

Bond



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Haryana Government**



Date :27/03/2017

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(Rs. Zero Only)

**Deponent**

Name: Rna Ip Attorneys

H.No/Floor : Na

Sector/Ward : 65

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 9910074336



Purpose : OTHERS to be submitted at All places

RANJAN NARULA

ARBITRATOR

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

In the matter of:

**Volvo Trademark Holding AB**

c/o AB Volvo  
SE-405 08 Goteborg  
Sweden

....Complainant

**Mr. Sachin**

197/1A, Bhola Nath Nagar  
Gali No. 11, Shahdara  
Delhi-110032

..... Respondent

Disputed Domain Name: **www.volvo-bus.in**

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is **Volvo Trademark Holding AB** of AB Volvo, SE-405 08 Goteborg, Sweden. The Complainant is represented by its Authorized Representative, Binny Kalra and Raunaq Kamath ([binny@anandandanand.com](mailto:binny@anandandanand.com) & [raunaq@anandandanand.com](mailto:raunaq@anandandanand.com)) of Anand and Anand, First Channel, Plot No. 17A, Sector 16-A, Film City, Noida, Uttar Pradesh, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. Sachin of 197/1A, Bhola Nath Nagar, Gali No. 11, Shahdara, Delhi-110032 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name **www.volvo-bus.in**. The Registrar is Godaddy India Web Services Private Limited of 003, Tower 4A, DLF Corporate Park, MG Road, Gurgaon HR 122002.

The Registrant is Mr. Sachin of 197/1A, Bhola Nath Nagar, Gali No. 11, Shahdara, Delhi-110032.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.



1. The complaint was produced before the Arbitrator on February 21, 2017 and the notice was issued to the Respondent on the same day i.e. February 21, 2017 at his e-mail address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response.
2. Vide e-mail dated February 28, 2017, the NIXI informed that the complaint could not be delivered to the Respondent and returned undelivered as '*No such person or person shifted*'. Accordingly, on March 1, 2017 the Arbitrator directed that this will be treated as deemed service since the packet was sent on address appearing on their WHOIS details. Further, they have been notified by e-mail.
3. Vide e-mail dated March 9, 2017 the Arbitrator granted further and final opportunity to the Respondent to submit its response on or before March 15, 2017. However, no response was submitted by the Respondent within the stipulated time of thereafter. There was no delivery failure message received from the Respondent's email address.

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

**Grounds for administrative proceedings:**

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

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

- a) The Complainant submits that Volvo Trademark Holding AB, is a company organized under the laws of Sweden with its registered office at AB Volvo, SE-405 08 Goteborg, Sweden. The Complainant is the exclusive and sole proprietor of the trade mark/name VOLVO, which enjoys the status of a well-known and famous trade mark in India.
- b) Aktiebolaget Volvo is a public company organized under the laws of Sweden, incorporated on May 5, 1915 with its registered office at SE 405 08 Goteborg, Sweden. Volvo Car Corporation is a corporation organized under the laws of Sweden with its registered office at SE 405 31 Goteborg, Sweden. Aktiebolaget Volvo executed a global deed of assignment in favor of the Complainant who



became the subsequent proprietor of the VOLVO trademarks and subsequently licensed these Aktiebolaget Volvo and Volvo Car Corporation to be used in relation to their respective business.

- c) The Complainant's main activity is to own, maintain, protect and preserve the Volvo trademarks and to license the use of these to other Volvo companies such as Aktiebolaget Volvo and Volvo Car Corporation. The day-to-day work of the Complainant is focused upon maintaining the global portfolio of trademark registrations and to extend sufficiently the scope of the registered protection for the Volvo trademarks. By virtue of its sole proprietorship of the VOLVO trademarks, the Complainant is globally authorized to act against unauthorized registration and use (including counterfeiting) of trademarks which are identical or similar to the Volvo trademarks.
- d) The Complainant's licensee Aktiebolaget Volvo is an international automotive and transport vehicle group which employs approximately 115,000 persons worldwide. Aktiebolaget Volvo provides a wide spectrum of transportation related products and services, with superior quality and high standards of safety and environmental care, to customers in selected segments. Today, it is a world leader in heavy commercial vehicles such as buses, trucks and construction equipment, as well as in drive systems for marine and industrial applications. Volvo Car Corporation occupies a prominent position as a car producer within its segment. Aktiebolaget Volvo and Volvo Car Corporation manufacture goods and provide related services throughout the world under the trademark/name 'VOLVO'.
- e) In addition to the Complainant's core business in transportation and automotive sector, the Complainant's use of the VOLVO mark, through its licensees, also extends to a wide range of ancillary products, services and businesses. Illustratively, the Complainant has created a diverse range of VOLVO merchandise goods which include stationery, bags, watches, clothing and a range of other accessories which further enhances the brand visibility of the Complainant's trademark/name and house mark VOLVO.
- f) The Complainant's predecessor in title, Aktiebolaget Volvo, adopted VOLVO as a trademark and corporate name in May 5, 1915. The word 'Volvo' is not found in any authoritative English dictionary and is thus a coined and inherently distinctive trademark which is solely associated with the Complainant.
- g) On account of priority in adoption coupled with over a century of extensive and continuous use on a global scale, the Complainant exercises strong common law



in trade mark/name VOLVO. In addition the Complainant has also obtained registration of numerous VOLVO trademarks all over the world including over two dozen registrations in India. The Complainant's earliest registration for the VOLVO trade mark in India dates back to 1975. The Complainant has obtained multiple registrations for the trade mark 'VOLVO' in various countries of the world.

