



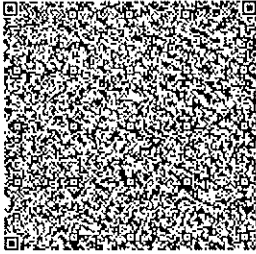
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Description of Document : Article 12 Award
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Consideration Price (Rs.) : 0
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First Party : SUDARSHAN KUMAR BANSAL
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.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)
ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

INDRP Case No. 1041

COMPLAINANT
Covestro Deutschland AG

VERSUS

RESPONDENT
Guanrui
GROUPFIELD LIMITED

ARBITRATION AWARD

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S. K. Bansal

.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

INDRP Case No. 1041

COMPLAINANT

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VERSUS

RESPONDENT

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S.K. Bansal

ARBITRATION AWARD

1. The Complainant is aggrieved by the domain www.covestro.co.in being registered with the sponsoring Registrar Netlynx Technologies Pvt Ltd (R62-AFIN) in the name of the Respondent and has accordingly made this Complaint seeking the relief that this disputed domain www.covestro.co.in be transferred to the Complainant alongwith costs and damages to the tune of INR 175,000.00.

2. The Complainant has preferred this Complaint on the basis of its claimed proprietary rights in the Trade Mark COVESTRO in gist on the following averments :-

2.1 The Complainant is a corporation organized under the laws of Germany and arose out of the well known German chemicals and pharmaceuticals giant Bayer AG, whose roots extend back to the 19th century. The Complainant alleges to have become a separate legal entity since September, 2015 and is among the worlds largest polymers company, a leader in research and production, to operate around 30 production sites in Europe, Asia, U.S.A. and to have worldwide presence. The Complainant alleges its IPO to be subject to broad press coverage worldwide including the USA and to have received favourable press reviews. The Complainant alleges its stock to be included in the German MDAX a stock index which lists the 50 Prime Standard shares from German companies in sectors excluding technology that rank immediately below the companies included in the DAX index, and international STOXX Europe 6000.

2.2 The Complainant alleges to have commenced its operations in India since 1988, and as of today to have an Indian subsidiary under the

J.K. Banerjee

name Covestro India Pvt. Ltd. The Complainant claims to maintain a total number of five sites in India and to provide information to the Indian market through its website www.covestro.in.

2.3 The Complainant claims to own several trade marks registrations/filings for the COVESTRO trade mark including the German Trade Mark registration under No.302015010554 and an international trade mark registration No.1272950 which designates inter alia Singapore and India. These registrations according to the Complainant cover a wide range of goods and services.

2.4 While claiming proprietary rights in the Trade Mark COVESTRO the Complainant has averred the word/mark COVESTRO to be an invented portmanteau word made up of the words "collaboration", "invest", and "strong" solely connected to the Complainant and not used by any third party in commerce. The Complainant has alleged to have built up an immense goodwill and reputation and acquired distinctiveness in its COVESTRO trade mark.

3. The Complainant alleges the rival domain www.covestro.co.in to be adopted and allegedly used by the Respondent to be confusingly similar to the Complainants trade mark COVESTRO and domain www.covestro.in and to be in bad faith and over which the Respondent has no rights or legitimate interest.

3.1 The Complainant has alleged the Respondents rival impugned domain name to be adopted by it (the Respondent) without the Complainants approval license or consent.

S. K. Datta

3.2 According to the Complainant, the Respondent is in the business of holding domains and is using the disputed domain in connection with a parking website providing advertisement links to third parties which mostly have no relevant connection with the Complainant. According to the Complainant by the disputed domain and its usage an impression would be created in the market and trade of its association with the Complainant. By the disputed domain and its alleged usage consumers would be diverted/mislead away from the Complainant which would tarnish the trade mark COVESTRO of the Complainant.

3.3 According to the Complainant the Respondent was well aware of the Complainants highly distinctive and strongly reputed COVESTRO trade mark and the Complainants rights therein at the time of its impugned adoption and which impugned adoption has been actuated for the purpose of creating a likelihood of confusion with the Complainants COVESTRO trade mark, to divert traffic intended to the Complainant to the Respondent with intent to earn revenues from the diverted traffic.

