



महाराष्ट्र MAHARASHTRA

नंबर ... 3893 ... रुपये 90000-00
दिनांक ... 26/10/09
नाव ... श्री. वि. रामजी. कोषागार
पता ... 26/10, शनिवार पेठ, पुणे
हस्ते ... श्री. वि. रामजी.
सौ. जयश्री देवसरे, स्टॅम्प व्हेंडर, ला.नं. - हवेली 1/36/9994
४२५ ब, शनिवार पेठ, पुणे-३०



AWARD

IN ARBITRATION

ALSTOM
3, avenue Andr'e Malraux
92300 Levallois Perret
FRANCE

THE COMPLAINANT

AND

ERIC LEDERGERBER
Im Glockengut 33
Schaffhausen - 8207
SWITZERLAND

THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: - alstom.in

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR

**DELIVERED ON THIS 26th DAY OF OCTOBER TWO THOUSAND NINE AT
PUNE.**

SUMMARISED INFORMATION ABOUT THE DISPUTE:

01. **Names and addresses** **ALSTOM**
Of the Complainant: - 3, avenue Andre Malraux
92300 Levallois Perret
FRANCE
- Through** its authorized representative Nathalie DREYFUS
Dreyfus & Associates
78, Avenue Raymond Poincar'e
75116 Paris
FRANCE
02. **Name and address of** **ERIC LEDERGERBER**
The Respondent: - Im Glockengut 33
Schaffhausen 8207
SWITZERLAND

02. **Calendar of Major events:**
03.

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case was referred to me	04/10/2009
02	Acceptance was given by me	04/10/2009
03	Hard copy of the complaint was received and Notice of arbitration was issued	08/10/2009
05	Submission of reply by the Respondent	Not Submitted
06	Reminder to the Respondent to submit his say	22/10/2009
07	Issue of award	26/10/2009

I] PRELIMINARY: -

M/s ALSTOM. having its office at 3. avenue Andre Malraux 92300 Levallois Perret FRANCE (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**alstom.in**' (**the disputed domain name / domain name**) in the name of the Respondent Eric I, edergerber of Switzerland



- 1) Since the Complainant is holder of various trademarks / service marks with the word **ALSTOM** it has disputed registration of domain name '**alstom.in**' (the disputed / domain name) in the name of **The Respondent**.
- 2) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with **INDRP** Rules of Procedure, notice of arbitration was sent to the Respondent on 8th October 2009 with the instructions to file his say latest by 19th October 2009.
02. The Respondent failed / neglected to submit his say / reply to the Complaint by 19th October 2009.
03. Therefore reminder notice was sent to the Respondent on 20th October 2009 with the instructions to file his say / reply to the Complaint latest by 24th October 2009.
04. The Respondent has failed / neglected to file his say / reply to the Complaint even by the extended deadline of 24th October 2009.
05. The Respondent has failed / neglected to communicate with the Arbitrator even for extension of period to submit his say on both the instances of notices sent to him.

III] SUMMARY OF THE COMPLAINT: -

(A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- a) The Complainant is a global leader in power generation and rail transport infrastructure and a multinational company. In the field of rail transport the Complainant is **globally** number one in terms of orders. It also provides turnkey integrated power plant solutions and associated services. It has also built the world's largest luxury cruise liner the Queen Mary II. It employs more than 80000 people in 70 countries.
- b) The Complainant is a registered proprietor of numerous international trademarks including in India on which the complaint is based. The Complainant has produced copies of such registration certificates of trademarks. The Complainant also uses ALSTOM as a trade name.
- c) The Complainant owns several domain names including its main trademark ALSTOM. The Complainant has produced copies of such domain names being owned by it.



- d) The Respondent's domain name alstom.in is identical to the Complainant's ALSTOM mark which incorporates Complainant's mark in its entirety. Therefore it is identical or confusingly similar to Complainant's registered mark. The Respondent has no prior rights or legitimate interests in the disputed domain name much less in trade marks of the Complainant.
- e) The Respondent is not affiliated with the Complainant in any way nor has the Complainant authorized the Respondent to use or register or to seek any domain name incorporating the said mark.
- f) The Respondent has neither used nor made any demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with bona fide offering of **goods** or services.
- g) The Respondent has offered in its correspondence to sell the disputed domain name to the Complainant for an amount of €1000 which exceeds the out of pocket expenses.
- h) The Respondent has never been known by the name ALSTOM.
- i) The Respondent is not making a legitimate non-commercial or fair use of the domain name.
- j) The Respondent is a citizen of Switzerland and has his domicile there and has never shown his potential links with India.
- k) The disputed domain name redirects to the official website of Alstom dedicated to India. Consequently the Respondent can not claim that he does not know the ALSTOM trademark.
- l) The Respondent has registered or acquired the domain name for the purpose of selling, renting or otherwise transferring the domain name to the Complainant or to his competitor, such registration can be considered as bad faith registration and use of the domain name.
- m) On the basis of above contentions, *inter-alia* other contentions, the Complainant has requested that the domain name be transferred to ALSTOM. The sum of Rs.5.00.000/- be awarded to the Complainant towards infringement of its **rights**



- n) The Complainant has cited various cases decided by Arbitrators in India and abroad in support of his claims and requests.

IV] NO LY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent has failed / neglected to submit his say / reply to the complaint, despite being given sufficient notice and period, including extended period for the same. I am therefore constrained to pass this award *EX-PARTE*.

ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights'?	Yes
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	No
04	Whether the Registrant / Respondent has registered domain name in bad faith?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No

VII] BASIS OF FINDINGS: -

Due to failure / negligence on the part of the Respondent to submit his say / reply to the Complaint. I have to rely solely on the documents furnished by the Complainant and his written complaint. Accordingly above findings have been based solely on the Complaint along with supporting documents furnished by the Complainant. However the Complainant has sufficiently established his claims according to INDRP.



I have also perused email correspondence between the Complainant's authorized representative and the Respondent, even during the period when the Arbitral proceedings were initiated. On 16th October 2009 the Respondent in his mail has stated "Last year when the parties had come to a settlement and I had to implement that settlement by transferring the domain to you. I sent you the code and was waiting for the money transfer to be the next step. I do not agree with your alleges in your complaint (f.cg. I can not see an allegation that I have threatened to sell the domain name to a third party in Annexe 15 or furthermore underlying an was not to make money with the domain).

I failed to understand, why this complaint had to be made. Can I have you comments on this by email. I would like to solve this problem as quick as possible and out of court."

It is very evident that the Respondent has been willing to transfer domain name to the Complainant at a consideration, mutually agreeable. It can therefore be inferred that the Respondent has never been serious about using the disputed domain name for his legitimate business purposes and was in fact keen in selling the same. This fact has gone completely against the Respondent.

IX) AWARD: -

On the basis of findings and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name - '**alstom.in**'. The Respondent shall forthwith transfer the same to the Complainant.
02. No order as to the costs.

Dated: -26.10.2009

PUNE.



(S.C.INAMDAR)

ARBITRATOR