- h) The Complainant further submit that the mark VOLVO has been declared as a well-known mark as defined under Section 2(1)(zg) of the Trade Marks Act, 1999 by a Division Bench of the Bombay High Court in an appeal titled *Aktiebolaget Volvo vs Volvo Steel Ltd.* [1998 PTC (18) 47]. Pursuant to this, the well-known status of the Complainant's trademark VOLVO in India was recognized by the Trade Marks Registry and the VOLVO trademark has been inserted in the list of well-known marks maintained by the Registry. As a result, the Complainant's VOLVO trademark is entitled to the highest degree of protection conferred under law, across all classes and including against disparate goods and services.
- i) The goodwill and reputation enjoyed by the Complainant is demonstrated by the number of cars sold under the VOLVO trade mark/name worldwide and in India. The Volvo Companies have also spent large sums of money every year towards the promotion, publicity and advertisement of their business under the VOLVO brand.
- j) As a cumulative result of its innate distinctiveness, wide-ranging business activities, extensive sales network, widespread promotion and publicity, the Complainant's VOLVO trademark/name has acquired the status of a well-known trademark on a global scale, the reputation of which pervades to goods and services beyond those actually manufactured and provided respectively by the Complainant and the Volvo companies.
- k) The Complainant further submits that the word "VOLVO" forms a key, essential and dominant part of the corporate name and trading style of the Volvo Companies. All subsidiaries of the Volvo Companies in India were incorporated with 'VOLVO' forming the key, essential and dominant portion of the corporate name. VOLVO continues to be the essential and conspicuous part of the corporate name of Volvo India Private Limited, which is the flagship company of Aktiebolaget Volvo in India.
- l) The Complainant has diligently protected, enforced and defended its statutory and common law rights in the VOLVO trademark all over the world including in India.



- m) The Complainant and the Volvo companies operate a website [www.volvo.com](http://www.volvo.com) where they provide information of products or services offered by the Volvo Companies. The said website was created as far back as December 9, 1995 and showcases the widespread activities of the Volvo Companies. It also displays the history of the Volvo Companies and provides other information in this regard as well. The VOLVO Companies also own several other domain names and websites. Notably, the Complainant is the owner of the domain name [www.volvobuses.com](http://www.volvobuses.com) as well as [www.volvocars.com](http://www.volvocars.com) and [www.volvotrucks.com](http://www.volvotrucks.com) etc.
- n) The Complainant submits that the Respondent has registered the domain name [www.volvo-bus.in](http://www.volvo-bus.in) thereby misappropriating illegally and without authority the trademark VOLVO which is the exclusive property of the Complainant herein. The Respondent is not operating any website under the impugned domain name and upon visiting the domain, the following message appears: *"Description: Unable to locate the server named "volvo-bus.in" ---the server does not have a DNS entry. Perhaps there is misspelling in the server name, or the server no longer exists. Double check the name and try again"*.
- o) The Complainant claims that the impugned domain name [www.volvo-bus.in](http://www.volvo-bus.in) wholly incorporates the Complainant's registered and well known trademark VOLVO and is merely suffixed with the word 'bus' which has an obvious affiliation to the Complainant's business under the VOLVO trademark/name. Moreover, the impugned domain name [www.volvo-bus.in](http://www.volvo-bus.in) is virtually identical to the Complainant's domain names [www.volvo.com](http://www.volvo.com) and [www.volvobuses.com](http://www.volvobuses.com). There is nothing in the Respondent's impugned domain name to distinguish it from the Complainant's registered and well-known trademark/name VOLVO or its domain name as the use of the generic word bus is entirely identifiable with the Complainant's business and clearly insufficient to obviate any confusion whatsoever.
- p) Further, the trademark VOLVO is exclusively identified with the Complainant and the goods and services of the Volvo companies acting for an on its behalf. As a result, the use of the Complainant's registered and well known trade mark/name VOLVO as a domain name by the Respondent, with or without suffix 'bus', will undoubtedly be understood as a reference to the Complainant and the Volvo Group of companies, thereby resulting in confusion among consumers who wish to access the Complainant's web page. The Complainant has placed reliance on **Canon Kabushiki Kaisha v. Price-Less Inkjet Cartridge Company (WIPO Case No. D2000-0878)**, where it was held that when the dominant feature of an impugned domain name is the Complainant's trademark and a generic term indicating goods or services offered by the Complainant has been added to it, the



resultant domain name would still be deemed as identical or confusingly similar. Reliance is also placed in **Magnum Piering Inc. vs The Mudjackers (WIPO case No. D2000-1525) and KFC Corporation V. Webmaster Casinos Ltd. (L-2/6/R4)** wherein it was held that when a domain name wholly incorporates a Complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes to the Policy. In both the aforementioned decisions, the domain names were transferred to the Complainants.

