



सत्यमेव जयते

INDIA NON JUDICIAL

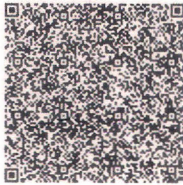
Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL90192514064136U  
Certificate Issued Date : 20-Sep-2022 11:06 AM  
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH  
Unique Doc. Reference : SUBIN-DLDL-SELF60338606254283U  
Purchased by : SANJEEV CHASWAL  
Description of Document : Article 12 Award - Movable  
Property Description : FLAT NO 6C SKYLARK APP TTS, SFS DDA FLATS P ENCLAVE GAZIPUR  
Consideration Price (Rs.) : 100  
(One Hundred only)  
First Party : SANJEEV CHASWAL  
Second Party : NA  
Stamp Duty Paid By : SANJEEV CHASWAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)

₹100



SELF PRINTED CERTIFICATE TO BE  
VERIFIED BY THE RECIPIENT AT  
WWW.SHCILESTAMP.COM

IN-DL90192514064136U

Please write or type below this line

IN THE MATTER OF ARBITRATION  
COMPLAINT NO 1586 OF  
ALSTOM GROUP. CO. IN.

*[Signature]*  
Arbitration

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.

**INDRP ARBITRATION  
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]  
ADMINISTRATIVE PANEL PROCEEDING  
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name**

**< alstomgroup.co.in>**

**and in the matter of INDRP case no : 1586**

**Alstom**

**48 rue Albert Dhalenne,**

**93400 Saint-Ouen,**

**France**

**.....**

**Complainant**

**Vs.**

**Mr. Santhosh Thomas**

**ALSTOM TRANSPORT INDIA LIMITED**

**No 65/02 Embassy prime building**

**5th floor CV Raman Nagar, Bangalore**

**Karnataka 560093**

**naveen.jankalaiah@gmail.com .....**

**Respondent**

**ARBITRATION AWARD**

**Disputed Domain Name: < alstomgroup.co.in>**



That NIXI have appointed the undersigned as sole arbitrator pursuant to the complaint filed by the complainant M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France represented through its representative in India, by invoking this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name <*alstomgroup.co.in*> against the Registrant / Respondent Mr. Santhosh Thomas Alstom Transport India Limited. No 65/02 Embassy prime building 5th floor CV Raman Nagar, Bangalore, Karnataka 560093 managed by its admin: naveen.jankalaiah@gmail.com

The Complainant in the proceedings is M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, and is responsible for the optimization of IP assets and providing connecting to support innovation and new business, opportunities for Philips and other companies. It is pertinent to note that Philips, the Complainant, has business operations in over 100 countries across the globe, including India.

The Registrant / Respondent, who had registered domain name <*alstomgroup.co.in*> through the IN. registry registrar M/s. Tucows Inc., the office address and other details of the Registrant / Respondent are withheld by registrar through invoking “REDACTED FOR PRIVACY ” as

A handwritten signature in black ink, appearing to be 'Sg' or similar, located below the text.

its details were not available earlier in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France has filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent for registering domain name illegally but as a matter of fact a identity theft and thereby claiming a relief of transferring the registered domain name **<alstomgroup.co.in>** from the Respondent / Registrant to the Complainant herein.

The NIXI has provided the WHOIS records to the sole arbitrator on its initial proceedings that contains the name address and other details of the Registrant / Respondent and the same is being incorporated by the undersigned arbitrator for issuance of the notice in this domain complaint at first instance.

That after entering upon as sole arbitrator in the above said arbitral reference, as such, the undersigned had issued the 1<sup>st</sup> notice by way of directions to the complainant and the Registrant / Respondent herein on

A handwritten signature in black ink, appearing to be 'S. S.', with a stylized flourish at the end.

Dated 8th of August 2022 to comply issued directions as stated herein in the notice under time bound manner, as prescribed under the INDRP ARBITRATION rules and Procedures.

## **1. The Parties:**

1.1 The Complainant in this arbitration proceeding is M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France, company incorporated and existing under the laws of The France, who has invoked this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name < *alstomgroup.co.in* > against the Registrant / Respondent address details of which is provided to sole arbitrator by the WHOIS database maintained by the National Internet Exchange of India [NIXI].

