A.8 The corporate name, said trademarks and domain names of the Complainant(s) are highly distinctive on account of their extensive use and patronages by public and customers as per the evidence on record. Under the circumstance, if the Respondent is allowed to continue/proceed to operate the website under the disputed domain names, the potential customers would be induced to-

- (a) Subscribe to the goods and services of the Respondent through the false facade of impugned website and deal with the Respondent believing it to be licensed or authorized by the Complainant(s);
- (b) Believe that the Respondent is carrying on activities that have been endorsed by the Complainant(s) and services/goods that are sought to be offered by the Respondent have the same level of quality and reliability that is synonymous with the Complainant(s).

6A.9 The Respondent has not disputed any contentions raised by the Complainant(s) in the Complaint. The Panel also find and hold that the disputed Domain Name DORMA.CO.IN is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant(s). The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion to deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name DORMA.CO.IN is identical and/or confusingly similar to the trademark DORMA of the Complainant(s).



B. Rights or Legitimate Interests

- 6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.
- 6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:
- 6B.3 The Respondent registered the disputed domain name in June 2009. At this time, the Complainant(s) already had built enormous repute in its mark DORMA and had been actively using the domain names mentioned above which can be accessed from any corner of the world. There is no reason whatsoever for the Respondent to adopt and/or register in his name a similar domain for doing similar kind of business as that of the Complainant(s) else in absolute malafide to benefit from the Complainant's goodwill and repute.
- 6B.4 Respondent has fraudulently and with *malafide* intentions registered the disputed domain name DORMA.CO.IN and routed/redirected them to the actual website of the Respondent viz., LINOX.COM.AU. Copy of the Page source of the impugned domain DORMA.CO.IN, the details of redirection/squatting of the domain to the Respondents actual website has been marked as **Annex [11]** to the complaint.
- 6B.5 The contents in Respondent's domain name LINOX.COM.AU routed / swapped through the disputed domain name DORMA.CO.IN, also convey the similar purpose for which the complainant has launched their domain name.
- 6B.6 The Respondent's registration and use of the disputed domain name is a clear case of cyber squatting, whose intention is to take advantage of the Complainant's substantial reputation and goodwill in order to confuse the public and the viewer by offering similar goods and services as that of the Complainant(s), divert business, tarnish the repute and goodwill of the Complainant(s) and the said marks and unduly gain in all aspects to the detriment of the Complainant(s).
- 6B.7 The Respondent did not dispute any of the contentions raised by the Complainant(s) in its Complaint. The case set up by the Complainant(s)



is deemed to be admitted as not disputed by the Respondent. The Panel also find, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.8 The Panel, therefore holds that the circumstances listed above demonstrates rights or legitimate interests of the Complainant(s) in the domain name DORMA.CO.IN and holds that Respondent has infringed the rights of the Complainant(s) by registering the Domain Name and has no legitimate right or interest therein.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of our 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 you have 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 website or Other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".



- 6C.3 The Complainant(s) state that at the time of creation and registration of the disputed domain name by the Respondent, the Complainant(s) had already a well established presence internationally as well as in India in respect of door control technology, architectural products, movable walls, automatic door system and related services.
- 6C.4 The Respondent has not been authorized, licensed or otherwise consented by the Complainant(s) to use the mark DORMA or seek any sort of registration incorporating the said mark and name of the Complainant(s) or carry on business under the well known name and brand of the Complainant(s) in any manner whatsoever.
- 6C.5 Being in the similar and identical area of business, it is obvious that the Respondent was aware of the Complainant(s), their said mark, their said domain name and the reputation, recognition, patronage and goodwill that the Complainant(s) has achieved Worldwide including in Australia where the Respondent carries on business and has subsequently adopted the disputed domain name.
- 6C.6 The registration of the domain name and its subsequent use by the Respondent is for the purpose of defrauding the public. An entry hit on the disputed domain name immediately switches over/swaps to actual website of the Respondent viz., LINOX.COM.AU which displays the same kind of products and services as that of the Complainant(s). The registration of the Domain Name and its subsequent use by the Respondent is a deliberate attempt by the Respondent to attract, divert for commercial gain internet users, customers and trade to the disputed website by creating confusion with Complainant's mark, corporate name and domain name DORMA such that the public would in all likelihood falsely believe that the disputed domain name is owned or sponsored, endorsed or authorized by or in association with the Complainant(s) or that the Complainant(s) has come out in that part of the world as that of the Respondent's LINOX products and services for similar kind goods and services.



The Complainant(s) believes this has been done solely for fraudulent purposes.

6C.7 To the best of the Complainant's knowledge, the Respondent has not registered the mark or name DORMA or any variation thereof with the Trade Marks Registry in India or Australia where the Respondent carries on business prior to the date upon which the disputed domain names was registered and even if the same be made, there is no *bonafide* in such applications/registrations in lieu of what is stated hereinabove. Neither does it appear that the Respondent is commonly known by the mark or name DORMA or any variation thereof prior to the Complainant(s).

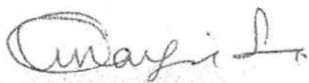
6C.8 The Respondent does not dispute any of the contentions raised by the Complainant(s). The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name DORMA.CO.IN was registered by the respondent in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

6C.9 The panel accepts the contentions of the Complainant(s) as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **Decision**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

- A. Transfer of the domain name DORMA.CO.IN to the Complainant(s).
- B. Respondent pay the Complainant(s) cost of Rs.25,000/- in the above proceedings.


AMARJIT SINGH
Sole Arbitrator

Dated: 6th January, 2011