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IN-DL27369050499843X

BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK
SOLE ARBITRATOR
ARBITRAL AWARD

V.P. Pathak
V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

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**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1942
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION CONCILIATION ACT, 1996**

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IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
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AND THE ARBITRATION CONCILIATION ACT, 1996**

Bose Corporation
The Mountain, Framingham,
Massachusetts, 01701
United States of America

.... Complainant

Versus

Namecheap, Inc
Stassfurt,
Germany- 39418

....Respondent

**DISPUTE RELATING IN THE DOMAIN DISPUTE NAME
www.boseindia.co.in**

Award Dated- 7.03.2025

**BEFORE V.P.PATHAK
SOLE ARBITRATOR
AT NEW DELHI**

⇒ **DISPUTED DOMAIN NAME & REGISTRAR-**

The disputed domain name is registered through the Registrar of the disputed domain name www.namecheap.com LLC, which is accredited with the .IN registry and is listed on the of the website of the .IN registry.

⇒ **ARBITRATION TRIBUNAL-**

1. The Complainant has filed this Complaint for the disputed domain name, to be transferred to it. To decide this Complaint, NIXI has appointed the undersigned as Arbitrator. A consent letter with a declaration of impartiality by the undersigned to decide this case was sent to NIXI on 16.01.2025.
2. This Tribunal resumed this matter on 27.01.2025, by sending notice to the Respondent for reply, but no reply was filed. So, in the interest of justice, the Tribunal gave an extension

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to the Respondent of 5 days till 11.02.2025, but there was no response even though the Complainant has sent a hard copy of the Complaint to the Respondent.

3. As per **Rule 5 of the INDRP Rules** the Tribunal issued a notice dated 27.01.2025 calling upon the Respondent to file its reply on the Complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
4. The Tribunal is constituted under the INDRP Policy and Rules. Under rule 13, the arbitration proceedings must be conducted according to the Arbitration and Conciliation Act, 2019 (as amended up to date) read with the Arbitration & Conciliation Act, Rules, Dispute Resolution Policy and its by-laws, and guidelines, as amended from time to time.
5. As mentioned above, the Respondent has not replied to any of the notices hence, this Tribunal is bound to proceed Ex Parte against the Respondent.

⇒ **PARTIES TO THE ARBITRATION-**

6. The Complainant was constituted in the year 1964, almost 50 years ago and by 2008 earned a name in the National Inventors Hall of Fame in Akron, Ohio for their achievements in audio technology. The Complainant product line includes portable Bluetooth, home audio, home cinema, soundbars, amplifiers, stereo, computer, portable PA, and accessories.
7. As per the information available on the domain name, the Respondent in the present administrative proceedings is an unidentified person (hereinafter referred to as the Respondent who appears to be the owner of the disputed domain, found using the registration data lookup tool, which reveal the registrant details as Namecheap, and the registrant's state as Stassfurt and country as Germany. WHOIS search results pertaining to the impugned domain name i.e., boseindia.co.in as accessible on 9.09.2024. **ANNEXURE A.**
8. The Complainant, BOSE represents its own interests, as well as the integrity and reputation of the BOSE trademark. The Complainant is also the registered proprietor of the well-known trademark BOSE. REACT India Pvt Ltd is the Authorized Signatory of the Complainant and a copy of the documents authorizing him duly executed in his favour. **ANNEXURE B.**
9. The complaint is based on the ground that the Respondent misappropriated the well-known trademark BOSE (and as shown in the complaint, hereinafter referred to as the "Logo") of the Complainant as a part of its domain name <boseindia.co.in>. it is pertinent to mention that the Complainant officially launched the organisation in 1964. The original website for BOSE is <https://www.boseindia.com>
10. The Complainant has filed the instant Complaint challenging the registration of the domain name www.boseindia.co.in under the ".in" Domain Name Dispute Resolution Policy {INDRP) and the rules framed there under. The Complainant has preferred this arbitration by raising this dispute for the reprisal of its grievances.

