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Account Reference	: IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91450305499987685850U
Purchased by	: SUDHIR KUMAR SENGAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SUDHIR KUMAR SENGAR
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IN-DL08585406182668U

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

Elcher Motors Limited
Vs

Samir Panchal

ARBITRATION AWARD Disputed Domain Name: www.royalenfield-dealer.in

Statutory Alert:

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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.

1. The Parties

The complainant in this arbitration proceedings is Eicher Motors Limited, 3rd Floor, Select Citywalk, A-3 District Centre, Saket, New Delhi-110017 (praisy@royalenfield.com).The Complainant's authorized representative in this arbitration proceedings is Diva Arora, Devyani Nath, Prithvi Gulati, Fidus Law Chamber,F-12, Ground Floor,Sector-8, Noida – 20130,1Uttar Pradesh, India (Telephone: 91-120-4847550, Email: diva@fiduslawchambers.com devyani@fiduslawchambers.com , prithvi.gulati@fiduslawchambers.com.)

The Respondent in these proceedings, is Samir Panchal (Phone : 91-965584474, Email samir@theuniquecollections.in)

2. Domain Name and Registrar

(i) The disputed domain name is < royalenfield-dealer.in >.

(ii) The Disputed Domain Name is registered with the domain registrar GoDaddy.com, LLC, 14455, North Hayden Road Suite 219, Scottsdale, Arizona 85260, United States of America.

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure("the Rules") which were approved on June 28,2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

On March 4, 2022, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on March 4, 2022 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on March 5, 2022 and the Respondent was directed to submit a response to the arbitration notice within 7(seven) days. The respondent failed to submit any response to the arbitration notice issued through email dated 5.3.2022. The Respondent was further given 3 (three) days time through email dated 14.03.2022 to respond to the notice already served through email dated 05.03.2022.The Respondent failed to file any response even after expiry of extended time line. In fact the respondent has not filed any response till date.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.
2. The respondent has no rights or legitimate interests in respect of the domain name.
3. The respondent has registered the domain name in bad faith.



5. Background of the Complainant

The Complainant has submitted that "the Complainant, Eicher Motors Limited, incorporated in the year 1982, is the flagship company of the Eicher Group in India and a leading player in automobile industry. The Complainant is a limited company organized under the laws of India having its registered office at Select Citywalk, District Centre, Saket, New Delhi." The Complainant further submitted that "the Complainant has been a pioneer of powerful four stroke engine technology since 1995 in India. With its manufacturing base in Chennai, India, the Complainant offers a variety of models of bikes/motorcycles, under its flagship brand, ROYAL ENFIELD, catering to the needs of the traditional segments, the enthusiasts, the leisure bikers and urban youth. The Complainant's motorcycles under the mark ROYAL ENFIELD created the mid-size motorcycle segment in India with its unique and distinctive modern classic motorcycles. The Complainant's ROYAL ENFIELD motorcycles enjoy an extensive and committed customer base and the same is evident from the Complainant's outreach on various social media websites such as Facebook and Twitter. The Complainant exports to more than 70 countries including but not limited to USA, Japan, UAE, France, UK, etc. The Complainant operates through a vast chain of authorized dealers and service centres set up across various cities and towns. The Complainant sells more than 60,000-65,000 bikes per month and more than 6,00,000 bikes in a year." The Complainant has further submitted that "In addition to dealing in bikes, the Complainant has also set up a wide network of brand stores and dedicated gear stores. The Complainant is also engaged in the business of sale of accessories, bike care products, apparels, and other lifestyle and related products. These products are targeted towards enhancing the 'true motorcycling experience' which the Complainant's envisions for its customers." The Complainant submitted that "the Complainant promotes and advertises its products and services through its website, www.royalenfield.com. The domain name www.royalenfield.com was registered on 19th October, 1997 and has been used by the Complainant continuously ever since. The Complainant is the owner and proprietor of a variety of registered trademarks and device marks including but not limited to ROYAL ENFIELD, BULLET, etc. The word mark ROYAL ENFIELD was registered for the first time in favour of the Plaintiff in the year 1995." The Complainant has submitted that "by virtue of long and continuous use and the exquisite quality of the Complainant's products, the trademarks have come to be associated exclusively with the Complainant and its flagship ROYAL ENFIELD. The Complainant's trademarks are exclusively associated with the complainant on account of factors such as the very nature of the trademarks which possesses a high degree of innate distinctiveness, its prior adoption and long, continuous, and extensive use by the Complainant, the extensive advertisement and publicity done by the Complainant under the said trademarks, and their widespread business activities." The Complainant has further submitted that "as a consequence of the above factors, the said trademarks enjoy a pervasive goodwill and reputation all over the world including in India and the Complainant has acquired common law rights to the exclusive use of the said trademarks."