3.4 The Complainant has alleged the Respondent to have even registered several other domains containing well known trade marks of other businesses.

4. Alongwith the Complaint the Complainant has filed numerous documents being Annexures-1 to 8. These documents as well as the pleading and averments raised by the Complainant in so far as they are applicable would be dealt with in the course of this Award.

5. The .IN Registry appointed me as a Sole Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure

J. K. Bannu

and/or bye-laws; rules and guidelines made therein and notified the factum thereof to the Complainant through its authorized representatives as well as to the Respondent. The .IN Registry appointed me as the sole Arbitrator of this case on 18.10.2018 and served upon me (the sole Arbitrator) the physical set of the entire Complaint paper book which was received by me on 22.10.2018.

6. Thereafter I (Arbitral Tribunal) issued a notice through E-mail dated 24.10.2018 upon the Respondent, with copy to the Complainant, informing it of my appointment as an Arbitrator and serving upon the Respondent therewith the complete set of the Complaint alongwith Annexures 1 to 8. Vide this notice an opportunity was given to the Respondent to file its reply and defences with documents supporting its position within a period of ten (10) days. In this Notice it was also stated that in the event of default by the Respondent the Complaint would be decided in accordance with law.

7. The Respondent did not answer the notice dated 24.10.2018 and nor did it submit any response or defence in its support.

8. Thereafter in the interest of justice I (the Arbitral Tribunal) served another notice through E-mail dated 09.11.2018 upon the Respondent giving upon it another opportunity of ten (10) days to file its reply and defence with documents, if any, in support of its position. In this notice of 09.11.2018 it was clearly indicated that no further time would be granted and in the event of default I (the Arbitral Tribunal) shall proceed to decide the Complaint in accordance with law.

S.K. Banerjee

9. The Respondent did not respond to even this notice dated 09.11.2018 and nor did it submit any reply or response in support of its position.

10. In the aforesaid facts and circumstances and in light of the pleadings and material on record I (the Arbitral Tribunal) now proceed to adjudicate this Complaint.

11. The Complainant's trade mark COVESTRO is duly registered in India under Section 36F of the Trade Marks Act, 1999 (TM Act) by virtue of the extension of protection resulting from the International Registration under No.1272950 filed under the Madrid Protocol for the COVESTRO trade mark, granted by the Registrar of Trade Marks, India vide certificate of grant of protection dated 06.04.2017 and copy whereof has been placed on record as **Annexure-6**. This extension of protection in India so granted is to the Indian Fraction application being under No.IRDI-3248717 dated 15.05.2015 in classes 1, 2, 17, 19, 25, 40 and 42 of the International Registration No.1272950. This Indian Fraction Application is with the priority claim of the basic application in Germany under No.302015010554 dated 29.01.2015. This International Registration under the Madrid Protocol had designated numerous countries including India. By virtue of this registration (IRDI-3248717) to the trade mark COVESTRO and its extension of protection, the Complainant has all the rights benefits and entitlements arising therefrom in the said COVESTRO trade mark including a presumption of proprietary rights in its favour therein. This registration confers valuable rights upon the Complainant including a presumption of validity in the registered Trade Mark. **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. & Anr. reported in AIR 1986 SC 137;**

J.K. Banerjee

National Bell Co. Vs. Metal Goods Mfg. Co (P) Ltd. & Anr. reported in AIR 1971 SC 898; Section 2(i) (v), 28 and 29 of the Act].

12. The Complainants activities, accomplishments, undertakings, business and standing have been analyzed, examined, scrutinized, evaluated and reported upon with reference to the Complainants COVESTRO trade mark/trade name in various leading independent newspapers and publications placed on record as **Annexure-1** being online publication in postgazette.com dated 01.09.2015; The Wall Street Journal Europe dated 02.09.2015 and 07.09.2015 ; The China daily dated 05.09.2015 ; The Washington Post online dated 19.09.2015 and 01.10.2015 ; The Wall Street Journal online dated 19.09.2015 ; The New York Times dated 01.10.2015.

