

Bond



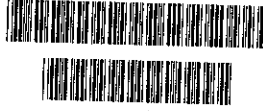
**Indian-Non Judicial Stamp
Haryana Government**



Date :12/07/2017

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Stamp Duty Paid : ₹ 101
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Deponent

Name: Rna Ip Attorneys

H.No/Floor : Na

City/Village : Gurgaon

Phone : 0

Sector/Ward : Na

District : Gurgaon

Landmark : Na

State : Haryana



Purpose : ALL PURPOSE to be submitted at All place

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

ROBERT BOSCH GMBH

Post fach 30 02 20

70442 Stuttgart

Germany

....Complainant

Zhao Ke

Weihai Road 755

Shanghai

200041

China

..... Respondent

Disputed Domain Name: **www.bosch.in**

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is of **ROBERT BOSCH GMBH** Postfach 30 02 20, 70442 Stuttgart, Germany. The Complainant is represented by its Authorized Representative, Mr. Julick Isaiah of M/s Depenning & Depenning (Patents, Trade Marks, Designs, Copyright) of 120 Velachery Main Road, Guindy, Chennai - 6000032 (domain@depenning.com) India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Zhao Ke of Welhai Road 755, Shanghai, 200041, China as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name **www.bosch.in** The Registrar is IAPI GMBH (R98-AFIN), TalstraBe 27, 66424 Homburg, Germany

The Registrant is Zhao Ke of Welhai Road 755, Shanghai, 200041, China

3) Procedural History:

This arbitration proceeding is 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) were approved by NIXI on 28th June, 2005 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.

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

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula 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 Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

1. The complaint was produced before the Arbitrator on June 12, 2017 and the notice was issued to the Respondent on the same day i.e. June 12, 2017 at his e-



mail address with a deadline of 10 days, before June 22, 2017 to submit his reply to the arbitration. The Respondent did not submit any response.

2. Vide e-mail dated June 16, 2017, the NIXI informed that the complaint could not be delivered to the Respondent and returned undelivered as '*No such person or person shifted*'. Accordingly, on June 20, 2017 the Arbitrator directed that this will be treated as deemed service since the packet was sent on address appearing on their WHOIS details. Further, they have been notified by e-mail.
3. Vide e-mail dated June 20, 2017 the Arbitrator granted further and final opportunity to the Respondent to submit its response on or before June 22, 2017. However, no response was submitted by the Respondent within the stipulated time of thereafter. There was no delivery failure message received from the Respondent's email address.

In the circumstances, the Complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

Summary of Complainant's contentions

This Complaint in support of its case has made the following submissions:

- i) That the disputed domain name is identical to a trade mark in which the complainant has right. The Complainant is a technology leader in various fields on account of the persistent and continuous research conducted in the company's development centers. The internet of things offers huge opportunities, and the Complainant has set itself the goal of becoming one of the leading global companies in this field.
- ii) In connection with the worldwide business, the Complainant uses many distinctive trademarks, which are registered and/or applied for registration in many countries of the world including India. The mark '**BOSCH**' has always been the Complainant's trading name for several decades. The mark '**BOSCH**' connotes distinctiveness, reputation, quality and goodwill garnered over uninterrupted use for more than a century.
- iii) The trade name/ trade mark '**BOSCH**' has acquired extensive reputation in India and in other countries over the last 130 years for its services that is up to Global standards. The Complainant's distinct services are:

- Automobile and accessories
- Automotive Technologies
- Work shop world
- E-Mobility Solutions
- E- Bikesystems

