



सत्यमेव जयते

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Certificate Issued Date : 19-Feb-2025 05:17 PM
Account Reference : SHCIL (FI)/ tnscoil01/ Saidapet-SRO/ TN-CS
Unique Doc. Reference : SUBIN-TNTNSHCIL0103652353086193X
Purchased by : SAISUNDER N V
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : SAISUNDER N V
Second Party : SAISUNDER N V
Stamp Duty Paid By : SAISUNDER N V
Stamp Duty Amount(Rs.) : 200
(Two Hundred only)



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NV SAISUNDER
SOLE ARBITRATOR

.IN REGISTRY- INTERNET EXCHANGE OF INDIA

INDRP CASE NUMBER: 1915

DISPUTED DOMAIN NAME: <tharroxx.co.in>

N V SAISUNDER



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IN THE MATTER OF ARBITRATION BETWEEN:

Mahindra & Mahindra Limited

Gateway Building Apollo Bunder,
Mumbai-400001

..... **Complainant**

Versus

ArmDass,

Plot No. 894, Balaji Colony
Gauhathi - 781001
India

..... **Respondent**

ARBITRATION AWARD

DATED: 11/03/2025


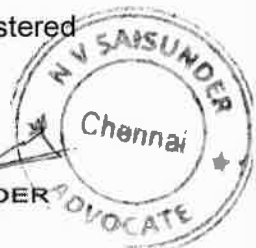
1. PARTIES:

The Complainant in this proceeding is Mahindra & Mahindra Limited, having its registered office at Gateway Building Apollo Bunder, Mumbai-400001, India. The Complainant is represented by its authorised representative Saikrishna & Associates, having office at B-140, Sector 51, Noida- 201 301.

The Respondent in this proceeding is ArmDass, Plot No. 84, Balaji Colony, Gauhathi – 781001, India as per the WHOIS details disclosed by NIXI.

2. DOMAIN NAME AND REGISTRAR:

The disputed domain name <tharroxx.co.in> ("**Disputed Domain Name**") is registered with Endurance Digital Domain Technology Private Limited.



N V SAISUNDER ADVOCATE

3. PROCEDURAL HISTORY:

The Statement of Acceptance and Declaration of Impartiality was submitted by me on 20th January 2025, as required by NIXI and the copy of amended complaint along with Annexures were served to the Arbitrator on 21st January 2025. In accordance with Rules 3 and 5(b), NIXI appointed me as the sole arbitrator for deciding on the complaint filed in respect of the disputed domain name on 21st January 2025 to arbitrate the dispute between the Parties in accordance with the Arbitration and Conciliation Act, 1996 and accordingly notified the Parties of the appointment of the Arbitrator on 21st January 2025. In accordance with Rule 5(c), the notice to the Respondent was issued on 21st January 2025 by the Arbitrator and the Respondent was called upon to submit his response, if any within 10 (ten) days from the date of issue of the notice, which ended on 31st January 2025. The Respondent did not file any response within the said date and nor has this panel received any response even as on the date of this award viz., 11th March 2025. Further, the Arbitrator did not receive any delivery failure notification from the Respondent's email id and hence the complaint is deemed to be served. Therefore the complaint is decided *ex-parte* solely based on the materials and evidence placed before the Arbitrator.

4. FACTUAL BACKGROUND:

The Complainant is an Indian vehicle manufacturing corporation and part of the Mahindra Group, a multi-national conglomerate incorporated in 1945. The Complainant claims to be the US multi-billion global federation of companies, the Mahindra Group, having a presence in more than 100 countries and employing over 2,50,000 people in over 150 companies. The Complainant claims that the Mahindra Group operates in 22 key industries, including but not limited to, automotive, aerospace, aftermarket, Agri industry, boats, clean energy, construction equipment, consulting, defence, farm equipment, financial services, hospitality, industrial equipment, information technology, insurance broking, logistics, power back up, real estate & infrastructure, retail, rural housing finance, steel, trucks & buses, and two wheelers. The Complainant has submitted that its automotive business portfolio includes world class SUVs, premium luxury UVs, sedans, pick-ups, light, medium and heavy commercial vehicles to three-wheelers and that the details of the Complainant's businesses are available on its website www.mahindra.com. The Complainant has received several awards and recognitions.