13. The Complainant has been carrying on its business and various activities in India by itself as also through its Indian subsidiary company Covestro (India) Pvt. Ltd., and has been providing information and business to the Indian market through its website under the domain www.covestro.in. The Complainants said business and activities are borne out from the printouts obtained from the said website www.covestro.in filed as **Annexure-8** to the Complaint. Apparent from these printouts is that the Complainant through its Indian subsidiary had in the year March, 2015 signed the Responsible Care global charter and became Responsible Care signatory member company ; the Complainant had organized a Stem Learning Workshop for girls in Mumbai in November, 2017 and was partner with the Chandra Mohan Foundation and the Nehru Science Center ; The farmers in the State of Tamil Nadu have adopted and used the Complainants technology for their benefits including to generate additional revenue. These printouts also bring out the nature, vision, overview, activities, history and market

J.K. Bannu

standing of the Complainant in India and overseas and all of which are with reference to the COVESTRO trade mark/trade name clearly highlighted therein.

14. The Complainant under its COVESTRO trade mark/trade name is extremely active on the internet and social media sites like the facebook and twitter. The Complainant and its business activities are well highlighted on the search engine google. A search for the query under the keyword COVESTRO on the google search engine provides search results referring to the Complainant which also provides links to various sites all leading to the Complainant and all clearly apparent from the first page obtained from the google search engine under the keyword COVESTRO and filed as Annexure-7 to the Complaint. The google search engine, the internet and the social media sites have easy and deep access worldover including in India.

15. The Complainant's various averments including of it being among the worlds largest polymers company, a leader in research and production, to operate around 30 production sites in Europe, Asia, U.S.A. and to have worldwide presence, to have arisen out of the well known German chemical and pharmaceutical giant Bayer AG, favourable press reviews in its favour, its stock to be included in the German MDAX and international STOXX Europe 6000, operations in India since 1988, trade mark registrations and distinctive trade marks COVESTRO having strong reputation and to be widely known have neither been traversed nor contested to by the Respondent and consequently have to be taken against the Respondent amounting to an admission. (Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740).

J.K. Banna

16. In light of the aforesaid it can safely be held that the Complainant has been in active business under its COVESTRO trade mark/trade name in India as well as in the International markets enjoying noticeable commercial visibility, market presence and standing. The Complainants said COVESTRO trade mark/trade name and activities thereunder, in addition, also satisfies the territoriality test mandated by the Hon'ble Supreme Court of India in its decision of Toyota Jidosha Kabushiki Kaisha vs M/S Prius Auto Industries Limited reported in AIR 2018 SC 167.

17. As per the WHOis database such report filed as Annexure-2 to the Complaint the disputed/impugned domain name www.covestro.co.in is registered in the name of the Respondent with the creation date 21.08.2017 with the sponsoring Registrar Netlynx Technologies Pvt Ltd (R62-AFIN). This impugned domain name registration with the sponsoring Registrar is much subsequent to the Complainant's afore-noticed International Trade Mark Registration for the COVESTRO Trade Mark under No.1272950 of 15.05.2015 and to the protection extended to its Indian fraction application under No.IRDI-3248717 vide certificate dated 06.04.2017 issued by the Registrar of Trade Marks, India (Annexure-6). This impugned domain name registration is also much subsequent to the various newspapers and publications as afore-noticed (Annexure-1). Resultantly the Complainant's COVESTRO Trade Mark can safely be held to be a prior and senior Trade Mark in its factum, existence and use compared to the rival disputed domain with the Respondent.