The Respondent

The Respondent is Samir Panchal (Phone : 91-965584474, Email samir@theuniquecollections.in). The Respondent registered the disputed domain name < royalenfield-dealer.in > on December 15, 2021.

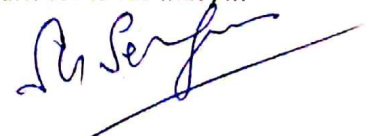


6. Legal Grounds

A. The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

Complainant's Contentions

The Complainant contends that the disputed domain name www.royalenfield-dealer.in wholly contains the Complainant's trademark ROYAL ENFIELD and is therefore identical to the Complainant's trademark/trade name ROYAL ENFIELD. The complainant submitted that the complainant has also filed a complaint with the Cyber Cell Chennai Police, Tamil Nadu, India under case number C.No. 323/DC. CCB-II/CPO/Gen/2021. The Complainant further contends that the Respondent registered the disputed domain name several decades after the adoption of the trademark ROYAL ENFIELD by the Complainant. The Complainant submitted that the trademark ROYAL ENFIELD has not been used by anyone other than the Complainant or its authorized dealers/service centres/franchisee holders. The Complainant contends that the Respondent is not a licensee or franchisee of the Complainant and has adopted the identical trademark with a view to ride upon the goodwill associated with the Complainant's well-known trademark ROYAL ENFIELD and pass off its goods and services as that of the Complainant. The Complainant further submitted that due to the fame and reputation associated with the trademark ROYAL ENFIELD, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant. The Complainant submitted that the domain name and the contents of the website hosted on the disputed domain name makes it evident that the Respondent is impersonating itself to the Complainant's company and are offering Royal Enfield dealership to third parties. The Complainant submitted that the offer to provide Royal Enfield dealership is fake, illegal and without any permission and/or authorization of the Complainant. The Complainant further submitted that the description (About Us) on the Respondent's website clearly establishes that the Respondent is portraying to the public that the Respondent is in fact Complainant's client Royal Enfield and is offering dealership of motor cycles offered by Complainant's client under its registered and well-known trademark ROYAL ENFIELD. The Complainant further submitted that the Respondent is also using images of the Complainant's bikes on the website and giving an impression to the public that the Respondent deals in the said bikes, gear, etc. The Complainant submitted that the Respondent is also *mala fide* offering dealership of ROYAL ENFIELD motorcycles to the public at large and the public can apply for the said dealership through the impugned website. The Complainant further submitted that the Respondent's use clearly indicates towards the Respondent's intention to pass off its business, goods and services as that of the Complainant. The Complainant submitted that the Respondent's acts clearly amount to infringement of the Complainant's trademarks. Further, the Respondent is also using the Complainant's logo mark without permission and the Respondent's *mala fide* is writ large further from the fact that on <https://royalenfielddealer.in/contact-us/> page the Respondent mentions its location as that of the Complainant's address. The Complainant submitted that this is a sheer case of impersonation and defrauding the public. The Complainant has relied upon Nike Inc. v. Nike Innovative CV Zhaxia (Case No. INDRP/804); Metropolitan Trading Company v. Chandan Chandan (Case No. INDRP/811); Lego Juris A/s v. Robert Martin (Case No. INDRP/125), where it was held that if a Disputed domain name completely incorporates the trademark / service mark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's Disputed domain name. The Complainant contends that, In



the instant case, the disputed domain name is identical to the Complainant's well-known ROYAL ENFIELD trademark and the services offered by the Respondent are identical to the Complainant. The Complainant further contends that, addition of the word DEALER in the disputed domain name does not negate the fact that the disputed domain name is identical and confusingly similar to the Complainant's trademarks. The Complainant submitted that the content of the website hosted on the disputed domain name clearly gives an indication that the Respondent is impersonating to by the Complainant and thus, there is a strong likelihood of confusion. The Complainant further contends that the Respondent in the present dispute has registered the domain name www.royalenfield-dealer.in thereby misappropriating illegally and without authority the Complainant's ROYAL ENFIELD trademarks including the logo, which is the exclusive property of the Complainant.

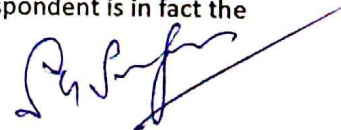
Respondent's Contentions

The respondent has not responded to the notice issued by this panel.