- iv) The Complainant has developed international footprint and has a network of around 350 subsidiaries and regional companies. Over 50 countries sales and service partners in roughly 150 countries worldwide.
- v) The Complainant has business interest in India in the form of a wholly owned subsidiary Robert Bosch India Limited which was formed in 1998. In 1999 Robert Bosch India Ltd. Became an ISO 9001 certified Company and went on to achieve many milestones. (**Annexure D** contains excerpts from the Complainant's website which contains information about the Complainant's business). The complainant has consistently advertised its trade mark '**BOSCH**' through mass media such as print, electronic media and also through participation in the fairs and exhibitions etc and has invested heavily in promoting the said trade mark '**BOSCH**'. Copied of few advertisements and promotional materials in respect of the trade mark '**BOSCH**' have been filed with the complaint and marked as '**Annexure-E**'
- vi) That the use of the keyword '**BOSCH**' in any leading search engine throws up the web pages of the complainant among the leading hits. Printout of the search results procured from the famous search engine google.com have been filed with the complaint and is marked as '**Annexure-F**'
- vii) On account of extensive usage of the trade mark '**BOSCH**', the adoption and/or usage of '**BOSCH**' by others would amount to not only dilution of the complainant's rights over the distinct mark but also would result in confusion and deception amongst the end customers. Such unauthorized usage of the complainant's mark '**BOSCH**', and domain names comprising of '**BOSCH**' by others would also amount to infringement and passing off and is liable to be prevented in the Courts of Law.
- viii) The Complainant has earned immense reputation and goodwill in the course of trade and has garnered the attention of the people from all corner of the world and as a result of the same, the '**BOSCH**' have been well received and reviewed by the media. A few abstracts with detail of media exposure are marked as '**Annexure G**'.
- ix) The '**BOSCH**' being a corporate name of Complainant appears on all printed material used in the Complainant's programs. To prove the extent of the Complainant's business and visibility of the **BOSCH** brand, copies of the first 84 pages of the Annual Report for the year 2015-2016 of the Complainant is provided as '**Annexure-H**' to this complaint.
- x) The Complainant has won several awards and recognition for their pioneering services as a **BOSCH** group of companies:



- The Bosch plant in Bursa (Turkey) received EFQM award in 2003 and 2008;
- In UK "Best Home Appliances Brand" in 2014
- The 'Which?' 'Best Buy' award is the most widely recognized independent consumer endorsement of quality in the UK. In 2013.
- In 2013 receiving the honour along with the 'Most Reliable Boiler Brand' and 'Most Satisfied Customers' awards.
- CES 2017 Innovation Awards: Bosch honored with four distinctions for three smart solutions

1. The Complainant had relied upon the following Indian Trade Mark registration in the name of **ROBERT BOSCH GMBH**, the Complainant herein:

Sr. No.	Mark	Application No.	Status	Class	Advertised in JI. No.	Journal Date	Page
1	BOSCH	156679	Renewed	12	131	01/11/1954	203
2	BOSCH	156678	Renewed	11	131	16/05/1954	202
3	BOSCH	156677	Renewed	9	147	16/07/1955	480
4	BOSCH	156676	Renewed	8	135	01/11/1954	574
5	BOSCH	156675	Renewed	7	131	01/07/1954	197
6	BOSCH	642310B	Renewed	7	1296S	08/06/2003	105
7	BOSCH	669385	Renewed	16	SS1VOLC	29/06/2003	231 8
8	BOSCH	669384	Renewed	9	SS1VOLB	29/06/2003	154 7
9	BOSCH SERVICE	688885	Renewed	16	1372	16/07/2007	874 1
10	BOSCH SERVICE & DEVICE	1239985	Registered	37,41,42	1342	16/04/2006	261 4
11	BOSCH	1239984	Registered	37,41,42	1328S4	28/02/2005	307 2
12	BOSCH	1629794	Registered	7,9,11	1420	16/07/2009	190 0
13	BOSCH	1640949	Registered	4	1408	16/01/2009	308
14	BOSCH	2290267	Registered	28	1624	20/01/2014	352

The aforesaid registered trademarks of the Complainant are valid and subsisting. Copies of the registration certificates and status of the Complainant's mark retrieved from the Trade Mark Registry's database have been filed as **Annexure I**. In addition to the above, it is submitted that the Complainant has been cognizant in protecting its Intellectual Property against frivolous imitations in India. The Complainant has provided the list of oppositions/rectifications petitions filed by the Complainant in India against several entities attempting to register the mark BOSCH and its variants.