On October 4, 2010, the Complainant claims to have launched a unique model in compact off road Sport-Utility Vehicle ("SUV") range in India under the brand "THAR" and that the term "THAR" was honestly conceived and adopted by the Complainant in 2010 when no other similar mark was present in the market. The Complainant claims that within a short span of time since its launch, the Complainant has sold several lakh vehicles under the "THAR" brand in India and also exported a large number to various countries across the world. Owing to its popularity and increasing demand, the Complainant claims to have launched new variants of the "THAR" vehicles.

The Complainant is the registered proprietor of the trademark "THAR" and "THAR ROXX" and claims to have been continuously using the mark in the global market. Complainant provides for the following list of marks:

Trademark	Registration Number	Application Date / User Claim	Class	Status
THAR ROXX	6184133	November 11, 2023 / Proposed to be Used	12	Pending registration
THAR	2654045	January 03, 2014 / December 21, 2010	12	Registered
THAR	5437609	May 06, 2022 / March 25, 2022	35	Registered

Additionally, the Complainant claims to also holds trademark applications/ registrations for the mark "THAR" and its formatives in various international jurisdictions such as Bhutan, Algeria, New Zealand, Morocco, EUIPO, Indonesia, Nepal, New Zealand, Peru, South Africa, Chile, Kenya, Mozambique, Saudi Arabia, UAE, Guatemala and Japan in respect of automobiles and its parts and accessories.

The disputed domain name <tharroxx.co.in> was registered on 21st July 2024 and resolves to an active site containing information about the Complainant's "THAR ROXX" SUV. The Complainant's trademark registration of the mark "THAR" predate the


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registration of the disputed domain name. The Complainant submits that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

From the whois details disclosed, the Respondent appears to be an Individual named ArmDass, based out of Gauhati, India.

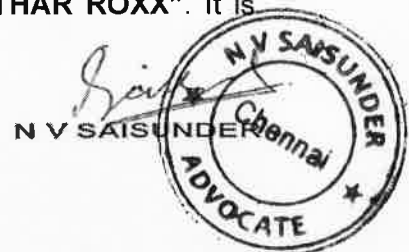
5. PARTIES CONTENTIONS:

A. Complainant:

The Disputed Domain Name subsumes the Complainant's registered trademark "THAR" and is identical with Complainant's trademark "THAR ROXX". In light of the glaring identity between the disputed domain name and the Complainant's trademark, an Internet user may be misled when coming across the Disputed Domain Name. The Complainant relies on *Royal Multisport Private Limited. v. Deepak Jawade Case No. D2023-0048* and *Nike Innovative C.V. v. Amy Hill, Case No. INDRP/1288*.

Complainant submits that any consumer when reading the Disputed Domain Name would get confused with the Complainant's trademark "THAR" and "THAR ROXX" as it consists solely of the Complainant's trademarks. In light of the above and owing to the disputed domain name subsuming Complainant's trademarks that are registered and/or pending registration in India and globally along with the extensive use of the trademark "THAR", the relevant public and the people visiting the disputed domain name will definitely associate the said disputed domain name with the Complainant alone.

The Respondent is using a Domain Name that is identical to the Complainant's well-known trademark "THAR" and prior adopted trademark "THAR ROXX", without the Complainant's consent or authorization and with no rights or legitimate interests with respect to the Disputed Domain Name. The Complainant has no relationship with the Respondent. The disputed domain name consists of extensive information about the Complainant's automobile "THAR ROXX" along with hyperlinks to the social media handles maintained by the Complainant under the trademark "THAR ROXX". It is



submitted by the Complainant that the Disputed Domain Name displays the Complainant's trademarks extensively, which shows that the Respondent has attempted to impersonate or pass-off as the Complainants, since the display of said trademarks misleads Internet users as to the source or sponsorship of the services rendered by the Respondents, while clearly seeking a commercial gain and hence cannot be construed as legitimate use.