## **2. The Domain Name and Registrar:**

2.1 The disputed domain name < *alstomgroup.co.in* > \_ is registered by the IN. registry registrar M/s “REDACTED FOR PRIVACY” the registrar has withheld address and other details of the Registrant / Respondent, as such address details of the Registrant / Respondent were not available in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France has approached



NIXI for availability of the address of the Registrant / respondent herein and further filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent,

### **3. Arbitration Proceedings Procedural History:**

3.1 This is a mandatory arbitration proceeding 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] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the 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:

3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder.



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

**As per the information received from NIXI, the history of the proceedings is as follows:**

3.3 The present Arbitral Proceedings have commenced on 8th of August 2022 by issuing of 1<sup>st</sup> notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully served by the complainant to the Respondent / Registrant through email.

3.4 Further as per the issued Notice to the Respondent / Registrant was directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by **23<sup>rd</sup> of August 2022**, failing which the Complaint shall be decided on the basis of the merits. The respondent / registrant namely having Mr. Santhosh Thomas Alstom Transport India Limited. No 65/02 Embassy prime building 5th floor CV Raman Nagar, Bangalore, Karnataka 560093





had failed to submit reply, or any detail statement in the above arbitral reference even after receipt of notice of 8th of August 2022 through email address as sent under rule 5(c) of INDRP Rules and procedure for submission reply, detail statement, if any, on or before is 23rd of August 2022,

3.5 As per available email record placed before the sole arbitrator, the sole arbitrator is of considered view that the respondent / registrant was duly served through listed email address and despite of receipt of this notice the Registrant / Respondent had failed to submit its reply to the sole arbitrator panel office by 23rd of August 2022.

3.6 The Registrant / Respondent reluctance to file reply, clearly proves that the respondent / registrant was not interested in pursuing the present arbitration proceedings, as such the sole arbitrator had on vide its order dated 29th of August 2022 foreclosed the right of the respondent / registrant of filing of reply and proceeded with deciding of this domain dispute complaint < alstomgroup.co.in> solely on merits.

#### **4. Factual Background:**

4.1 The Complainant in these administrative proceedings is M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France,, by invoking this administrative domain arbitration proceeding through it authorized signatory, in respect of domain name < *alstomgroup.co.in*> against the Registrant / Respondent





## **5 .Parties Contentions:**

5.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name < ***alstomgroup.co.in***> illegally.

5.2 The Registrant / Respondent had failed to submit its reply or detailed statement to the sole arbitrator panel within 15 days of the issued notice but had also had failed to comply directions of the said notice as well.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name < ***alstomgroup.co.in***> is stated as under:

### **A. Complainant Grounds for proceedings**

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.***
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.***
- III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.***



The Complainant submits its detailed contentions in their complaint that are described in details as under:

**I) Background of the Complainant and its statutory and common law rights related prior Adoption and use:**

5.4 The complainant is a M/s. Alstom, 48 rue Albert Dhalenne, 93400 Saint-Ouen, France is the owner of the 'ALSTOM' trademarks is registered proprietor of the well-known trademark 'ALSTOM'.

5.5 The Complainant, the Complainant uses in connection with its products and services. The Complainant, Alstom is a company existing under the laws of France and is a leader in the field of integrated transport systems offering efficient and sustainable mobility solutions. The Complainant also offers a complete range of solutions in the rail infrastructure industry ranging from high-speed trains to metros, tramways and e-buses, passenger solutions, customized services such as maintenance and modernization, infrastructure, signalling and digital mobility solutions.

5.6 The Complainant, Alstom enjoys a prominent presence in 70 countries around the world and is a renowned player in the transport systems industry. Further, the Complainant employs over 74,000 individuals from all over the world,

A handwritten signature in black ink, appearing to be 'S. G.' or similar, with a stylized flourish.

who have been working in over 250 sites across 70 countries. The Complainant is recognized all over the world for its high-quality goods and services and has also been certified as a “Top Employer” in many countries including India. The above further highlights the extent to which the Complainant has been renowned under the ALSTOM marks.

5.7 The Complainant has also set up an Engineering Centre of Excellence in Bangalore, India and continues to gain immense goodwill and reputation among the Indian public. Furthermore, the Complainant also established a state-of-the-art manufacturing facility in Sricity, Andhra Pradesh that manufactures rolling Stock for Montreal and Sydney metro lines, an electric locomotive factory for manufacturing and supply of 800 units of high horse-power locomotives at Madhepura in Bihar, maintenance depots in Uttar Pradesh and Maharashtra. The Complainant employs over 9000 Indian employees across its 6 manufacturing sites and 2 maintenance depots that have manufactured over 100 metro train sets in India

## **II) Complainant's Claim of Statutory Rights:**

5.8 The Complainant the Complainant had, at least from 1990, adopted variants of ALSTOM marks in India (even earlier globally) and has been using it extensively and continually for its products and services across the globe including India.