18. The Complainant in the Complaint has alleged the word COVESTRO to be an invented portmanteau word made up of the words "collaboration" "invest" and "strong" solely connected to the Complainant

J.K. Banna

and not used in commerce by any third party. In my considered view the word/mark COVESTRO is indeed an invented portmanteau and coined word in relation to the business of the Complainant including to the goods and services covered in classes 01, 02, 17, 19, 25, 40 and 42 specified for in the Complainant's afore-noticed International Trade Mark Registration under No.1272950 and its Indian fraction application under No.IRDI-3248717 –

- (a) The word/mark COVESTRO is not found in any English dictionary and nor does it convey any meaning or it any rate any obvious meaning taken in its entirety and nor does it form part of the ordinary language or usages atleast in India. Standing by itself the word/mark COVESTRO does not give any inkling to the polymers business or the goods/ services specified in classes 01, 02, 17, 19, 25, 40 and 42 of the Complainant's of afore-noticed International Trade Mark Registration and its Indian fraction application. The word/mark COVESTRO has no descriptive connotation or suggestion to these goods/ business.
- (b) The common words viz. "collaboration" "invest" and "strong" from which the said word/ mark COVESTRO has been derived, created or telescoped loose their individual identity and significance therein and nor is an ordinary person reminded of these common words when he encounters or considers the word/ mark COVESTRO. Such a variation in the said common words "collaboration" "invest" and "strong" vis-a-vis the word/ mark COVESTRO is perceptible and writ large and not a mere trifle or colourable variation thereof.

J.K. Bann

[See F. Hoffmann-La Roche And Co. Ltd., Vs. Geoffrey Manners and Co. Pvt. Ltd. reported in 1970(2) SCR 213].

19. Being an invented or coined Trade Mark the word/ mark COVESTRO enjoys inherent distinctiveness and is consequently an extremely strong Trade Mark which can be protected even without the necessity to prove the existence of any secondary significance **[See Three-n-Products Pvt. Ltd., Vs. Yashwant and Ors., reported in 2002 (24) PTC 518 (Del)] and which has to be given an expansive scope of protection as the inherent novelty attached to a invented trade mark creates a substantial impact on the consumers mind. [See Stork Restaurant Vs. Sahati 166 F.2d 348, 76 USPQ 374 ; Aveda Corp. Vs. Evota Marketing Inc., 706 F. Supp. 1419, 12 USPQ2d 1091].**

20. In view of the aforesaid the Complainant in my view has been able to establish its rights and interests in its COVESTRO Trade Mark and can base a successful, cogent and enforceable cause thereon.

21. The word/ mark covestro forms a dominant, essential and distinguishing feature of the impugned domain and with reference to which it would be accessed or remembered to by an ordinary consumer exercising average caution and such a dominant feature is not offset by the top level domain "co.in" attached to the disputed domain. The disputed domain is comprised of the Complainant's COVESTRO Trade Mark in its entirety there being not even a one letter difference. Consequently the disputed domain is identical with and/or deceptively similar to the Complainant's COVESTRO Trade Mark in each and every manner including phonetically, visually, structurally and conceptually. **[See B.K. Engineering Company Vs. U.B.H.I. Enterprises AIR 1985 Delhi 210 (DB); Kirorimal Kashiram Mktg & Agencies Pvt.Ltd., Vs**

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Shree Sita Chawal Udyog Mill 2010 (44) PTC 293 (Del) (DB); South India Beverages Pvt. Ltd., vs. General Mills Marketing Inc., 2015 (61) PTC 231 (Del) (DB)].

22. The Respondent has been using the disputed domain in connection to its website which provides advertisement links to websites of third parties which is as per the print outs obtained therefrom filed as **Annexure-5** to the Complaint. Such a use would/ could cause deception and confusion in the market and trade which include ordinary users and consumers and can potentially adversely affect the Complainant's rights and standing in the COVESTRO Trade Mark-

- (a) Having regard to the close similarity between the rival and competing Trade Marks and domains a mental image would be formed in the minds of an ordinary consumer suggesting to it the Respondent's impugned domain and the website triggered thereby to be that of the Complainant or to be associated, sponsored, affiliated or in some way connected with the Complainant or to be an extension of the Complainant's business or to be licensed by it. Thus the consumers and the market and trade would be deceived/ confused into believing the Respondent or its impugned domain and website and the activities thereunder to be from the source and origin of the Complainant resulting in consumer deception and leading to the formation of an unjust association between the Complainant and the Respondent. **[See Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 (16) PTC 142 Del (DB) ; Ravenhead Brick Company Ltd., Vs. Ruaborn**

