



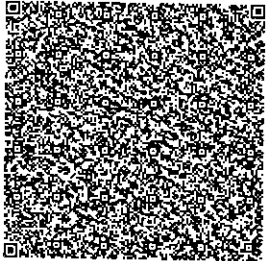
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL147566235247660
Certificate Issued Date : 27-Oct-2016 02:10 PM
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP17296973045073760
Purchased by : AMARJIT SINGH ADVOCATE
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : AMARJIT SINGH ADVOCATE
Second Party : Not Applicable
Stamp Duty Paid By : AMARJIT SINGH ADVOCATE
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

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

IN THE MATTER OF:

BMW AG

.....Complainant

Versus

Liheng

.....Respondent

Disputed Domain Name: <BMW-MOTORRAD.CO.IN>

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority

ARBITRATION AWARD

**.IN REGISTRY – NATIONAL INTERNET
EXCHANGE OF INDIA
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IN THE MATTER OF:

BMW AG
Peteulring 130
80788, Munich,
Germany

.....Complainant

VERSUS

Liheng
C/o Just Traffic Supervision Consulting
Room No. 1326, Kexin Building,
Hong Kong-999077.

.....Respondent

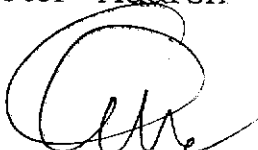
1. **THE PARTIES**

The Complainant in this administrative proceeding is BMW AG, Peteulring 130, 80788, Munich, Germany.

The Respondent is Liheng C/o Just Traffic Supervision Consulting, Room No. 1326, Kexin Building, Hong Kong-999077.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name **<BMW-MOTORRAD.CO.IN>** has been registered by the Respondent. The Registrar with whom the disputed domain is registered is IN Registrar, d.b.a. inregistrar.com, Hotel Adarsh Palace, 118, Old



Hanuman, Lane Kalbadevi, Mumbai-400 002,
Maharashtra, India.

3. PROCEDURAL HISTORY

- 3.1 The Complaint was filed with the. In Registry, National Internet Exchange of India (NIXI), against Liheng C/o Just Traffic Supervision Consulting, Room No. 1326, Kexin Building, Hong Kong-999077. The NIXI verified that the Complaint together with the Annexures to the Complaint had satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").
- 3.2 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 July 29, 2016. The parties were notified about the appointment of an Arbitrator on August 9, 2016.
- 3.3 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). NIXI, by its email of August 9, 2015 forwarded soft copy of the complaint along with annexures to the Respondent and also informed me that



hard copy of the complaint along with Annexures were sent to the respondent by Courier.

3.4 The Respondent did not submit response to the complaint.

3.5 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 case set up by the complainant in the complaint is that the Complainant, Bayerische Motoren Werke GmbH, is a company incorporated under the laws of Germany, with its registered office at Peteulring 130, 80788, Munich, Germany. The complainant will include reference to its predecessors-in-interest, parent, and affiliated companies, unless the context otherwise requires or permits.

4.2 The Complainant was founded in the year 1916 in Germany and has been commonly and popularly referred to as BMW AG (BMW, being the abbreviation of Bayerische Motoren Werke).



- 4.3 The Complainant enjoys the distinction of being Germany's largest industrial companies. Since its founding 100 years ago, the complainant has become one of the most reputed car and motorcycle manufacturers in the world alongwith others such as MERCEDES BENZ, TOYOTA, HONDA and GM. The automobiles manufactured by the complainant set the highest standards in terms of aesthetics, dynamics, technology and quality, borne out by its leading position in engineering and innovation.
- 4.4 The Complainant has been consistently ranked as among with world's largest companies. For example, as early as the year 2002, the complainant was listed at No. 81 in the Forbes Global 2000, a comprehensive annual ranking of the world's largest companies. It continued to be featured in this prestigious list in the year 2008, coming in at No. 112. In the years 2014 and 2016, it was ranked at No. 45.
- 4.5 The Complainant operates on a global scale and does business in more than 150 countries worldwide, including in India. The Complainant's worldwide distribution network currently consists of more than 3250 dealerships which sell automobiles and other goods. As of December 31, 2015, the complainant's production network comprised a total of 30 locations in 14 countries, including India. as of December 31, 2015, the



complainant had a work force of 122,244 employees worldwide. Notably the Complainant has set up sales subsidiaries in more than 35 countries around the world, including India.