B. The Respondent has no rights or legitimate interests in respect of the Domain Name.

Complainant's Contentions

The Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name, more in particular that the Respondent has not used, nor made, demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services; and further the Respondent (as an individual, business, or other organisation) is not commonly known by the disputed domain name and the Respondent has acquired no trademark rights; and further the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name and is using the domain name to defraud general public; and further the Respondent has failed to establish the criteria mentioned in paragraph 4(b). The Complainant contends that the disputed domain name has not been used in connection with *bona fide* offering of goods or services by the Respondent and the contents of the website hosted on the disputed domain name makes it evident that the Respondent is impersonating itself to be Complainant company using its brand ROYAL ENFIELD and are offering Royal Enfield dealership. The Complainant further submitted that this offer is fake and without any permission and/or authorisation of the Complainant. The Complainant further submitted that the Respondent is not authorised by the Complainant in any manner to use the trademark ROYAL ENFIELD and Royal Enfield is not a mark that has ever been used by the Respondent for any purpose including automobiles and related services. The Complainant submitted that the Respondent has evidently copied the Complainant's trademark ROYAL ENFIELD to impersonate the Complainant and defraud the public. The Complainant further submitted that the content of the website hosted on the disputed domain name makes it evident that the same is not for non-commercial or fair use purposes. The Respondent's clearly gaining commercial benefits and unjust enrichment by misappropriating the Complainant's ROYAL ENFIELD trademark. The Complainant contends that the disputed domain name suggests an affiliation with the Complainant and its Royal Enfield trademark, as the disputed domain name fully incorporated the Complainant's registered ROYAL ENFIELD trademark. The Complainant further submitted that the disputed domain name is identical to the Complainant's ROYAL ENFIELD trademarks and the entire website connected to the disputed domain name creates an impression that the Respondent is in fact the



Complainant and that the website on the disputed domain name is the official website of the Complainant. The Complainant contends that the Complainant has established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name. The Complainant has relied on *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455). The Complainant further contends that internet users are misled regarding the relationship between the disputed domain name and the Complainant and will falsely believe that the website connected to the disputed domain name is owned by the Complainant. The Complainant further contends that such use of the disputed domain name cannot be considered a *bona fide* offering of services and does not establish legitimate interest on behalf of the Respondent.

Respondent's Contentions

The respondent has not responded to the notice issued by this panel.

C. The domain name was registered and being used in bad faith.

Complainant's Contentions

The Complainant contends that the facts and circumstances as set out above cannot lead to any other conclusion than that there has been bad faith on the part of the Respondent and it is unthinkable that registration was *bona fide* and/or that the use is taking place in good faith. The Complainant contends that due to the fact that the ROYAL ENFIELD trademark is well-known in the entire world, that ROYAL ENFIELD is highly distinctive, and given the identity between the ROYAL ENFIELD trademark and the disputed domain name, the Respondent must have been aware of the Complainant, the ROYAL ENFIELD trademark, domain names and websites associated with the Complainant and the goodwill associated with it, when the Respondent registered the disputed domain name. This indicates registration in bad faith. The Complainant has relied on *Hodge Jones & Allen LLP v. Koichiro Taneda* WIPO Case No. D2018-1426. The Complainant further contends that given the similarities between the disputed domain name and Complainant's trademark and the impersonation by the Respondent to be the Complainant, there is a great risk that the disputed domain name is and will be used for fraudulent activities by the Respondent. The Complainant submitted that there is apprehension that by the Respondent by offering fake ROYAL ENFIELD dealerships have already perpetrated fraud on numerous consumers and therefore, it is important to refrain the Respondent from using the disputed domain name at the earliest. The Complainant further contends that the Respondent's registration of the disputed domain name shows that the Respondent's intent to rely on a risk confusion with the Complainant's activity and trademark as to the source, sponsorship, affiliation or endorsement of the disputed domain name and website associated with it and evidently, such use of the domain name cannot be qualified as a *bona fide* offering of services. The Complainant has relied on *AT&T Corp. v. Amjad Kausar*, WIPO Case No. D2003-0327. The Complainant further submitted that there is also a risk that the Respondent will make use of the disputed domain name for fraudulent activities such as phishing expeditions and this risk is enhanced by the fact that the Respondent has not only registered the disputed domain name, but also activated email addresses associated with the disputed domain



