



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL18823622830808S
Certificate Issued Date	: 17-Dec-2020 02:07 PM
Account Reference	: IMPACC (IV)/ dl978703/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL97870341708432099236S
Purchased by	: R K KASHYAP
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: R K KASHYAP
Second Party	: Not Applicable
Stamp Duty Paid By	: R K KASHYAP
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA  
6C, 6D & 6E, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi- 110001

BOLLORE

V/s

DINGCORP

*Due to*

#### 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.
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## AWARD

### 1. THE PARTIES

The Complainant is **BOLLORE**, ODET, 29500, ERGUE GABERIC, FRANCE, is a French Corporation being represented by NAMESHEILD (Laurent Becker) of France.

The Respondent is **DINGCORP** and it is based in California, USA.

### 2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name <bollore.in>

The disputed Domain name is <bollore.in>.

The said domain is registered with **DYNADOT, LLC**

Email: account@dynadot.com

Date of creation: 26-09-2020

Date of Expiry: 26-09-2021

Registrant Client ID: C-406601

Email: chromebooks@hotmail.com

Phone: (86)17172121151

### 3. PROCEDURAL HISTORY

- (a) Complainant has filed a complaint dated September, 28, 2020 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue.

*Prudhvir*

The annexures received with the complaint are **Annexure-1** to **8**. The exchange verified the complaint, satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.

(b) The Exchange appointed Sh. R.K.Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 26.10.2020. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence as required by the Exchange.

(c) The Arbitrator, as per the INDRP Policy and the Rules issued the notice on 28.10.2020 and directed the complainant to serve the Respondent with a softcopy of the Complaint with annexures on the given e-mail address in the Complaint, that is, account@dynadot.com. Which has duly been mentioned in the complaint itself and directed the respondent to file the reply/response within 15 days from the receipt of notice.

The Respondent has failed /neglected to file its reply to the specific allegations made in the complaint within the stipulated time despite receipt of soft copy of the Complaint and Annexures. I feel that enough opportunity has been given to the Respondent

*Praveen*



and genuine efforts have been made to make it a part of the proceedings. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

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

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

##### **Complainant's Activities**

The Complainant is a existing company and it was incorporated in the year 1822.

According to the Complaint, the Complainant is engaged in the business of "Transportation and Logistics, Communication and Media, Electricity Storage and Solutions. The entire details of the business of the Complainant company are duly available in their website at [www.bolllore.com](http://www.bolllore.com).

The Complainant is amongst the top 500 largest companies in the World. It is duly listed on the Paris Stock Exchange, the majority interest of the Complainant group stocks are controlled by the Bolllore family. This stable majority control of its capital allows the group to develop a long term investment policy. In addition to its activities the group also manages a number

*David*

of financial assets including plantations and financial investments. The same are duly mentioned in detail in **Annexure-2** in the complaint.

The Complainant has also its business in India since 1989 through its subsidiary "Bollore Logistics India", which has duly been mentioned in **Annexure-3**.

The Complainant claims that it owns a large portfolio of Trademarks including the wordings "BOLLORE" in several countries including in India, the complete detail has been provided in **Annexure-4**, Such as:

Trademark	Registration Territory	Registration Number	Registration Date	Classes
BOLLORE	International	704697	11.12.1998	16,17,34,35,36,38,39.
BOLLORE	INDIA	833849	24.12.1998	16
BOLLORE	INDIA	1846204	31.07.2009	36,39

The Complainant further claims that it also owns and communicates on Internet through various Domain names such as <bollore.com> Registered on July 25<sup>th</sup>, 1997. Which has been duly mentioned in detail in **Annexure-5**.

*Pravir Adv*



The Complainant has duly brought in the knowledge of the Authorities about the disputed Domain name <bollore.in> on September 28, 2020 which was registered on September 26, 2020. Which has been mentioned in the **Annexure-6** of the complaint.

**Respondent'S IDENTITY AND ACTIVITIES:**

The Respondent's activities are not known as no response has been received from the Respondent.

**5. PARTIES CONTENTIONS:**

**A: COMPLAINANT:**

The Complainant contents that each of the elements specified in the policy are applicable to this dispute.