4.6 The Complainant submits that he has used the trademark BMW and trademarks that incorporate the BMW mark (collectively the "BMW Marks") consistently and extensively since the year 1916. During the 100 years period during which the Complainant has used the BMW Marks, these marks have been used on cars, motorcycles and other goods including, parts and fittings of cars and motorcycles, miniature cars, clothing and luggage in connection with services offered by the complainant, including retail store services and financial services in the complainant's advertising on its Internet websites such as www.bmw.com and www.bmw.in on social media and in other ways. The Complainant states that owing to their prominent and ubiquitous use, the BMW Marks are synonymous with the complainant and no one else.

4.7 The Complainant submits that over the years, the Complainant's revenues have shown significant increases. As early as 2003, the complainant's annual revenue exceeded EURO 40,000 million. The Complainant's revenue figures during the period starting in 2004 and ending in 2015 are as follows:-



YEAR	REVENUE (IN MILLION EUROS)
2004	44,335
2005	46,656
2006	48,999
2007	56,018
2008	53,194
2009	50,681
2010	60,477
2011	68,821
2012	76,848
2013	76,059
2014	84,401
2015	92,175

4.8 The Complainant further states that as stated in paragraph 4.7 above, the complainant's advertising has and continues to consistently display the BMW Marks. The complainant invests large amount of resources in advertising and publicizing its goods and services. As early as the year 2003, the Complainant spent more than EURO 1,000 million in advertising and marketing spend during the period starting in 2004 and ending in 2014 is shown below:-

YEAR	ADVERTISING SPEND (IN MILLION EUROS)
2004	3806
2005	3889
2006	4039
2007	4284

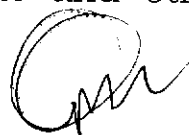
2008	4048
2009	3647
2010	4020
2011	4554
2012	5147
2013	4885
2014	5344

4.9 The Complainant advertised the BMW Marks through various media including, but not limited to, print and television.

4.10 The Complainant submits that given the fame of the BMW Marks, it is hardly surprising that the marks have received extensive media coverage over the years in renowned publications that have a worldwide circulation and on the internet.

4.11 The Complainant owns registrations for the BMW Marks in many countries and jurisdictions, including in India, the United States, the European Union, Singapore, Hong Kong, Australia and others. The Complainant also submits that BMW Marks are registered in more than 140 countries around the world, including India.

4.12 The Complainant also states that sometime in the year 1996, the Complainant registered the domain name BMW.COM. For many years, this domain name has resolved to an active website. This website is well-known to customers, the trade and other segments of



the public. The BMW Marks are prominently displayed on this website.

4.13 The Complainant manufacturers not only cars, but also motorcycles. In fact, the complainant has manufactured and sold motorcycles under the BMW Marks since the early 1900s. The complainant uses the mark BMW MOTORRAD in relation to its motorcycles. MOTORRAD is the German word for “motorcycles”. However, complainant submits that the consumer living in India, the word “motorrad” does not have any generic or descriptive connotation. In fact, consumers in India will construe the word “motorrad” as a coined and consequently highly distinctive term.

4.14 The complainant has registered the mark BMW MOTORRAD in numerous countries and jurisdictions around the world, including India, Germany, the European Union, the United States of America and others. The earliest German registration for the mark BMW MOTORRAD dates back to December 10, 1917 and the earliest United States registration dates back to May 30, 2005.

4.15 The Complainant has sought registration of the mark MOTORRAD in the Unites States.

4.16 The Complainant has used the BMW MOTORRAD mark for numerous years on and in relation to motorcycles manufactured and sold by it.

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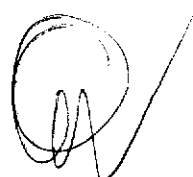
4.17 The Complainant has registered the top-level and country-code top-level domain names such as BMW-MOTORRAD.COM, BMW-MOTORRAD.COM.AU, BMW-MOTORRAD.CA, BMW-MOTORRAD.DE, BMW-MOTORRAD.JP, BMW-MOTORRAD.CO.NZ and BMW-MOTORRAD.CO.UK.

4.18 The Complainant's commercial ties to India date back to at least as early as 1997, when the complainant began selling cars bearing the BMW Marks in India through its licensed importers. Thus, consumers in India were exposed to the BMW Marks as early as the year 1997.

4.19 After the automobile sector in India was liberalized, the Complainant set up a wholly-owned subsidiary in India named M/s BMW India Private Limited in the year 1997. This wholly-owned subsidiary manages the complainant's business operations in India.

4.20 Subsequently, in the year 2007, the Complainant set up an assembly plant in Chennai, India. The primary function of this assembly plant is to assemble automobiles that bear the BMW Marks and supply them to regional markets.