Due to the impeccable reputation of the Complainant around the world, the word “ALSTOM” is associated solely with the Complainant and no one else. Moreover, the Complainant’s prior registered the domain alstom.com which features extensive information about the products and services offered by the Complainant.

5.9 The Complainant’s registrant of numerous domain names under various generic and country code TLDs reflect its trademarks, including with the words “Alstom group”. Some domains registered by the Complainant are:

- <alstomgroup.com> registered since November 14, 2000
- <alstomgroup.net> registered since June 2, 2017
- <alstomgroup.fr> registered since June 2, 2017
- <alstomgroup.eu> registered since November 24, 2018
- <alstom.com> registered since January 20, 1998
- <alsthom.com> registered since June 20, 2000;
- <alstom.ru> registered since April 28, 2009;
- <alstom.cn> registered since July 7, 2004;
- <alsthom.cn> registered since May 24, 2006;
- <alstom.co.uk> registered since June 15, 1998;
- <alstom.org> registered since April 1, 2000;
- <alstom.net> registered since April 1, 2000;

A handwritten signature in black ink, appearing to be a stylized 'S' or 'G' followed by a flourish.

- <alstom.info> registered since July 31, 2001;
- <alstom.biz> registered since November 19, 2001;
- <alstom.eu> registered since April 1, 2006;
- <alstom.mobi> registered since June 12, 2006;
- <alstom.tv> registered since August 20, 2013;

5.10 The Complainant's domains and their corresponding websites also have country specific pages for the multiple countries in which the Complainant is present. The domain [www.alstom.in](http://www.alstom.in) specifically leads to the India specific page of the Complainant which provides extensive information about its products and services in India. The Complainant, per se known as ALSTOM is thus popular, owing to the laudable promotion, has been thriving in the market for decades together.

5.11 The Complainant is a prior adopter, of its trade name / mark and is identified by the purchasing public exclusively with the Complainant as such it has acquired an enormous goodwill in several countries across the globe including India. On account of the high degree of inherent and acquired distinctiveness, which the mark 'ALSTOM' is possessed of, the use of this mark or any other identical or deceptively similar mark, by any person other than the Complainant, would result in immense confusion and deception in the trade leading to infringement, passing off.



5.12 The Mark ALSTOM has grown immeasurably in India for over a century now and has established manufacturing sites at Karnataka, Andhra Pradesh, Tamil Nadu and many more, and has undertaken several prestigious projects in India such as signalling for Kolkata Metro in 1990, first Indian metro signalling contract in India from Delhi Metro SYS01 in 2001, AFTC Contracts in Central, Western & Southern railways from 2001 to 2004, Bengaluru metro signalling contract in 2009, Chennai Metro Rail project in 2010, Jaipur metro signalling contract in 2011 and ALSTOM rolled out its 100th metro train set in India in 2019. The city of Kochi in India operated a 100% metro fleet custom built at ALSTOM's state of the art facility in Sricity. In 2016, the Complainant won an award for 'Excellence in Make-in-India' category at the Metro Rail Asia Summit 2016.

***I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.***

5.13 The Complainant is Prior adopter and user and proprietor of the trademark 'ALSTOM' by virtue of priority in adoption, long, continuous and extensive use and advertising and the reputation consequently running thereto in the course of trade. The Complainant is the registered proprietor of the ALSTOM In addition to the Indian registrations,



the Complainant, also owns registrations for ALSTOM trademarks in India has exclusively used 'ALSTOM' as a trademark, so that it is uniformly perceived as indicative of the source of the products/services emanating from the Complainant and its associated companies.

5.14 That the impugned domain name < alstomgroup.co.in > is visually and phonetically identical and/or confusingly similar to the Complainant's trademark 'ALSTOM' in which the complainant has statutory as well as common law rights. The Respondent has registered the domain name <alstomgroup.co.in> that solely incorporates in its entirety the Complainant's reputed trademark 'ALSTOM' to just to cause confusion and deception in the minds of the public.