SNO.	TM No.	TRADEMARK	TM5 FILING DATE	CLASS	APPLICANT	OPPOSITION NO.	OPPONENT	OPPOSITION STAGE
1	7646188	BOSCHMANN GERMANY	13-Feb-06	9	GANGA BISHAN NARDA & SONS	DEL-214927	Robert Bosch Gmbh	Opposition Allowed
2	754605	CBOSCHMAN	13-Feb-06	12	CHADHA APPAREL EXPORTS	DEL-214926	Robert Bosch Gmbh	Opposition Allowed
3	2117861	BOSCO	31-Jul-12	12	JBL AUTOMOTIVE PARTS	DEL-791769	ROBERT BOCH GMBH	Opposition Allowed
4	2151732	BOSCH MICO	09-Oct-12	17	SHREE KRISHNA RUBBER INDUSTRIES	DEL-793833	Robert Bosch Gmbh	Opposition Allowed

Copies of the order passed in the aforementioned opposition proceedings have been filed with the complaint and marked as **Annexure J**.

2. In view of the consistent and extensive market presence of '**BOSCH**', the said trade mark of Complainant is considered as well-known in India and in several other jurisdictions of the world. The word '**BOSCH**' expressed on any particular product/service connotes and denotes reputation, eminence and goodwill associated with the quality of products manufactured, marketed and serviced and otherwise dealt-with by the Complainant.
3. The Complainant is also the owner of the domain name www.bosch.com, which is valid and subsisting till 5th April 2018. The said domain name is actively used by the Complainant. It is stated that the Respondent has no right and legitimate interest in the domain name www.bosch.in. The Respondent illegally and wrongly adopted the famous trade mark **BOSCH** of the Complainant with the intention to create an impression of an association with the Complainant. Further, the impugned domain name is also identical to the Complainant's domain name www.bosch.com resulting in customer confusion and an unfair advantage to the Respondent. In addition, the Complainant has registered the domain name www.bosch.co.in as early as 29th April, 2010 and has been continuously renewed ever since. Details pertaining to the said domain retrieved from the .in domain registry has been filed as **Annexure-L**.
4. The Respondent has wrongfully and fraudulently adopted and registered and impugned domain name www.bosch.in in order to utilize the name reputation attached to the word '**BOSCH**' without having any rights thereto and in spite of having full knowledge of the complainant's iconic stature in India and internationally.
5. The Complainant submits that the respondent is trying to en-cash on the goodwill and reputation associated with the trade mark '**BOSCH**', although the respondent has no connection with the complainant.
6. It is further stated that the complainant has not licensed or otherwise permitted the respondent to use the mark '**BOSCH**', nor has it permitted the Respondent to apply for or use any 'Domain Name' incorporating the mark '**BOSCH**'.