The Complainant in this administrative proceeding is a global business player "BOLLORE" and its main areas of business are Transportation and Logistics, Communication in Media Storage and Solutions. It is also the Registered proprietor of the Trademark "BOLLORE" in its various variation related to its business.

The Complainant is the prior adopter of the Mark "BOLLORE" and the owner of The Trademark Mark/Service mark "BOLLORE" the Complainant is well known all around the World by the name of

*Prudhvi*

"BOLLORE", and has made profits under this name.

The Complainant further states that its use of the well known Trademark has been Extensive, Exclusive and Continuous all around the World. As a result of the Complainant's Marketing and promotion of its Goods and Services under its Trademark "BOLLORE", the mark has gained Worldwide Recognition and Goodwill, and has become well known. Moreover the Complainant's Trademark has firmly been associated with the Complainant.

The Complainant contends that the disputed Domain name contains the Registered Trademark of the Complainant, that is, Bollore. The addition of the generic word ".in" in the Domain name is insignificant. They do not lead to any distinctive or reduce the similarity to the Trademark "BOLLORE" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the Services offered under the disputed Domain name from the Complainant. Further that they do not help in distinguishing the disputed Domain name from the Complainant's Trademark. On the contrary, the disputed Domain name leads the public to believe that it relates to the Services rendered by the Complainant.

It is critical especially because the Complainant has operations in India and the

*David Bollore*



customers will mistakenly be redirected to the Respondents website which uses the identical Domain name "bollore.in" that it belongs to the Complainant.

Therefore, the Complainant contends that the disputed Domain name is identical and/or confusingly similar to their Registered Trademark "BOLLORE".

Complainant has relied Upon Case No. **INDRP/776, Amundi versus GoaGou** "The disputed Domain name incorporates the trade name "Amundi" in its entirety and this is adequate to prove that the disputed Domain name is either identical or confusingly similar to the mark".

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "BOLLORE". The Respondent does not own any Trademark registration as "BOLLORE" or a mark that incorporates the expression "BOLLORE". The Respondent has no license or authorization or permission from the Complainant to either use the designation "BOLLORE" or to register the disputed Domain name. The Respondent does not have any *bona fide* reasons to adopt the Domain name which is identical to the Trademark of the Complainant.

*Pravdo*  
*for*



Complainant has relied upon case number **INDRP/776 Amundi versus GoaGou**, the Complainant is required to make out a prima facie case that Respondent lacks right or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating right or legitimate interests in the Domain name. If Respondent fails to do so, the Complainant is deemed to have satisfied para 4(II) of the INDRP policy.

Further, the Respondent is not making a legitimate or fair use of the said Domain name for offering Goods and Services. The Respondent Registered the Domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate Justification or interest in the disputed Domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has Registered the disputed Domain name in bad faith and for its actual use in bad faith. The main object of registering the Domain name "bollore.in" by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has registered the disputed Domain name on September 26, 2020 but has not demonstrated any preparations to use the Domain name or a name corresponding to the Domain name in

*Praveen*



connection with any bona fide offering of goods or Services.

This clearly demonstrates that the respondent has registered the Domain name solely with an intention to derive undue pecuniary benefit from the Complainant trade name and not for any genuine or legitimate use.

The Complainant has stated that the use of a Domain name that appropriates a well-known Trademark to promote competing or infringing products cannot be considered a "*bona fide offering of Goods and Services*".

**B: RESPONDENT :**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.bollore.in> or any Trademark right, Domain name right or contractual right.

**6. DISCUSSION AND FINDINGS:**

The Rules instructs this Arbitrator as to the Principles to be used in rendering its decision. It says that, "a panel shall decide a Complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable".

*(Rustan)*



According to the Policy, the Complainant must prove that:

- (i) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- (iii) The Registrant's Domain name has been Registered or is being used in bad faith.

A. Identical or Confusingly Similar:

The disputed Domain name <bollore.in.> was registered by the Respondent on September 26<sup>th</sup>, 2020. The registration of the said disputed Domain name is due to expire on September 26, "2021. It is pertinent to note that the Complainant has taken swift action and filed complaint on September 28, 2020.