5.15 In addition to the common law rights that have accrued to the Complainant in the trademark 'ALSTOM' by virtue of the aforesaid laws, the Complainant is also the registered proprietor of the trademark 'ALSTOM' in many classes under the Trade Marks Act, 1999 in India in relation to a diverse range of goods and services. The Complainant is registrants of various domain names containing its trade/service mark containing 'ALSTOM'.

5.16 The Complainant also wins trademark registrations for the mark 'ALSTOM' as well as various 'ALSTOM' figurative marks in around 21 countries besides India.





The said trademark registrations as solely exist in favour of the Complainant around the world. The Complainant, its group of companies, its subsidiaries, and the companies promoted by it are the proprietors of the trademark 'ALSTOM' formative marks. By virtue of the said registrations, the Complainant has the exclusive right to use the trademark 'ALSTOM' in relation thereunder and to obtain relief in respect of the infringement of its registered trademarks.

5.17 The Complainant has been using the ALSTOM marks continuously for its products and services, not only in India but across the globe. Due to the impeccable reputation of the Complainant around the world and in India, the mark ALSTOM is exclusively associated with the Complainant and any unauthorized use of the ALSTOM mark or any mark deceptively similar to the same would cause the public to believe such use has been authorized or is associated with the Complainant in some manner. The Respondent's unauthorized registration merely possesses a varied country code Top Level Domain ("ccTLD") and is a blatant imitation of the Complainant's ALSTOM marks and its domain. As stated earlier, the Complainant considers its intellectual property to be of great value and has always striven to protect it. In fact, the Complainant had previously initiated INDRP proceedings against similar domains such as [www.alstomgroup.in](http://www.alstomgroup.in) and [www.alstom.co.in](http://www.alstom.co.in) and was successful in receiving a favourable arbitral award.

5.18 The Complainant is the registered proprietor of the many marks world over having word per se ‘ALSTOM’. The Complainant submits that as the domain name is < **alstomgroup.co.in**> is clearly identical / confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

5.19 As a result of the continuous and extensive use of the Complainant's trademark 'ALSTOM' over a long period spanning a wide geographical area coupled with extensive advertising publicity, the said trademark enjoys an unparalleled reputation and goodwill and has acquired the status of a “well-known” trademark. It is submitted that a reputed and well-known trademark embodies an aura of pre-eminent excellence and is recognized irrespective of the class of goods or services for which it is used and text the Complainant's trademark ‘ALSTOM’ wholly qualifies for this distinction.

5.20 The disputed domain name is confusingly and deceptively similar to the Complainant's ALSTOM trademarks and its trade name, which have been extensively and continually used in numerous countries including India for many years. The Respondent has registered the domain name which comprises, the significant part of the Complainant's trademark ALSTOM. It is pertinent to note that the Complainant has registered various domains



that include the words “Alstom” and “alstomgroup” which would further undoubtedly lead the public to perceive the disputed domain to =be associated to the Complainant. Additionally, the fact that the disputed domain consists of the word “group” following the registered ALSTOM trademark of the Complainant would only cause further deception as the use of the term group implies that the domain belongs to the ALSTOM Group of entities which is an absolute misrepresentation of facts and is deceitful. Further, the word element “ALSTOM” of the disputed domain name [www.alstomgroup.co.in](http://www.alstomgroup.co.in) is a colourable imitation of the term ALSTOM by which the Complainant is widely and popularly known, which is further substantiated by the fact that ALSTOM is registered trademark of the Complainant.

In *M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. (2004 (5) SC 541)*, it was held that “Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain name also. In modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol.”

In *LEGO Juris A/S v. Robert Martin, INDRP/125 (2010)*: “It is well-recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant’s registered mark.”



n Starbucks Corporation vs. Mohanraj, INDRP/118 (2009): “Domain name wholly incorporating a complainant’s registered trademark may be sufficient to establish identity or confusing similarity, despite addition of other words to such marks.”

In *Alstom v. Zahir Khan, Palki Event Inc. [Case No. D2017-1124]*, the Panel observed that “the Complainant is well known in the electrical infrastructure and power generation industry”. Thus, it is inconceivable that the Respondent was unaware of the globally well-known ALSTOM.

Further in *ALSTOM v. Ahmed El Shaweesh, DnArab.com [Case No. D2019-1796]*, the Panel observed that “The extension “.com” is considered as a technical element and has consequently no distinguishing effect.” Likewise, in this scenario, the disputed domain “alstomgroup.co.in” not only consists of the Complainant’s

***II) The Respondent has no rights or legitimate interests in respect of the disputed domain name***

5.21 The Complainant is the sole proprietor of the ‘ALSTOM’ trademarks and provides products and services under the mark ‘ALSTOM’ globally, including India. Consequently, the Complainant has garnered immense goodwill and reputation under the ‘ALSTOM’ trademark and the same is distinctive to the Complainant.