- q) The Complainant has not permitted the Respondent to use the trademark VOLVO and as a result, the Respondent has no rights or legitimate interest in the impugned domain name. In any event, the Respondent is not operating any website under the impugned domain name which demonstrates that the Respondent is devoid of any rights therein. Assuming, without prejudice, that the Respondent commences operation of a website where it offers any products or services under the VOLVO trademark, any such act would only amount to a further transgression of the Complainant's exclusive rights therein and amount to infringement of the registered and well known trademark VOLVO.
- r) The disputed domain name comprises the Complainant's well-known and famous trademark VOLVO, it is evident that the Respondent can have no right or legitimate interest in the domain name. Further, it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the well-known trademark VOLVO and to encash the goodwill attached to the Complainant's trademark and cause confusion in the minds of consumers with respect to the source of these services.
- s) Further, the Respondent's use of the disputed domain name www.volvo-bus.in for a commercial gain is not bona fide in nature. Reliance is placed on **The Chip Merchant, Inc. v. Blue Star Electronics, d/b/a/ Memory World (WIPO Case No. D2000-0474)**, where it was held that the only reason for the use of specific domain names that are virtually identical to the Complainant's name, for a commercial website bearing its own name that bears no relation to the domain names, would be to divert online consumers seeking one of its successful competitors, thereby trading on its goodwill and reputation.
- t) The Complainant's mark VOLVO is a well-known trademark having a stellar reputation and the Respondent is deemed to have had knowledge of Complainant's mark at the time it registered the impugned domain in July 2012. Moreover, the Complainant's VOLVO trademark was registered and recognized as a well-known trademark at the time of registration of the impugned domain name by the Respondent which demonstrates the mala fide nature of the registration. The Respondent is also not commercially using the impugned



domain name and is merely *squatting* on the same. The registration of the impugned domain name without legitimate authorization from the registered proprietor for commercial gain further reveals mala fide intention of the Respondent. The Respondent's act of registering the Complainant's trade mark/name VOLVO as a domain name is clearly calculated to encash the Complainant's reputation and goodwill attached to the said mark or to sell the said domain name either to the Complainant or its competitors for exorbitant amounts of money.

- u) The proposition that the registration of a domain name incorporating a well-known trademark of the Complainant is bound to be in bad faith has been upheld by numerous UDRP decisions. Some notable cases which have upheld this proposition are ***Marie Claire Album v. Marie-Claire Apparel Inc. (WIPO Case No. D2003-0767)***, ***Veuve Clicquot Vonsardin, Maison Fondée en 1772 v. Herreveld (WIPO Case no. D2000-0776)***, ***Adidas-Salomon AG v. Domain Locations (WIPO Case No. D2003-0489)***, wherein it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith. The said proposition is squarely applicable in the facts of the present case and especially considering that the impugned domain name comprises of the Complainant's well known mark VOLVO in conjunction with the generic word bus which has an obvious affiliation to the Complainant. Reliance is also placed on ***Volvo Trademark Holding AB vs. Riguo Ding (INDRP 225)***, wherein it was held that "*registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use*".
- v) The Complainant had also taken steps to serve the Respondent with cease and desist notices, which were completely ignored by the latter. Reliance is placed on ***Ebay, Inc. v. Ebay4sex.com and Tony Caranci, (WIPO Case No. D2000-1632)***, wherein it was held that bad faith can further be inferred from a Respondent's failure to reply to the Complainant's cease and desist letter.

#### 5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy. The attempt to serve them hard copy of complaint by NIXI via courier was also not successful.

#### 6) Discussion and Findings:





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

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

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

It has been successfully established by the Complainant that it has statutory as well as common law rights in the well known mark 'VOLVO'. The Complainant holds numerous registrations for the mark VOLVO all over the world including over two dozens of registrations in India. Further, the Complainant's earliest registration for the VOLVO mark in India dates back to 1975. Complainant has in support submitted substantial documents. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

Thus, I hold the disputed domain name [www.volvo-bus.in](http://www.volvo-bus.in) contains or is identical to the Complainant's mark 'VOLVO'.

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

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

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name '[www.volvo-bus.in](http://www.volvo-bus.in)'.

- (3) the domain name has been registered in bad faith.



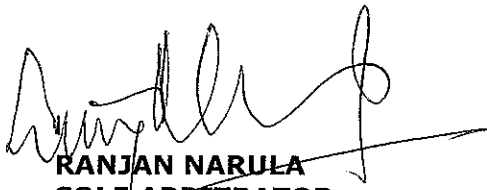
It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference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

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

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

**7. Decision:**

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



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**March 29, 2017**