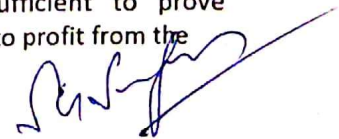
name. The Complainant has relied on WIPO Overview 3.0, section 2.13.1 wherein it is stated that it is well established that "the use of a domain name for illegal activity[,] [such as] phishing, [...] impersonation/passing off, or other types of fraud[,] can never confer rights or legitimate interests on a respondent." The Complainant contends that the Respondent has registered the domain name www.royalenfield-dealer.in with the sole purpose of misappropriating illegally and without authority the Complainant's trademarks/trade name ROYAL ENFIELD, which is the exclusive property of the Complainant. The Complainant further contends that the contents of the website hosted on the disputed domain name makes it evident that the Respondent is impersonating itself to be Complainant's ROYAL ENFIELD company and are offering Royal Enfield dealership. The Complainant submitted that above offer is fake and without any permission and/or authorisation of the Complainant with the sole purpose to defraud customers. The Complainant further submitted that there is great likelihood that actual or potential visitors to the present website of the Respondent will be induced to believe that the Complainant has licensed their trademark/trade name/ trading style ROYAL ENFIELD to the Respondent or authorized the Respondent to register the disputed domain name and that the Complainant has licensed their trademark/ trade name/trading style ROYAL ENFIELD to the Respondent or authorized the Respondent to sell and advertise products and offer services under the trademark ROYAL ENFIELD and that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with Complainant. The Complainant further submitted that the Respondent has registered the disputed domain name for the purpose of intentionally disrupting the business of the Complainant and by registered the disputed domain name, the Respondent is preventing the Complainant to use the disputed domain name and dislocating and disrupting Complainant's activities and business, with the clear intention to secure a favorable bargaining position vis-à-vis the Complainant.

Respondent's Contentions

The Respondent has not responded to the arbitration notice issued by this panel.

7. Discussion and findings

The Complainant, Eicher Motors Limited, is a company of the Eicher Group in India having its registered office in Saket, New Delhi. The Complainant offers brand ROYAL ENFIELD models of bikes/motorcycles. The Complainant's ROYAL ENFIELD motorcycles have large customer base and the Complainant has also significant presence on various social media websites such as Facebook and Twitter. The Complainant exports motorcycles to many countries. The Complainant has number of authorized dealers and service centres in many cities. The Complainant has also its brand stores and gear stores dealing in sale of accessories, bike care products, apparels, and other lifestyle and related products. The domain name royalenfield.com was registered by the complainant on 19th October, 1997 and is continuously in use. The Complainant is also the owner of registered trademarks ROYAL ENFIELD. The mark ROYAL ENFIELD is being used by the Complainant since 1995. The Complainant has invested substantial money on advertisement and publicity of their marks and trademarks are associated with the complainant by the general public. The Complainant's trademarks comes under well known category need to be protected under common law rights. The disputed domain royalenfield-dealer.in was registered on 15.12.2021 years after registration of marks and domain of the Complainant. The disputed domain name contains Complainant's mark "ROYALENFIELD" in entirety and is sufficient to prove confusingly identical nature of domain. The purpose of respondent appears to profit from the



reputation of the Complainant by registering a nearly identical mark/domain. The disputed domain is likely to attract internet traffic intended to the Complainant's domain. The registration of disputed domain name chosen by the Respondents shows his intent of using nearly identical mark/domain name of the Complainant to divert an ordinary internet user who may consider respondent's website to be associate of the Complainant. The Respondent has redacted the critical information from registrar's whois database . The whois information, made available by NIXI, gives absurd information about location of the respondent. The Complainant was not also able to deliver physical copy of complaint due to absurd address provided by the Respondent in whois information database. The Respondent has failed to respond to the arbitration notice issued by this panel so as to rebut the contentions of the Complainant.

Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex party decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.

The disputed domain name <royalenfield-dealer.in> is nearly identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks 'ROYALENFIELD' by submitting substantial documents. The mark is widely used by the Complainant in different advertising modes and has a strong presence in social media platforms. The disputed domain contains name which is identical and similar to mark 'ROYALENFIELD' as the disputed domain contains Complainant's mark completely. Addition of top level domain (CCTLD) extension '.in' is insignificant and does little to make it different. There can't be coincidence that the respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level domain name <royalenfield.com> was registered by the Complainant years before registration of disputed domain name <royalenfield-dealer.in> by the respondent on 15.12.2021.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.



The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark "ROYALENFIELD". The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the respondent. The Respondent has failed to submit any response to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents , I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered and is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating mark and domain name of the Complainant. The Complainant has been the using the mark for several years when the Respondent registered the disputed domain name in December, 2021. The Respondent redacted the critical information in whois database and has provided absurd information about his location indicating his malafide intentions. The panel finds that the Respondent has used the mark of the Complainant in disputed domain name giving impression that disputed domain website belongs to the Complainant's company. The sole purpose of the respondent is to create confusion to an ordinary internet user. The respondent is using disputed domain to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The Respondent has failed to submit any response to rebut the contentions of the Complainant

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.



Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the respondent's Domain name <royalenfield-dealer.in> be cancelled with a request to NIXI to monitor the cancellation. The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

March 24, 2022


Sudhir Kumar Sengar 24/03/22

Sole Arbitrator