Moreover, the disputed domain name is confusingly identical to the ‘ALSTOM’ trademarks in which the Complainant enjoys substantial reputation and goodwill. The continuous and extensive usage of the ‘ALSTOM’ trademarks by the Complainant and the subsequent registrations confers the Complainant with an undisputed ownership and exclusive legal right to use the ‘ALSTOM’ trademarks. Hence, the Respondent has no right or legitimate interest with respect to its use of the disputed domain name.

5.22 The Complainant further submits that any person or entity using the mark ‘ALSTOM’ as a domain name that too with related keyword referring to its corporate name ‘ALSTOM’ is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant and lead to confusion and deception. It is indeed extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. [*Daniel C. Marino, Jr. v. Video Images Productions, WIPO-D2000-0598*].

5.23 The Respondent / Registrant was never authorised by the Complainant to register the impugned domain name <*alstomgroup.co.in*> hold the domain name or make use of its ‘ALSTOM’ Trademark in any manner.



The Domain Name registered by the Respondent / registrant is clearly intended to “pass off” and have a free ride on its reputation and goodwill. Undoubtedly, the Respondent is deliberately trying to portray a connection between the disputed domain name and the Complainant, through the domain name.

5.24 The disputed domain lacks a functional website, and the Respondent has merely squatted on the domain with an intention to take unfair advantage of the Complainant’s global reputation and goodwill. Furthermore, the disputed domain name is deceptively and confusingly similar to the ALSTOM trademarks, in which the Complainant enjoys substantial reputation and goodwill. Thus, the Respondent clearly can have no legitimate interest in the disputed domain name, which is nothing but a mere duplication of the Complainant’s prior, registered and well-recognized ALSTOM trademarks.

5.25 The Complainant is required to make a prima facie case that the Respondent lacks rights or legitimate interest in the domain name at issue. When the complainant establishes a prima facie case that the Respondent lacks rights or legitimate interest in a domain name, then total burden shifts to Respondent to rebut Complainant’s contentions. If Respondent fails to do so, Complainant is deemed to have satisfied the second element. In the present case, the Respondent cannot demonstrate or establish any rights or legitimate interest in the infringing domain name.

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' followed by a flourish.

5.26 The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark **VELCRO**, in order to capitalize / profit from the goodwill associated with the famous mark. *Similarly in the INDRP matter of Velcro Industries B.V. v. Velcro Technologies [INDRP/858; Velcro Technologies.in]: "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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but has been parked with the Domain Registrar, Go Daddy LLC only. It has been held that merely registering the domain name is not sufficient to establish rights or legitimate interests. [Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO-D2000-1244].*

5.27 The Respondent's act of registering the impugned domain **www.alstom .in** of which the Complainant's trade / service mark '**ALSTOM**' forms a conspicuous part, is an infringement of the Complainant common law and statutory rights as it is vested in its registered and well-known mark '**ALSTOM**'. There can be no plausible explanation for the use of the mark '**ALSTOM**' by the Respondent as the said trade service mark of the Complainant is t coined and invented term.





5.28 The Respondent using illegally the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade 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- D2005-0321 – mtvbase.com*].

5.29 There can be no plausible explanation for the registration and use of the impugned domain name < alstomgroup.co.in> by the Respondent as the trademark /service mark '**ALSTOM**' of the Complainant, which is exclusively used by the complainant, its group companies, subsidiaries. As previously stated, the Complainant owns and has registered several domain names containing the '**ALSTOM**' trademarks prior to that of the Respondent, including identical domain names bearing the words "Alstom".

A handwritten signature in black ink, appearing to be 'Sg' or similar, with a stylized flourish.

Hence, it is likely that the Respondent was interested in obtaining the disputed domain name only because it is identical to a name in which the Complainant has rights and interest to extort the Complainant. Such use of a domain name does not provide a legitimate interest under the Policy.

In *L'OREAL vs Jack Sun INDRP/343 (2012)*, the learned Arbitrator observed that although the disputed domain name belonged to the Respondent, the simple use of the L'OREAL trademark in the disputed name did not confer rights or legitimate interest to the Respondent in the same. Accordingly, and for all the reasons above, the Respondent has no rights or legitimate interest in the disputed domain name as per INDRP Policy, para 6 (ii); INDRP Rules, para 4 (b) (vi) (2).