The Complainant is an owner of the Registered Trademark <bollore>. The Complainant is also the owner of a large number of domains with the Trademark <bollore> as stated above and referred to in the Complaint. Most of these Domain names and the Trademarks have been created by the Complainant much before the date of creation of the disputed Domain name by the

*Pravindra*



Respondent. The disputed Domain name is Trademark <bolllore>. Thus, the disputed Domain name is very much similar to the name and the Trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the Domain name has become a business identifier. A Domain name helps identity the subject of trade or Service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for <bolllore> products in India or elsewhere would mistake the disputed Domain name as of the Complainant.

In the case of *Walmart Stores, Inc. v. Richard MacLead*, (WIPO Case No. D2000-0662) it has been held that "When the Domain name includes the Trademark, or a confusingly similar approximation, regardless of the other terms in the Domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the Domain name <bolllore.in> is phonetically, visually and conceptually identical or confusingly similar to the Trademark of the Complainant.

**B. Rights or Legitimate Interests:**

The Respondent may demonstrate its rights to or legitimate interest in the Domain name by proving any of the following circumstances:





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; or

(ii) the Registrant (as an individual, business or other organization) has been commonly known by the Domain name, even if the Registrant has acquired no Trademark or Service mark rights; or

(iii) The Registrant is making a legitimate non-commercial or fair use of the Domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Trademark or Service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed Domain name anywhere in the World. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and as such the Respondent has no rights or legitimate interests in the disputed Domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the respondent

*David Sch*



to use its name or Trademark <bollore> or to apply for or use the Domain name incorporating said mark. The Domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the Domain name under INDRP Policy, Paragraph 4(ii).

**C. Registered and Used in Bad Faith:**

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the Domain name in bad faith:

- i) circumstances indicating that the Registrant has Registered or acquired the Domain name primarily for the purpose of selling, renting, or otherwise transferring the Domain name registration to the Complainant who bears the name or is the owner of the Trademark or Service mark, or to 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

*Penelope*



owner of The Trademark or Service mark from reflecting the mark in corresponding Domain name, provided that the Registrant has engaged in a pattern of such conduct; or

- iii) by using the Domain name the Registrant has intentionally attempted to attract the internet user to the Registrants website or other online location by creating a likelihood of confusion with the Complainant's name or Mark as to the source, Sponsorship, Affiliation, or Endorsement of the Registrant's website or location of a product or Service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

Further, as has been mentioned above if there are circumstances indicating that the Registrant has Registered or

*Paul J. J.*



acquired the Domain name primarily for the purpose of selling, renting or otherwise transferring the Domain name registration to the Complainant who bears the name or is the owner of the Trademark or Service mark or to a competitor of that Complainant for valuable consideration in excess of the Registrant's documented out of pocket cost directly related to the Domain name, it will amount to the registration or use of the main name in bad faith.

Further, the disputed Domain name resolves to a parking page with commercial links and has attempted to attract Internet users for commercial gain to his own website using Complainant's trademark for its own commercial gain.

Finally, the complainant has identified the Respondent (chromebooks@hotmail.com) known in prior INDRP decisions in pattern of conduct such for exam for example:

-INDRP case number IND RP / 627 M/s  
Tata Motors Limited versus GoaGou  
(chromebooks@hotmail.com)  
<tatamotors.in>

-INDRP case number IND RP / 613

*Plut*

Boehringer Ingelheim Pharma Gmbh & Co.  
KG v Yerect International Limited  
(chromebooks@hotmail.com) <buscopan>;


-INDRP case number IND RP/420 Comercia  
Inc v GoaGou Yerect International  
Limited (chromebooks@hotmail.com)  
<tatamotors.in>

The foregoing circumstances lead to  
the presumption that the Domain name  
in dispute was Registered and used by  
the Respondent in bad faith.

## 7. Decision

In light of the foregoing findings, namely,  
that the Domain name is confusingly similar to  
a mark in which the Complainant has rights,  
that the Respondent has no rights or  
legitimate interests in respect of the Domain  
name, and that the Domain name was Registered  
in bad faith and is being used in bad faith,  
in accordance with the policy and the rules,  
the Arbitrator orders that the Domain name  
"bollore.in" be transferred to the  
Complainant.

This award is passed at New Delhi on this 21<sup>st</sup>  
day of December, 2020.

  
21/12/2020

R. K. KASHYAP  
SOLE ARBITRATOR