That the Respondent possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which constitutes registration and use in bad faith. Reliance has been placed on *Koninklijke KPN N.V. v. Privacy service provided by Withheld for Privacy ehf / Aiden Pearce Case No. D2022-0304*. The Complainant claims that the bad faith of the Respondent is also evident as the Respondent is using the disputed domain name page to list unauthorized information about the Complainant's goods and services offered under the trademark "THAR ROXX".

B. Respondent:

The Respondent did not file any response to the submissions of the Complainant.

6. DISCUSSION AND FINDINGS:

Under the INDRP, the following three elements are required to be established by the complainant in order to obtain the remedy of transfer of the disputed domain name to the complainant:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and,
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.



A. Identical or confusingly similar:

The Disputed Domain Name incorporates the Complainant's "Thar" mark in its entirety and it is also pertinent to note that while the Complainant launched the "Thar Roxx" vehicle in August 2024, Complainant claims to have been promoting the same extensively even before its launch. It is well accepted principle that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. The Complainant has submitted evidence of its trademark registrations that establish that the Complainant has statutory rights in the mark for the purpose of policy and specifically also holds registration in the country where the Respondent is operating out of. Further, the trade mark of the Complainant, "THAR ROXX" has been reproduced in the Disputed Domain Name "tharroxx.co.in". It is a well-established principal that when a domain name wholly incorporates a complainant's mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. The Complainant has also provided evidence of the reputation, goodwill and global presence associated with its mark due to its extensive and continuous use.

The Disputed Domain Name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4(a) of the Policy, that the Disputed Domain Name is identical or confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate interest:

Paragraph 6 of the Policy provides a list of circumstances in which the registrant of a domain name may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in the proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent


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fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Panel finds the following from the records before it:

- a. before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name with a bona fide offering of goods or services.
- b. the Respondent has not been commonly known by the Disputed Domain Name.
- c. the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.
- d. the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Disputed Domain Name.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

On perusal of the content of the Disputed Domain Name, it is observed that information regarding the launch date, mileage and other specifications of the SUV under the name "**THAR ROXX**" is exhibited, and thus the Internet users will naturally assume that the Disputed Domain Name is owned or has been authorized by the Complainant, which is not the case. Panels appointed under the Policy have found that the use of a domain name for illegal activity, such as impersonation or passing off, cannot confer rights to or legitimate interests in a domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4(b) of the Policy has been met by the Complainant.



C. Registered and/or used in bad faith:

The Panel notes that, for the purposes of paragraph 4(c) of the Policy, paragraph 7 of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel notes from the contents of the Disputed Domain Name that the Respondent has apparently created the website under the Disputed Domain Name as- *"a dedicated platform for Mahindra Thar enthusiasts, offering the latest news, reviews, modifications, accessories, and a vibrant community"*. However considering the fact that there are no disclaimers on the Disputed Domain Name or acknowledgement of trademark rights of the Complainant over the "THAR ROXX" marks, and furthermore considering the fact that the Disputed Domain Name subsumes and appropriates the well-known trademark "THAR ROXX" in entirety with no addition of any typically descriptive or laudatory term so as to indicate that the website created under the Disputed Domain Name is a fan site or platform for "Thar" enthusiasts, this Panel has to draw a presumption in favour of the Complainant as regards the third element and against the Respondent who has chosen not to respond to the Complaint herein.

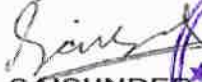
It is evident that the Respondent has been using the Domain Name intentionally to attract Internet users to the Complainant's website, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of Complainant's website or product. Further the Respondent is using the disputed domain name as a web portal through which Internet users can, not only obtain information about the Complainant but also compare pricing of the competitor's products with the Complainant's products. The Complainant is extremely well-known and popular and there is virtually no possibility that the Respondent was unaware of its existence or presence in the market. All of the aforementioned indicates the bad faith towards the Respondent and hence in Panel's view the bad faith is evidently established and hence its very use by the Respondent with no connection to the trademarks suggests opportunistic bad faith.



7. DECISION:

In view of the above findings it is ordered that:

- a. The Disputed Domain Name <tharroxx.co.in> be transferred to the Complainant.
- b. The Respondent pay the Complainant a sum of INR 2,00,000/- (Indian Rupees Two Lakhs only) towards costs of these proceedings.


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Arbitrator

Date: 13th March 2025