4.21 Today the complainant has sales offices in numerous Indian cities, including Delhi, Gurgaon, Bangalore, Hyderabad, Chennai, Mumbai, Kolkata, Chandigarh, Kochi, Indore, Nagpur, Raipur and Ahmedabad. The



Complainant has a network of 16 distributors and 44 showrooms in India spread over 10 states including Delhi.

4.22 The Complainant has sold approximately 50,000 cars bearing the BMW Marks during the period 2007-2014.

4.23 Over the years, the complainant has enjoyed significant commercial success and witnessed numerous milestones in India. Some of these milestones include:

Year 2008

- CNBC- Auto Car Award for 'Best Premium Car';
- CNBC- Auto Car Award for 'Best Design and Styling'.

Year 2009

- NDTV Profit Car and Bike award for 'Design of the year'

Year 2010

- Bloomberg UTV Autocar award for 'Best Driver's Car';
- Business Standard Motoring award for 'Import car of the year';
- AutoBild Golden Steering award for the 'Import Luxury Car of the year';
- TopGear Award for 'Family Car of the Year'.

Year 2011

- Bloomberg UTV Autocar award for 'Best Design and Styling;



- Business Standard Motoring Car and Bike Award for 'Premium car of the year'.

Year 2012

- AutoBild Golden Steering award for the 'Automotive company of the year';
- TopGear award for 'Driver's car of the year';
- Bloomberg UTV Autocar award for 'Luxury SUV of the year';
- Bloomberg UTV Autocar award for 'Import Bike of the year';
- TopGear award for 'Car of the year'.

4.24 The Complainant has sponsored many important and widely advertised events to promote the BMW brand experience in India. an example of this is the BMW India Bridal Fashion Week 2014, in which many celebrity designers participated and many Bollywood celebrities walked the ramp.

4.25 Sometime in 2012, the renowned cricketer, Sachin Tendulkar, was appointed as the Complainant's brand ambassador in India. Mr. Tendulkar has an immense fan following in India and his appointment as brand ambassador has contributed to the fame of the BMW Marks in India. In February, 2015. Mr Tendulkar launched the Complainant's new range of automobiles under the BMW's mark.

4.26 Cars bearing the BMW Marks manufactured by the Complainant have been purchased, and

used, by numerous Bollywood actors and other celebrities.

4.27 The Complainant owns numerous registrations for the BMW Marks covering a broad spectrum of goods and services, including Classes 7, 9, 12, 25, 28, 36, 37 and 39 in India. The Complainant's earliest Indian registration for the BMW Mark, namely, Registration No.173509, dates back to the year 1956. In addition, the Complainant also owns numerous registrations for BMW Marks including, but not limited to the following:

Registration No.	Mark	Class	Date of Application/Registration
173508	BMW (Device)	12	10 March, 1956
890302	BMW	28	7 December, 1999
1239076	BMW	37	23 September, 2003
1488005	BMW	36	18 September, 2006
1795914	BMW	25	16 March, 2009
2145168	BMW <i>i</i>	12 and 35	16 May, 2011

5. PARTIES CONTENTIONS

5A COMPLAINANT

5A.1 The Complainant claims that on November 13, 2002, the Complainant registered the domain name BMW.CO.IN and on February 14 2005, the Complainant registered the domain name BMW.IN. Both domain names resolve to active web sites that display the BMW marks prominently.

- 5A.2 Over the years the Complainant has actively policed domain names registered by third-parties that incorporate the BMW Marks. The Complainant has filed numerous complaints against such domain names.
- 5A.3 The complainant contends that BMW Marks have developed a stellar reputation owing to the Complainant's extensive and continuous use all over the world and this reputation has spilled over into India. The complainant further submits that BMW Marks qualify as 'well-known trade marks under Article 6bis of the Paris Convention. Consequently, the BMW Marks are entitled to a broad scope of protection extending to those goods and services that are not similar to those for which the marks are registered. Thus, the Complainant has continuous and extensively used the BMW Marks in India. Owing to such use, Indian consumer associate the BMW Marks solely and exclusively with the Complainant and its high quality goods. The complainant further submits that BMW Marks have become well-known owing to extensive and continuous use within India and qualify as 'well-known trade marks', as envisaged by Section 2 (1) (zg) and Section 11(6) of the Trade Mark Act, 1999.
- 5A.4 The Complainant has used the BMW MOTORRAD mark in India for many years. In fact, the Complainant's motorcycles are sold in



India through Navnit Motors, the Complainant's authorized importer in India.

5A.5 The Complainant has obtained a registration for the BMW MOTORRAD mark in India. This registration namely, Registration No. 1497906, is dated October 19, 2006 and is valid and subsisting.