7. The trade mark **BOSCH**, as already stated, remains as one of the world's biggest suppliers of automotive component and that the respondent knowingly adopted the complainant's trade mark **BOSCH** with full knowledge of its popularity.
8. The disputed domain name clearly incorporates the famous trade mark '**BOSCH**' of the complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the UDRP. In this regard the Complainant has relied upon the decisions of this Hon'ble WIPO Arbitration and Mediation Centre passed in the case of Twitter, Inc Vs Moniker Privacy Services/accuil des solutions inc WIPO Case No. D2013-0062 <twitter.org>. Octopustravel Group Limited Vs Alexander Rosenblatt aka Yana Belkova, case No. D2011-0417 <octopus.com> filed as **Annexure M**.
9. The complainant had adopted and registered the domain www.bosch.com way back in the year 1995. The domain name acts as a fulcrum in providing information to its potential customers around the world wanting to join the BOSCH community. The disputed domain name has been registered by the Respondent on 15th April, 2014, which is almost two decades after the adoption and use of the domain www.bosch.com by the Complainant. At this time, the Complainant had already established considerable reputation in the trade mark 'BOSCH' and had been actively using the website www.bosch.com.
10. On account of the long and consistent use of the trade mark BOSCH for more than a century, it is stated that it has attained distinctiveness and has become famous and is associated solely and exclusively with the Complainant worldwide including in India. Whereas the disputed domain name was created by the Respondent on 15th April 2014 which is more than a century after the adoption and use of the trade mark BOSCH by the Complainant. The disputed domain name clearly incorporates the trade mark BOSCH of the Complainant in its entirety without any addition and deletion. Therefore it is beyond doubt that the disputed domain name is identical to the trade mark of the Complainant.
11. The Complainant believes that the Respondent is not or has never been known by the name BOSCH or by any confusingly similar name and assuming but not admitting that even if the Respondent has accrued any rights in the disputed domain name www.bosch.in since its registration, such rights would be significantly predated by the Complainant's statutory and common law rights.
12. The Respondent's registration and use of the disputed domain name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's impeccable reputation and its prominent presence on the internet in order to confuse the public, divert business, tarnish the unrivalled goodwill of the Complainant and unduly gain in all aspects to the detriment of the Complainant. The intent of the respondent has been to deceive the public at large, by employing a name which is identical to or too nearly resembles the name '**BOSCH**', which stands both under the Trade Marks Act, 1999 and the Companies Act, 1956.
13. It is further stated that considering the Complainant's statutory rights worldwide (including in India), extensive and continuous global use for many decades, proactive promotional and enforcement efforts, as well as its impeccable reputation and unrivalled goodwill in foreign jurisdictions and in India for the trade mark



'BOSCH', the members of the public and the trade both are bound to associate the impugned domain name with the Complainant and would get a wrong impression that the respondent is associated with the Complainant. Thus, resulting in confusing in the minds of the public and trade about the impugned Domain's source, sponsorship, affiliation or endorsement.

14. The Complainant states that it is apparent that the said conduct of the respondent is to deceive the public. The existence, registration and use of the disputed domain name will result in the following:
- a. That the people will believe that the disputed domain name belongs to the complainant or authorized by the complainant.
 - b. That the complainant will face tremendous loss in terms of money and loss to its goodwill and reputation;
 - c. That the public at large will be cheated by the respondent.

Respondent

The Respondent has 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 3 of the policy. The attempt to serve them hard copy of the complaint by NIXI via courier was also not successful.

Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'BOSCH' leads to the conclusion that the Complainant has superior and prior rights in the mark 'BOSCH'. Thus it can be said a) the web users associate the word 'BOSCH' with the goods and services of the Complainant b) the web users would reasonably expect to find the Complainant's products and services at the www.bosch.in and c) they may believe www.bosch.in is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further, the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

- i) The Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;



It has been successfully established by the Complainant that it has statutory as well as common law rights in the well known mark 'BOSCH'. The Complainant holds numerous registrations for the mark BOSCH' all over the world including over 12 registrations in India. Further, the Complainant's earliest registration for the BOSCH' mark in India dates back to 1954. Complainant has in support submitted substantial documents. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

Thus, I hold the disputed domain name www.bosch.in contains or is identical to the Complainant's mark BOSCH.

- ii) The Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the mark BOSCH as part of its domain name. The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his rights and interest in the domain name.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.bosch.in'.

- iii) The domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

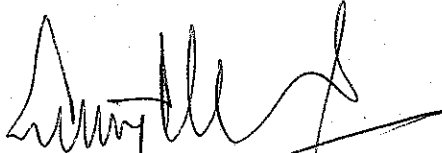
Further, the registration of a domain name incorporating a well-known mark is clearly with the intention to ride upon the goodwill and reputation attached to the mark BOSCH and make unjust monetary gain.

Based on the above and documents submitted by the Complainant, it can be concluded that the domain name www.bosch.in is identified with the Complainant's products/services, therefore its adoption by the Respondent shows 'opportunistic bad faith'.



Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name 'www.bosch.in' is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.bosch.in be transferred from the Respondent to the Complainant.



**RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA**

August 10, 2017