

Bond



**Indian-Non Judicial Stamp
Haryana Government**



Date :12/01/2018

Certificate No. G0L2018A1958

GRN No. 32659575



Stamp Duty Paid : ₹ 101
(Rs. Only)

Penalty : ₹ 0
(Rs. Zero Only)

Deponent

Name: Ranjan Narula

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

District : Gurugram

Landmark : Na

State : Haryana



Purpose : ALL PURPOSE to be submitted at Other

RANJAN NARULA

ARBITRATOR

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

In the matter of:

Covestro Deutschland AG

Kaiser-Wilhelm-Allee 60

51373 Leverkusen

Germany

....Complainant

Aurnab Sarker

105 Middle Badda

Dhaka 1212

Bangladesh

Phone: +880.1915481588

Email: indranil1901@gmail.com

.....Respondent

Disputed Domain Name: <WWW.COVESTRO-INDIA.IN>

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Covestro Deutschland AG, of the address Kaiser-Wilhelm-Allee 60, 51373 Leverkusen, Germany. The Complainant is represented by its authorized representative, BPM Legal, Germany.

The Respondent in this arbitration proceeding is Mr. Aurnab Sarker, of the address 105, Middle Badda, 1212 Dhaka, Bangladesh 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 is <www.covestro-india.in>.

The Registrar is Endurance Domains Technology LLP.

The Registrant is Mr. Aurnab Sarker, of the address 105, Middle Badda, 1212 Dhaka, Bangladesh.

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 28th 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 Mr. 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.

- The Complaint was produced before the Arbitrator on May 31, 2019 and the hard copy of the Complaint sent by NIXI was received in the Arbitrator's office on June 3, 2019.
- The notice was issued to the Respondent on June 4, 2019 at his email address indranill901@gmail.com outlining that the Complainant had prayed for transfer of the disputed domain name "www.covestro-india.in" in its favour and cost/damages undergone by them. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until June 14, 2019.
- As no response was received, the Arbitrator issued another notice to the Respondent on June 17, 2019 via email granting another opportunity to the Respondent to submit its reply on or before June 24, 2019.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties. The Arbitrator thus informed the parties on June 25, 2019 that the Respondent has not filed its response and has been proceeded ex-parte.
- In view of the above, the complaint is therefore being decided based on the submissions made by the complainant and documents placed on record.

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; and is providing the nature of services identical with or confusingly similar to the services provided by the Complainant;
- 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:

1. That Covestro Deutschland AG is among the world's largest polymers companies and a leader in research and production. It operates around 30 production sites in Europe, Asia and the United States of America, with a total numbers of 15,600 employees. The Complainant further submits that its presence is worldwide and ranges from smaller facilities designed for regional purposes to world-scale production plants.
2. That it arose out of the well-known German Chemicals and Pharmaceuticals giant Bayer AG and has been a separate legal entity since September 2015. In India, the Complainant has a subsidiary Company with the name of Covestro India Pvt. Ltd.
3. That it owns and uses several trademarks for "COVESTRO" in various countries which cover a wide range of goods and services.
4. That the word "COVESTRO" is an invented portmanteau word and is made up of "collaboration", "invest", and "strong" and the said word is solely connected to the Complainant and not used in commerce by any third party. The Complainant is notably the owner of the following trademark:
 - International trademark "**COVESTRO**" registered under No. 1272950 covering goods and services in classes 1, 2, 17, 19, 25, 40 and 42

In addition, the Complainant has a strong internet presence and owns numerous domain name registrations containing the trade mark COVESTRO:


- <covestro.com>
- < covestro.de>
- < covestro.in>



5. That the disputed domain name is confusingly similar to its trade mark COVESTRO. Further, the disputed domain name includes the Complainant's mark COVESTRO and the Top-Level-Domain ".in". The Complainant further submits that it is well established that the specific top level of a domain name such as ".in", ".co.in" etc. does not affect the domain name for the purpose of determining whether it is identical or confusingly similar. Further, it has been established that the latter is more evident, when there is not even one letter difference between the disputed domain name and the trade mark of the Complainant.

That the fact that the disputed domain name includes the additional word "India" does not eliminate the similarity between the Complainant's trade mark and disputed domain name as well. It is well established that a domain name is confusingly similar to a trade mark despite the addition of generic or common words.

In addition, the word "India" strengthens the similarity between the disputed domain name and the trade mark COVESTRO as the Complainant also has a subsidiary in India.

6. That it has not licensed or otherwise permitted the Respondent to use any of its trade marks and has not permitted it to apply for or use any domain name incorporating the mark COVESTRO. The Complainant further submits that the word "COVESTRO" is highly distinctive and obviously connected with the Complainant's products and is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant.
7. That there is no evidence of the Respondent'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. The Respondent is using the disputed domain name in connection with a website providing advertisement links to websites of third parties which have mostly no relevant connection with the Complainant. The Complainant further submits that to the best of its knowledge, the Respondent has not been commonly known by the disputed domain name or under COVESTRO INDIA.
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8. The Complainant submits that the Respondent's use of the disputed domain name in connection with a pay-per-click website is also not a legitimate on-commercial or fair use of the domain name but supports the finding that the Respondent has registered the disputed domain name with the intent for commercial gain and to divert internet users to its website.
9. The Complainant submits that:
- (i) the Respondent/Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant, who bears the name or is the owner of the trade mark 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 to the domain name; or
 - (ii) The Respondent/Registrant has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a 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 Internet users to the Registrant's website or other.
10. The Complainant submits that the Respondent does not conduct any legitimate commercial or non-commercial business activity. The Complainant's trade mark COVESTRO has a strong reputation and is widely known, including Bangladesh, where the Respondent is located.
11. The Complainant submits that it had announced the intent to strengthen its operations in the Asian-Pacific Region on its website at <https://www.covestro.in> and the event for this announcement was organised on March 22, 2017 in Dhaka, Bangladesh, exactly where the Respondent is located. The Complainant further submits that a few month later, the Respondent registered the disputed domain name, therefore, inconceivable that the Respondent registered the disputed domain name



