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BEFORE THE SOLE ARBITRATOR UNDER THE  
.IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF

AB Electrolux  
St. Goransgatan 143  
105 45 Stockholm  
Sweden

The Complainant

Vs.

GROUPFIELD FAR EAST LIMITED  
Guanrui  
ROOM 403,  
NO. 29 SHANXI STREET,  
999077  
HongKong

The Respondent

*Handwritten signature in blue ink.*

### **THE PARTIES**

The Complainant in this proceeding is AB Electrolux, St. Goransgatan 143, 105 45 Stockholm Sweden.

The complainant's authorized representative in the administrative proceeding is:

Cecilia Borgenstam  
Melbourne IT Digital Brand Services  
Salmatargatan 7  
SE – 113 59 Stockholm, Sweden.

The respondent in this proceeding is GROUPFIELD FAR EAST LIMITED, Guanrui, ROOM 403,  
NO. 29 SHANXI STREET, 999077, HongKong.

### **THE DOMAIN NAME, REGISTRAR AND REGISTRANT**

The disputed domain name is <www.aeg-electrolux.in>.

The Registrar for the disputed domain name is Public DomainRegistry.com / A to Z Domains Solutions Pvt. Ltd.

The Registrant is GROUPFIELD FAR EAST LIMITED, Guanrui, ROOM 403, NO. 29 SHANXI STREET, 999077, HongKong.

### **PROCEDURAL HISTORY:**

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.aeg-electrolux.in>.

.In Registry has supplied the copy of the Complaint to me.

On March 3, 2012, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the same email, I requested the complainant to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

On March 5, 2012, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant.





The Respondent failed to file his say/ reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and Annexure/ documents.

**FACTUAL BACKGROUND:**

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

The Complainant in the proceedings is AB Electrolux, is a Swedish joint stock company founded in 1901 and registered as a Swedish company in 1919. AB Electrolux is a world leading producer of appliances and equipment for kitchen and cleaning. Electrolux is also one of the largest producers in the world of similar equipment for professional users. Electrolux is a global leader in home appliances and appliances for professional use, selling more than 40 million products to consumers in 150 countries every year including India.

Electrolux products include refrigerators, dishwashers, washing machines, vacuum cleaners and cookers sold under esteemed brands such as ELECTROLUX, AEG, AEG-ELECTROLUX etc.

The Complainant has spent a considerable amount of money promoting its brand "ELECTROLUX" and "AEG" worldwide. The complainant has a huge annual turnover and many millions are spent on advertising and establishing the brand "ELECTROLUX" and "AEG" worldwide.

The marks "ELECTROLUX " and "AEG" have due to extensive and long term use on products and services of the Complainant and in connection therewith has registered the trademarks in several classes in more than 150 countries all over the world. The marks "ELECTROLUX" and "AEG" were registered long before the registration of the disputed domain name.



### **PARTIES CONTENTIONS:**

Complainant:

The Complainant contends as follows:

The respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.

The respondent has no rights and legitimate interest in respect of the domain name.

The Respondent has registered and is using his domain name in bad faith.

Respondent:

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

### **DISCUSSIONS AND FINDINGS:**

As earlier pointed out; the Respondent has failed to file any reply to the Complainant and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case "*.

As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted ex parte.

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

In the present circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Arbitrator is convinced that the Complainant has proved that he has statutory and common law rights in the mark "Electrolux".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.





- (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.

**BASIS OF FINDINGS:**

**The Registrant's Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complaint has rights:**

The Complainant has stated <www.aeg-electrolux.in> is confusingly similar and identical to his trademarks "ELECTROLUX" and "AEG". The Complainant has submitted that his marks "ELECTROLUX" and "AEG" are registered and used in many countries including India. Thus the Complainant has the right over the names "ELECTROLUX" and "AEG" and Respondents domain is also confusingly similar to it.

It is alleged by the Complainant that the disputed domain name is identical to the Complainant's trademark except for the country code top level domain name ".in" identifier. The Complainant has relied upon the award of *Morgan Stanley vs. Bharat Jain, INDRP case No. 156 dt. October 27, 2010*.

Thus the conclusion is that the domain name of the Respondent is identical and confusingly similar to the Trademark of the Complainant as the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

**The Registrant has no rights or legitimate interests in the respect of the domain name:**

The Tribunal determines that the Complainant has made positive assertions and concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the subject domain name. Hence, the burden shifts on the Respondent to prove that it has rights or legitimate interests in the subject domain name. Whereas the Respondent has not discharged the onus positively, which had shifted upon him as the Respondent has not responded to any of the allegations raised by the Complainant in its Complaint.

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

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- i. *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- 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.*

The Complainant has contended that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it. It is further alleged that the Complainant has not given any authorisation to the Respondent to use the Complainant's mark.

The Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

The Complainant has further stated that Respondent is neither commonly known by the disputed name, nor it is a personal name. The Complainant has further contended that Respondent is not engaged in any business or commerce under the domain name.

The Respondent has not shown or given any evidences to prove that it is commonly known by the disputed domain name and hence does not have any right or legitimate interest in the disputed domain name.

The Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name. According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain. The sole purpose of the Respondent is to divert Internet users to its web site. It is alleged that the Complainant's mark have been registered in many countries and can be termed as well recognised trademarks, hence there is very less possibility of the fact the Respondent was not aware of the trademarks of the Complainant prior to registration of the disputed domain name.

The Tribunal concludes that the above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexure establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



**The Registrant domain name has been registered or is being used in bad faith:**

The Complainant has contended that via an email the Respondent was requested to cease the use of the disputed domain name and immediately transfer to the Complainant. The Respondent offered to transfer the disputed domain name and transfer it "only" 2590 USD. The Complainant offered to reimburse USD200 to the Respondent but the said offer was refused by the Respondent.

The Complainant argues that the Respondent was aware of the Complainant's brand and tried to create a likelihood of confusion by registering domain name that is identical to the trademark in which the Complainant has rights.

The Complainant further alleges that the Respondent has registered the domain name which is currently connected to a website with displaying a competitors brand and only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Tribunal is of the view that the above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has registered the disputed domain name in bad faith under INDRP paragraph 4(ii).

**DECISION:**

In the view of the above facts and circumstances it is clear that the Complainant has succeeded in his complaint. The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. < **www.aeg-electrolux.in** > to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this day of 6<sup>th</sup> August, 2012.



**Rajeev Singh Chauhan**

**Sole Arbitrator**

**Date: 06.08.2012**