J.K. Datta

**Brick & Tera Cotta Co. Ltd., (1937) 54 RPC 341 (Ch.D) ;
Semigres TM (1979) RPC 330].**

- (b) Consumers seeking to access or reach the Complainant or the Complainant's goods or business under the COVESTRO Trade Mark on the internet or through the e-commerce systems by use of the disputed domain name would not reach where they intended and instead would reach the Respondent and thereon diverted to other third party(s) websites not connected to the Complainant. The Complainant would have no hold over the Respondent or to the nature of the business and activities being carried on by it or to those of third parties diverted to by the Respondent and would always suffer by any inferior quality of services being offered by them or which do not match those of the Complainant. The Complainant's goodwill and reputation would be at the mercy of the Respondent or a third party(s) over whom the Complainant would have no control. The Complainant would suffer by the transfer of traffic and business intended for it by its diversion to the Respondent or third party(s). **[See Baker Hughes Limited Vs Hiroo Khushalani 1998 (18) PTC 580 (Del)].**

23. All these violative acts of the Respondent through the disputed domain name would perpetually and irreparably not only tarnish the business of the Complainant but also dilute, diminish, erode and eclipse the goodwill, reputation, distinctiveness attached to the Complainant's prior and senior COVESTRO Trade Mark and nullify or seriously interfere with the Complainant's afore-noticed Trade Mark Registration protected under the TM Act. Not only that even the consumers would suffer as they

J.K. Sharma

would not get what they expected. By the disputed domain loss and injury would be caused to the Complainant, the Complainant's COVESTRO Trade Mark and to the Complainant's business thereunder as also loss and injury would be caused to the innocent and unwary consumers and to the market and trade and all at the behest of the Respondent who by such misrepresentation and deceit would in the process unjustifiably enrich itself. It can safely be taken that the Respondent by its impugned domain seeks to earn commercial gains, profits and benefits to itself whether present or prospective to which it would not be entitled to but for the impugned domain.

24. There is a close relationship between Trade Marks and Domain Names. "Trade Marks" are source identifiers of goods or service from a particular source distinguishing them from those of others while "Domain Names" are source identifiers of the business of a particular entity. The basic principles of trade mark and passing off laws apply to domain name disputes **[Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)]**. A right in the Trade Mark and especially in the registered Trade Mark has to be protected even if it is being used as a material part of a rival domain name as a trade mark can be violated by its use as part of a rival domain name. **[See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & Anr.-2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited Vs. Manu Kosuri & Anr.-2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee & Ors.- 2003 (26) PTC 60 (Del)]**

25. In my considered view the very adoption of the rival disputed domain by the Respondent is in bad faith, fraudulent, malafide and an act in piracy and there are no elements of good faith or bonafide

J.K. Bhatnagar

attached thereto and the Respondent has no rights leave aside any legitimate rights or interest in the disputed domain which in addition is also apparent from the following:-

- (a) The Respondent was well aware of the Complainant and the Complainant's said COVESTRO Trade Mark and its standing at the time of its impugned adoption of the impugned domain and its registration with the sponsoring Registrar.
- (b) The Respondent is based in Singapore. The Complainant's afore-noticed International Trade Mark Registration under No. 1272950 dated 15.05.2015 designates Singapore besides other countries.
- (c) The Complainant's said COVESTRO Trade Mark and its business and activities therein are well reported and commented upon in independent media including through online publications. The Complainant has huge presence over the internet and social media sites. The Respondent who has registered the impugned domain with the sponsoring Registrar must be well aware of the e-system or why else would it invest in a domain and a website.
- (d) The Complainant's said COVESTRO Trade Mark is an invented, coined Trade Mark not forming part of the ordinary languages or usage atleast in India and otherwise enjoying global and Indian reputation and goodwill to the admission of the Respondent itself.