unaware of the Complainant's rights in its trade mark COVESTRO and reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the trade mark COVESTRO and therefore in bad faith as required.

12. The Complainant submits that by using the disputed domain name in connection with a pay-per-click website offering advertisement links to websites of third parties, the Respondent deliberately tries to attract internet users to its website. The Complainant further submits that it is clear that its purpose is, by creating a likelihood of confusion with the Complainant's mark, to divert traffic intended for the Complainant's website to its own, with the intent to earn revenues from the diverted traffic.

The Complainant further submits that in addition, the prior use of the disputed domain name by the Respondent in an effort to conduct fraudulent actions and monetary fraud is also proof of bad faith registration and use.

13. The Complainant submits that the Respondent's use of the disputed domain name in connection with a parking website supports the finding that the Respondent has registered the disputed domain name with the intent for commercial gain and to divert internet users to its website.

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.

6) Discussion and Findings:

The Complainant has produced evidence in the form of website extracts marked as **Annex 6** which mentions that the Complainant had made an announcement for a joint event conducted by Covestro & Connell and Covestro AG on March 22, 2017 at Le Méridien Dhaka where the Respondent is located. The Complainant has supported its statutory rights in the COVESTRO vide



registration details filed as **Annex 4**. The trademark COVESTRO stands registered in India by virtue of an International Registration since May 15, 2015. Further, the earliest worldwide registration dates back to January 2015 in Germany.

The Complainant secured the registrations of the domain names www.covestro.com on October 29, 2012 and www.covestro.in on May 12, 2015. The official website of the Complainant is accessible to visitors/customers all across the world including India. The website extracts filed as **Annex 6** shows the Complainant's trademark COVESTRO used on its webpage.

The Complainant has dedicated country-specific domain names containing its trade mark COVESTRO such as www.covestro.de.

The whois extract filed as **Annex 2** shows Aurnab Sarker, of Bangladesh as the Registrant of disputed domain name www.covestro-india.in. Therefore, the said entity/person is rightly pleaded as the Respondent for the present case.

Annex 3 shows the Respondent's website at www.covestro-india.in. The Respondent created and used an email account "sales covestro-india <asish.bhuva@covestro-india.in>" and contacted customers in China, representing itself as a distributor of Covestro India Pvt. Ltd., a subsidiary of the Complainant and asked for an advance payment for delivery of goods. **Annex 7** shows that in one case, a Chinese company transfer the requested advance payment of USD 27,000. Thereafter, the Respondent did not deliver and goods and stopped correspondence with the said Chinese company. The Complaint was informed by the Chinese customer when the said customer became aware that it was cheated.

A formal letter addressed by the Complainant's Counsel to the Registrar of the Disputed Domain Name, i.e. Endurance Domains Technology LLP filed as **Annex 8** shows that the fraudulent use of the Disputed Domain Name was brought to the attention of the Registrar and requested it to take down the website www.covestro-india.in. However, as per the averments made, no action seems to have been taken from the Registrar.

Based on the submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain



Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;


It has been established by the Complainant that it has statutory rights, common law rights, and rights on account of prior and longstanding use of the mark COVESTRO. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to the Complainant's COVESTRO mark in its entirety. The mark COVESTRO is being used by the Complainant to identify its business.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name;

The Complainant submits that the Respondent neither has rights or legitimate interests in the Disputed Domain Name nor has the Complainant assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its registered trademark **COVESTRO**.

The Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its registered trademark **COVESTRO** or domain name containing COVESTRO. Further, the Respondent has never used the disputed domain name for legitimate business. The adoption of an identical or confusingly similar domain name is clearly to divert internet traffic and to cash-in such deception. The Respondent adopted the disputed domain name with an intention to monetize the domain name by parking the domain to operate pay-per-click links

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 own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.



The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.covesto-india.in'

(iii) The Registrant's domain name has been registered or is being used in bad faith.

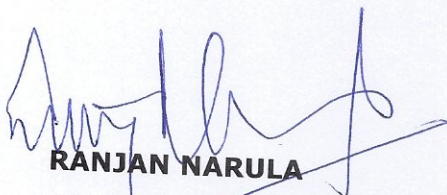
It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference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

Further, the Respondent represented itself as a distributor of Covestro India Pvt. Ltd., a subsidiary of the Complainant and cheated on a Chinese Customer by asking for an advance payment of USD 27,000 for delivery of goods.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark COVESTRO is identified with the Complainant's name, mark and goods, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

Decision

In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.COVESTRO-INDIA.IN> be transferred to the Complainant. Further, cost of Rs 100,000 for filing and prosecuting the complaint are awarded in favour of the complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

July 9, 2019