5A.6 The disputed domain name is BMW-MOTORRAD CO.IN. The Respondent is Liheng, C/O Just Traffic Supervision Consulting. From the copy of the WHOIS record relating to the domain name it can be seen that the Registrant registered the disputed domain name on October 2, 2015.

5A.7 Currently the disputed domain name BMW-MOTORRAD CO.IN, resolves to a web site that has links, most of which incorporate the Complainant's BMW mark. On checking on these links, a user is taken to third-party web sites, including the web sites of entities that sell motorcycles.

5A.8 The Complainant, upon learning of the registration of the domain name BMW-MOTORRAD CO.IN, instructed its Indian representative to send a letter to the Registrant to demand that the disputed domain name be transferred to the Complainant without any monetary consideration.



5A.9 Upon receiving the letter, the Registrant sent an email to the Complainant's Indian representative asking for US\$ 1890 for the domain name.

B. RESPONDENT

5B(1) The Respondent did not submit its response to the Complaint before this panel in respect of the disputed domain name **BMW-MOTORRAD.CO.IN.**

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, 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 circumstance, 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 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 have been admitted.
- 6.5 Decision of the Hon'ble Supreme Court of India, **Jahuri Sah Vs. Dwarika Prasad**, AIR 1967 SC 109, is 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). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent.

6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

A. **IDENTICAL OR CONFUSINGLY SIMILAR**

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

6A.2 The Complainant has prior demonstrated statutory and common law rights in the BMW Marks. As discussed above, the Complainant owns registration for the BMW Marks, including the BMW MOTORRAD mark and the MOTORRAD mark. In various countries and jurisdictions around the world, including India. Furthermore, the Complainant has used the BMW Marks, including the BMW MOTORRAD mark, for a number of years around the world, including in India. On the other hand, the Registrant has registered the



disputed domain name in the year 2015. Clearly, the Complainant's rights in the BMW Marks predate registration of the disputed domain name by the Registrant. Thus, there is no doubt regarding the Complainant's prior rights in the BMW Marks.

6A.3 The disputed domain name BMW-MOTORRAD CO.IN is identical to the BMW MOTORRAD mark and confusingly similar to the BMW Marks. The domain name, BMW-MOTORRAD.CO.IN, incorporates the BMW MOTORRAD/BMW marks in its entirety.

6A.4 .IN a country code and non-distinctive. It is an essential part of every domain name. Thus, the .IN part of the domain name does nothing to distinguish the disputed domain name from the BMW Marks. Wells Fargo & Co. and others v. SreeDas Kumar, INDRP/666 (June 5, 2015).

6A.5 Thus, the Complainant has proved that the requirements of INDRP Policy Paragraph 4(i) are fulfilled.

B. RIGHTS OR LEGITIMATE INTEREST

6B.1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interest in the disputed domain name:

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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.

6B.2 The Respondent has no right or legitimate interest in respect of the impugned domain name because the disputed domain name incorporates the complainant's mark BMW/BMW MOTORRAD. The Complainant has sole and exclusive prior rights in the BMW/BMW MOTORRAD marks that have become well-known owing to the complainant's efforts and are associated solely and exclusively with the complainant. The Registrant, on the other hand, does not own any trademark registration for BMW/BMW MOTORRAD marks. Furthermore, there is no evidence of use of the BMW/BMW MOTORRAD marks by the Registrant.



6B.3 BMW/BMW MOTORRAD is not part of the Registrant's personal name. a copy of the WHOIS record associated with the disputed domain name shows that the Registrant's name is Liheng. Accordingly, the Registrant cannot be known as BMW/BMW MOTORRAD or his/her name cannot incorporate the BMW marks. This is also evidence of the Registrant's lack of rights or legitimate interest in the disputed domain name.

6B.4 The Registrant is not a licensee of the Complainant, nor has the complainant authorized the Registrant to use the BMW Marks or to register the disputed domain name. In fact, the Registrant has no relationship with the complainant.

6B.5 The Registrant also does not have any rights or legitimate interest in the disputed domain name because the domain name resolves to a website that displays links to third-party websites. Clearly, this is not legitimate non-commercial or fair use because the Registrant is attempting to generate revenue from consumers who mistakenly visit the website believing that it is the complainant's website.

6B.6 The Registrant's lack of rights and legitimate interest is also evident because the Registrant has offered to sell the disputed domain name



to the complainant for a sum in excess of the Registrant's out-of-pocket expenses.

6B.7 Lastly, the illegality of the Registrant's registration of the disputed domain name arises from the fact that, today, the domain names are part and parcel of a company's corporate identity. Clearly, in this case, the Complainant has a history of registering country-code top-level domain names that include its BMW/BMW MOTORRAD marks, and is using some of these domain names to resolve to active web sites that feature its goods and services offered under these marks. However, by registering the disputed domain name, the Registrant is preventing the complainant from using the disputed domain for the intended purpose.