N.K. Banna

- (e) No explanation leave aside any plausible just cogent or credible explanation has been furnished by the Respondent as to how it came upon to adopt the disputed domain bearing the identical COVESTRO Trade Mark of the Complainant.

26. As the very adoption of the impugned domain at inception is tainted it cannot be protected by any amount of subsequent use or dealings and it can be justifiably concluded that the Respondent by such an act wanted to encash upon the name and reputation of the Complainant which was the sole primary and real motive of the Respondent in adopting such a impugned violative domain. The Respondent cannot derive any benefit from its own wrong and must be deemed to be aware of the consequences which follow from such a wrongful adoption. **[See M/s Hindustan Pencils Pvt. Ltd. v/s M/s India Stationary Products Company & Anr. Reported in 1989 PTC 61].**

27. The Respondent as per the material placed on record is a habitual pirate which further brings out the bad faith fraud and malafide of the Respondent in adopting the impugned domain. The Respondent has systematically, steadily, periodically, consistently, regularly and under a set pattern over a period of time commencing from the year 2011 through the year 2017 adopted other domains bearing well known Trade Marks of third parties. Examples of some such domains are <amazontv.info> ; <kookai.info> ; <laduree.info>; <starbucksstore.info>; <volvic.in>; uncreditgroup.co.in>; <t-mobile.in>; <sprite.co.in>; <louisvuitton.co.in>; <hermes.co.in>; and <applestore.co.in>. The Complainant has filed as **Annexure-3** search reports including from the WHOis database search evidencing such adoptions by the Respondent.

V.K. Sharma

28. Not only that the Respondent has also been subject to adverse UDRP proceedings against its adoption of domains bearing Trade Marks of other businesses at the behest of such aggrieved right holders viz. businesses. The Respondent against its adoption of the domain booz – allen.biz was subjected to a WIPO Arbitration under Case No.D2015-1614 by the right holder Booz Allen Hamilton Inc. wherein the disputed domain was ordered to be transferred to the right holder vide an order dated 30.10.2015 passed therein. Another such case is against the Respondent's adoption of the disputed domain bearing the word/mark morganstanley where the FORUM Arbitration in a proceedings under Claim No.FA 1509001639091 instituted against it by the right holder Morgan Stanley had ordered the transfer of the disputed domain to the right holder vide its order dated 27.10.2015. The copies of both the aforesaid decisions have been filed on record as Annexure-4. In both these decisions the respective tribunals had found the Respondent to be in bad faith and to have no rights or legitimate interest in the subject matter domains impugned therein.

29. It can safely be held that the Respondents adoption and alleged use of the disputed domain is without the leave, license or approval of the Complainant. It is highly unlikely for the Complainant to have consented to the adoption and use by a rival business of its strong and well reputed trade mark which would prejudice the Complainant itself. As also the Respondent despite an opportunity being granted to it has not traversed the Complainants allegation of the disputed domain to be without the Complainants approval [**See Uttam Singh Dugal supra**].

30. In my considered view the Complainant has been able to discharge its onus/burden and has established its proprietary and enforceable rights in the COVESTRO trade mark. The Respondent has

J.K. Berman

no legitimate rights or claims on the disputed domain name which is a bad faith domain and by which the rights and standing of the Complainants COVESTRO trade mark are being violated and consumer and market deception ensuing or likely to so ensue.

31. Trade marks, trade names and domains have been accepted to be valuable business assets to be protected against their wrongful adoption and use as rival domains and such violations have to be removed in the interest of the right holder and consumers swiftly and effectively.

32. I have no reservation in holding that the Complaint must be allowed.

Accordingly, it is decided that the disputed domain name **www.covestro.co.in** be transferred to the Complainant.

Signed at New Delhi, India on this 1st day of December, 2018.


Sudarshan Kumar Bansal
Sole Arbitrator