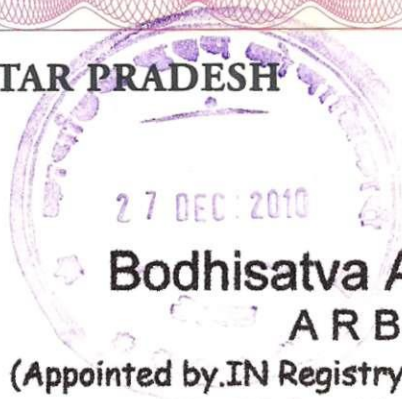


उत्तर प्रदेश UTTAR PRADESH

AL 472761



Bodhisatva Acharya
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)
Case No. Of 2010

ARBITRATION AWARD: DISPUTED DOMAIN NAME: www.dormaindia.in

In the matter of:

Dorma GmbH+Co.KG,

Dorma Platz 1,

D-58256 Ennepetal, Germany

E-mail: frank.thomas@dorma.com (complainant-1) and

Dorma India Private Limited,

No.14, Pattullous Road,

Chennai-600 002, India

E-mail: vr.ramesh@dormaindia.com (complainant-2),

Filed by its authorized Attorney

Kalyan Jhabakh,

Surana & Surana International Attorneys,

International Law Centre,

61-63, Dr. Radhakrishnan Salai, Mylapore,

Chennai-600 004, India,

E-mail: iplaw@lawindia.com .

.....Complainants.

Vs.

Mr. STEVEN POLGAR,
M/S Linox Technology Pty Ltd.
Suit 63, 20-28 Maddox Street
Alexandria, New South Wales-2015
AUSTRALIA.
E-mail: steven@linox.com.au

.....Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is Dorma GmbH+Co.KG, Dorma Platz 1, D-58256 Ennepetal, Germany, E-mail: frank.thomas@dorma.com (complainant-1) and Dorma India Private Limited, No.14, Pattullous Road, Chennai-600 002, India, E-mail: vr.ramesh@dormaindia.com (complainant-2), and filed by its authorized Attorney Kalyan Jhabakh, Surana & Surana International Attorneys, International Law Centre, 61-63, Dr. Radhakrishnan Salai, Mylapore, Chennai-600 004, India, E-mail: iplaw@lawindia.com.

Respondent in this arbitration proceeding is Steven Polgar, M/S Linox Technology Pty Ltd. Suit 63, 20-28 Maddox Street Alexandria, New South Wales-2015, AUSTRALIA. E-mail: steven@linox.com.au

The Domain Name, Registrar & Registrant:

The disputed domain name is www.dormaindia.in

3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name www.dormoindia.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Mr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The complaint was produced before the Arbitrator and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 23rd, 2010, to submit his reply but the Respondent didn't give any attention then again the Arbitrator sent his Second notice on December 8th, 2010 to Respondent to submit his reply but the result was same as before hence the AWARD is being declared on the December 30th, 2010 as Ex-parte.

4. Factual Background:

- (A) The first complainant is an old incorporated company under the laws of GERMANY by the "DORKEN & MANKEL KG" in the year 1908. Later in 1970 Dorken & Mankel **KG** was *renamed* as DORMA GmbH+Co and continues the business under the brand name and trade mark DORMA worldwide in the field of production and supply of Door Technology Glass Doors of all kinds, Separation Walls, Movable Walls and Automatic Door System etc. . . . The first complainant is doing business Worldwide under the trade mark DORMA from more than 100 years with 71 wholly owned companies in 47 different countries worldwide. The first complainant has secured many patents worldwide for its technology and by the excellent quality in goods and service, trust and customer's satisfaction the complainant has earned a great reputation and goodwill in the market worldwide and for this the complainant has been awarded by many priceless AWARDS worldwide.



- (B) The second complainant is a subsidiary of the first complainant in INDIA and establishes the business to produce and supply the door products of all kinds, Separation Walls, Movable Walls and Automatic boor system etc... under the trade mark DORMA and The second complainant has been authorized to use of the brand and trade mark DORMA by the first complainant.
- (C) The first complainant is the registered owner of the trade mark of DORMA and many other trade marks thereof in classes - 6, 7, 9, 16, 19, 35, 37 & 42 in India. DORMA is not only a trade mark or brand of complainant duo but also it's an international recognition for them.
- (D) When the complainants came to know about the illegal uses of the trade mark DORMA by the Respondent then the complainant sent a cease and desist notice regarding the use in bad faith of trade mark DORMA on November 28th, 2009 and respondent had received the same on December 9th, 2009 but the Respondent had replied nothing to complainant and hence the complaint was filed for Arbitration proceeding on October 21st, 2010 by its authorized attorney.

5. Parties Contentions:

- (a) Complainant contends that
- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and



- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

Under the Paragraph 4 of the Policy (INDRP) Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right.
- (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 with bad faith

After having gone through the records, documents, produced by the Complainant, **Arbitrator's findings** are:

- (i) That the Respondent's performance was clearly *ab initio* in **bad** faith because he **received the complainant's** notice on December 9th, 2009, and he never replied to complainant regarding the similarity of the disputed domain name and he never replied to Arbitrator also in this arbitration proceeding therefore it is proved his intention is wrong and he is not clean hand and it also proved that the name, trademark or mark in which the Complainant has right, the Registrant's domain name is identical or confusingly similar to the Complainant's Mark and has been registered or being used in bad faith,




- (ii) That the Name/Mark www.dormainciia.in is distinctive unique and has reputation worldwide and the mere mention of the said Mark establishes an identity and connection with Complainant and none else.
- (iii) The Complainant duo own all the rights in the said Mark and the Complainants incurred also a huge expenses worldwide therefore Complainant is entitled to protection for the aforesaid Mark, and
- (iv) The Complainant has proved all the aforesaid premises as mentioned in Paragraph 4 of Policy in his favor and he has produced all the documentary proof in his favor to satisfy the Arbitrator.

7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.dormaindia.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and **orders** that the domain name www.dormaindia.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI 30/12/2010

DATED: November 30TH, 2010,
PLACE: NEW DELHI,
INDIA.