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11. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of Complaint. Per this rule, the Respondent was sent a copy of the Complaint on the email shown in the domain name registration data in the .IN Registry's WHOIS database.
12. There is no reply to the Complaint so, we are unaware of the Respondent's version.

⇒ **FACTS OF THE CASE -**

• **Complainant-**

9. The Complainant, Bose is a 50-year-old company producing high end musical and technical products. It was the first to introduce US FDA-cleared, self-fitting hearing augmentation technology for consumers with perceived mild to moderate hearing loss. The Complainant is known for making affordable hearing aids accessible to million of adults.
10. The Complainant has enduring principles like Growth, Teamwork and Collaboration, Financial viability, Innovation and Technology that they follow every day to make their company efficacious.
11. The annexures submitted by the Complainant states that the Complainant company got its trademark registered on 28.02.1995 and the Logo of the Complainant was registered on 2.07.1993 & as stated earlier it was constituted in 1964. This proves that the Complainant is a registered business of more than 30 years.
12. The Complainant has an extensive scale of business operations worldwide and has international recognition and goodwill for their premium quality of goods. With 6000 number of employees and facilities located in 25 countries worldwide. **ANNEXURE C.**
13. The Complainant is always committed to operating the business responsibility and transparency. Consistent with this trade practice, the Complainant continues to embed Environmental, Social and Governance (ESG) efforts in our business strategies and across entire value chain. **ANNEXURE D.**
14. The Complainant's distinctive designs of the Wave, Acoustics Wave, SoundDock, and Lifestyle systems and the two-tone swirl pattern on the cords of Bose in-ear headphones are registered trademarks of Bose Corporation in the United States and/or other countries. Other service marks, trademarks and trade names referred to on this website are the property of their respective owners.
15. Since the Complainant's emergence in the industry, the Complainant has been continuously and consistently using the trademark and trade name BOSE or Logo. As it is highly distinctive nature and the pioneering activities of the Complainant, the trademark and name "BOSE" or Logo has acquired an excellent reputation from the very beginning and down the decades is known for the high quality of products manufactured and/or high quality of products manufactured and/or services rendered under it.
16. The Complainant is the proprietor of the trademark and name "BOSE" or as the Logo by virtue of priority in adoption, long continuous and extensive use and advertising, and reputation consequently accruing thereto during trade. The Complainant promoted by it

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has exclusively used “BOSE” as a trademark so that it is uniformly perceived as indicative of the source of the products/services emanating from the Complainant. The Complainant is acknowledged to be the standard bearer of the excellence in quality and business ethics globally.

17. The Complainant is the proprietor of the trademark and name “BOSE” or as the Logo holds exclusive rights in the same and is entitled to act against any unauthorized use of the same by third parties as regards any loss of goods or services or in any other manner whatsoever.
18. In addition to the common law rights that have accrued to the Complainant in the trademark “BOSE” or the Logo by the aforesaid facts. The Complainant is also the registered proprietor of the trademark “BOSE” in classes 9, 12, 16, 18, 25 under the Trademarks Act 1999 in relation to electronics, and other diverse range of goods and services. **ANNEXURE E.**
19. The Complainant is proprietor of the trademark “BOSE” and other “BOSE” formative marks. By virtue of said registration, Plaintiff has the exclusive right to use the trademark “BOSE” or the Logo in relation to the goods covered thereunder and to obtain relief in respect of the infringement of its registered trademarks.
20. As a result of the continuous and extensive use of the Complainant’s trademark “BOSE” or the Logo over a long period of time spanning a wide geographical area coupled with extensive promotion and publicity, the said trademark enjoys an unparalleled reputation and goodwill and has acquired the status of the "Well-known" trademark. It is submitted that a reputed and well-known trademark embodies an aura of pre-eminent excellence and is recognized irrespective of the class of goods or services for which it is used and the Complainant’s trademark “BOSE” or the Logo wholly qualifies for this distinction.
21. Thus, the Complainant has successfully and vigorously enforced its trademark rights in the trademark “BOSE” in relation to various goods and services, even those that are different and unrelated to its existing field of operations.
22. The Complainant has devoted an enormous amount of time. promoting and advertising the said mark in print & online media are consequently identified solely with the complaint.
23. It is pertinent to mention here that the Complainant and its subsidiaries are registrant of domain names containing its trade/service mark BOSE. A few of such domains are: <https://www.boseapac.com/> ; <https://www.bose.com/> . **ANNEXURES F&G.**
24. In the light of the Complainant’s prior adoption of the mark and the reputation and goodwill created by the Complainant, it is recognized as the proprietor of the said mark, which is perceived and identified by consumers and members of the trade, as the Complainant’s mark alone. Thus, the adoption and use of a mark by a third party, that is similar and/or identical to the Complainant’s Trademark and trading style "BOSEINDIA" with respect to any of the diversified fields of activities, will lead to confusion and deception amongst the relevant class of consumers and the members of the trade.