**III) The Respondent's disputed domain name has been registered or is being used in bad faith.**

- 5.30 The Registrant/Respondent's former use of the infringing domain name as a parking page with PPC links for financial gain, does not constitute a bona fide offering of goods or services or a legitimate non-commercial fair use. The use is neither legitimate nor fair. Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

5.31 The Complainant states in his complaint that the Respondent's act of registering the impugned domain name [www.alstom.in](http://www.alstom.in) incorporating: the trademark of the Complainant 'ALSTOM' is a mala-fide attempt on the Respondent's part to squat over the impugned domain name and make illegal economic gains and profits by misusing and free-riding on the unprecedented goodwill and reputation associated with the registered and well- own trademark 'ALSTOM' of the Complainant.

5.32 It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith. It is further submitted that the WHOIS information further indicates the knowledge on the part of the Respondent.

5.33 The Respondent knowingly chose to register and use the disputed domain name < *alstomgroup.co.in* > to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP,



whereby a domain registrant declared that he would not infringe the intellectual property rights of others but, given the above facts, Respondent is thus guilty of wilful suppression, concealment and misrepresentation by providing inaccurate / incorrect information to the Registry as well.

5.34 The Complainant submits that the impugned domain name bearing the well-known trademark of the Complainant has also been registered by the Respondent with the ulterior motive of preventing the Complainant from making legitimate use of the same. It is further stated that the said act of the Respondent appears to be motivated by its nefarious intention of coercing the Complainant to purchase the impugned domain from the Respondent at an exorbitant price. In other words, this is also a clear case of domain name squatting by the Respondent.

5.35 The factum of argument is that the Respondent has deliberately acquired a confusingly similar name and domain name in which the Complainant has substantial interest being its registered trade/service mark. The Respondent was very well aware of the commercial value and its significance of the various domains owned by the complainant of which the word 'ALSTOM' forms a conspicuous part of its mark.

**In Google Inc. Sunil K. Support Solution Aditi Sawant, Support Solution Rohit Sharma/ Vineet Sharma**

A handwritten signature in black ink, appearing to be 'Sunil K.', written in a cursive style.

**Deep Sunil K, FA1501001599162 (National Arbitration Forum, February 19, 2015)** the Panel held that “Respondent’s use of the contested domain name is an attempt to capitalize on the likelihood that Internet users will be confused as to the possibility of Complainant’s association with the contested domain name and its website. Under Policy 4 (b) (iv), this stands as evidence of Respondent’s bad faith in the registration and use of the domain name. “

In **LEGO Juris A/S v. Martin, INDRP/125 (2008)**: “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.”

In **Google Inc. vs. Chen Zhaoyang, INDRP/23 (2007)** the Panel held that “The Respondent has taken deliberate steps to ensure to take benefit of identity and reputation of the Complainant. The Respondent also provided web services which were similar to those of the Complainant. All these factors indicated that the disputed domain name was registered and used by the Respondent in bad faith in respect of the general commercial activities.”

#### **B. Contention of the Complainant:**

A handwritten signature in black ink, appearing to be 'Sg' or similar, with a small dot below the 'g'.

5.36 Firstly the Complainant submits that the Respondent has used the Complainant's registered well-known trademark 'ALSTOM' as part of the impugned domain name <*alstomgroup.co.in*> in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amounting to a infringement of the complainant's rights as are vested in the trade/service: **mark 'ALSTOM'**

5.37 Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's trade and service mark 'ALSTOM', which insures and continue to insure its legitimate right to Complainant only.

5.38 The Complainant has a long and well-established reputation in the Complainant's mark. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [*Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)*].



5.39 The present respondent appears to be a regular offender it is not to be the first time that the Respondent has been trafficking in registration of other reputed trademarks. The Respondent has been regularly registering other known mark as its own registered domain name that contained a registered trademark of a well-known brand. It is for the, same reason why the Respondent registered the impugned name <alstomgroup.co.in>. The registration of the disputed domain name bearing the registered as a trade/service mark of the complainant is nothing but an opportunistic bad faith registration on the part of the Respondent.

5.40 It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

a) ***Complainant's name was famous at the time of registration: Cho Yong Pil v. Sinwoo Yoon, WIPO-D2000-0310.***

b) ***Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.***

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' followed by a flourish.