6B.8 The Domain Names under the Policy are available to anyone on first come first served basis. In case, any person or organization claims right over the Domain Name as violation of its trade/service mark rights, the onus is on such person/organization to prove the right in the mark and the burden thereafter shifts to the Respondent to prove its legitimate interest and the use of the Domain Name in good faith.

6B.9 The trademark rights as are granted under the respective statutes of each country are territorial in nature.



6B.10 The Respondent has failed to show any demonstrable preparations to use the Domain Name or a Name corresponding to the Domain Name in connection with bonafide offering of goods or services through the impugned Domain Name BMW-MOTORRAD.CO.IN.

6B.11 The Impugned domain name was registered on 02.10.2015 as per Annexure-26 to the complaint. The perusal of Annexure-20 to the complaint show that the first registration of trademark BMW under no. 173508 was made as of 10.03.1956. There are other registrations made in the years 1999-2011 in the name of the complainant. The Respondent, therefore, cannot claim to be the proprietor adopter or prior user of the impugned domain name.

6B.12 The issue whether the Registrant is making a legitimate, non-commercial or clear use of the Domain Name does not arise as the said Domain Name has never been used for bonafide offering of goods or services by the Respondent.

6B.13 In view thereof, the Panel concludes that the Respondent has no common right or legitimate interest in respect of the Domain Name <BMW-MOTORRAD.CO.IN>.



REGISTERED 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 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:-

- i) Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant's 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 trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or



iii) By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complainant's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's Website or location or of a product or service on Registrant's Website or location.

6C.3 The Registrant, as discussed above, offered to sell the disputed domain name to the complainant for a sum of US\$ 1890. This is evidence of the Registrant's bad faith. The Registrant is claimed to be a cyber-squatter by the complainant. Cyber Squatter is also an evidence of bad faith.

6C.4 The Registrant chose and registered a domain name that is identical/confusingly similar to the BMW marks. The Complainant has a long and well established reputation in the BMW marks through its exclusive use throughout the world, including in India. There can be no doubt that the Registrant was aware of the BMW marks when he chose and registered the disputed domain name and in fact chose



the domain name because it was confusingly similar to the BMW marks and intended to capitalize on that confusion. This also constitutes evidence of bad faith. In fact, it has been held that registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the owner of the mark is in itself evidence of bad faith.

6C.5 The Registrant is not using the domain name in connection with any legitimate business. Clearly, the Registrant registered the domain name with the intention of depriving the complainant from using the domain name in connection with its business in India. This also demonstrates the Registrant's bad faith.

6C.6 The Registrant registered the disputed domain name in 2015 and, since then, it has been holding the domain name without a proper website related to Registrant's products or services. This is evidence of the Registrant's bad faith use of the disputed domain name.

6C.7 The Registrant's use of the disputed domain name is bound to lead to confusion and deception in the minds of the public. The BMW marks have been



used extensively by the complainant and understood by consumers, including those in India, as marks that identify the complainant's goods and services. On account of high reputation attributable to the BMW marks, use of the disputed domain name would lead to confusion and deception in the trade.

6C.8 The complainant's goods and services under the BMW marks are offered in various countries, including in India. to facilitate consumer access to these services, the complainant has registered domain names such as BMW-MOTTORRAD.COM. Clearly, by registering the disputed domain name, the Registrant is preventing the complainant from suing the BMW-MOTORRAD.CO.IN domain name in connection with its goods and services for consumers in India. This is not evidence of good faith use of the disputed domain name.

6C.9 The Registrant uses the disputed domain name in connection with a website on which it provides links to websites, including, through which goods similar to the goods on which the BMW marks are sold. Thus, the registrant is generating revenue or attempting to generate revenue through consumers who visit



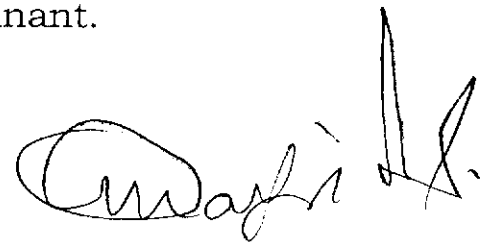
this website. This is evidence of the Registrant's bad faith registration and use.

6C.10 In the said circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.

7. **DECISION**

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel direct the transfer of impugned domain name **BMW-MOTORRAD.CO.IN** to the complainant.



AMARJIT SINGH
Sole Arbitrator

Dated: 28th October, 2016