*c) The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

*d) Thus, the Respondent is guilty of registering and using the disputed domain name < alstomgroup.co.in> in bad faith in terms of Para 7 of the INDRP.*

### **C. Contention of the Respondent:**

5.35 The Respondent had not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

## **5. Discussion and Findings:**

6.1 It is evident that the Respondent knowingly chose to register and use the disputed domain name < ***alstomgroup.co.in***> to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name.



Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

6.2 It is further clear the Respondent / registrant redacted private policy to conceal their identity. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

6.3 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

**[a] The Respondent's Default:**

6.4 As per INDRP Rules of Procedure, it require as defined under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) be read as follows:

A handwritten signature in black ink, appearing to be 'Sg' or similar, located at the bottom left of the page.

*"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."*

- 6.5 Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:

*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

- 6.6 The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.



6.7 As previously indicated; the Respondent had failed to file any reply to the Complaint and has not sought to answer nor presented its assertions, evidence or contentions in any manner against complaint. The undersigned as being arbitrator opined that the Respondent has been given a fair opportunity to present his case, thus non submission of the reply by the Respondent to the Arbitrator, entail the sole arbitrator to proceed on the Complaint in accordance to its merit.

6.8 The Rules paragraph 12(a) 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 the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the 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 and evidence and inferences drawn from the Respondent's failure to reply.

**[b] The issues involved in the dispute:**

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

A handwritten signature in black ink, appearing to be 'S. S.', is located below the text of paragraph 4 of the INDRP.

**"Brief of Disputes:**

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 Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and**
- (iii) the Respondent's domain name has been registered or is being used in bad faith.**

6.9 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

6.10 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.



**I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

6.11 The mark **ALSTOM** has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations:*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*



*It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

6.12 The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <**alstomgroup.co.in**> is identity theft, identical with or deceptively similar to the Complainants' <**ALSTOM**> mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

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

6.13 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

6.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing





that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.

- 6.15 The Respondent has failed to submit reply thus not rebutted the contentions of the Complainant and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent has no legitimate right or interest in respect of the disputed domain name *<alstomgroup.co.in>*

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

**The disputed domain name has been registered or is being used in bad faith.**

- 6.16 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.



6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

*"Circumstances indicating that the Respondent has registered or 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent 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 Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

6.18 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and

A handwritten signature in black ink, appearing to be 'Sg' or similar, with a stylized flourish.

It has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.

6.19 Moreover, use of similar disputed domain name by the Respondent / Registrant would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, as disputed domain name *<alstomgroup.co.in>* , is associated exclusively with the complainant, by the trade and public in India and all over the world.

6.20 Further the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark '**ALSTOM**' from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark '**ALSTOM**' as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the Respondent / Registrant have redacted private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.



Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

## **6. DECISION**

- 7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein
- 7.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide. The Respondent / Registrant had no previous connection with the disputed domain name and have clearly registered the disputed domain name in order to prevent the Complainant who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.
- 7.3 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed

A handwritten signature in black ink, appearing to be 'S. S.', is located below the text of paragraph 7.3.

that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

*[Relevant WIPO decisions:*

*Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. Sanchai Aree D2002-0358; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-06611*

- 7.4 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. Some notable cases reaffirming this proposition are INDRP decision in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve Clicquot Ponsardin, Maison Fortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163* and *Adidas-Solomon AG v. Domain Locations Case No D 2003 0489*



7.5 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is very much clear that the Respondent / Registrant is using the disputed domain name in bad faith and 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.

***[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupo d.d. v. WACHEM d.o.o. D2004-01101***

7.6 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.



- 7.7 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.

*ALSTOM Sons Ltd v. mmt admin / Ok ALSTOM byebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304*

- 7.8 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that

*"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier.*



*A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. ”*

7.9 It was observed that *“it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights”* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. In the present dispute as well, the Respondent, in registering the disputed domain name, has done so in clear violation of the exclusive rights of the Complainant in the ALSTOM name and mark. *In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)*

The WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163* has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.





7.10 The Registrant / Respondent's registration and use of the Domain Name is abusive and in bad faith. The Registrant / Respondent have no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name *<alstomgroup.co.in>* be transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



**SANJEEV KUMAR CHASWAL  
SOLE ARBITRATOR  
INDRP ARBITRATION NIXI**

**NEW DELHI**

**DATE 11-09-2022**