- **Respondent-**

25. The Respondent has not replied to the Complaint.

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⇒ **CONTENTIONS OF THE PARTIES-**

• **By the Complainant-**

26. As per the WHOIS search result of the Respondent's impugned domain name <boseindia.co.in> it appears to be registered on 23rd April 2024. It is to be noted that the impugned domain does host a website and is active. That the Respondent is using the impugned domain to sell similar kinds of products which further establishes the misappropriate intention of the respondent. The respondent is clearly misappropriating illegally and without authority, the trademark "BOSE" which is the exclusive property of the Complainant. An extract from <boseindia.co. in>, evidencing the aforementioned fact is being enclosed. **ANNEXURE-H.**
27. The disputed domain name <boscindia.co. in> is identical to the well-known trade/service mark "BOSE" of the Complainant. The Complainant has overwhelming common law as well as statutory rights in the trade/service mark BOSE and is its sole legitimated owner and proprietor.
28. Further the disputed domain name <boseindia.co. in> attempts to associate itself with the Complainant by incorporating the name BOSE in full in their domain name. The malicious intention of the Respondent is evident from its blatant misappropriation of the Complainant's trade/service mark BOSE. In the present instance, if any user was to search for the Complainant online as BOSE India, she/he would be taken to the Respondent's domain name which enhances the possibility of inevitable confusion.
29. Moreover, any use of the word BOSE is understood only as making a reference to the Complainant since the said trade/service mark of the Complainant is a registered and a well- known trademark. Incorporation of a trademark in the entity in a domain name is sufficient for establishing confusing similarity is a settled principle of law and has been upheld in numerous UDRP adjudications such as- *Magnum Piercing Inc. vs The Mudjacks*: WIPO Case No. D2000-1525. **ANNEXURE- I**
30. The Respondent's act of registering the impugned domain <boseindia.co.in>, of which the Complainant's trade/service mark BOSE forms a conspicuous part is an infringement of the Complainant's overwhelming common law and statutory rights as is vested in its registered and well-known mark BOSE. There can be no plausible explanation for the use of mark BOSE by the Respondent as the said trade/service mark of the Complainant's name is based on the surname of the founder Dr. Amar Bose.
31. The registration of the Complainant's registered and well-known trademark BOSE, by the Respondent is a mala-fide attempt on its part to squat over the impugned domain name and make illegal economic gains and profits by misusing and free-riding on the enormous good will and reputation associated with the registered and well-known trademark BOSE of the Complainant.

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32. Hence, the impugned domain name of the Respondent <boseindia.co,in> is identical and confusingly similar to the registered and well-known trademark BOSE of the Complainant in which it has overwhelming common law and statutory rights.
33. That the Complainant has overwhelming common law and statutory right in the trade/service mark BOSE as well as in various BOSE formative marks is solely entitled to use the same in relation to its products and services including the incorporation of the said mark as a conspicuous part of domains used to describe the activities of the Complainant. The Complainant has not in any way authorized, licensed or otherwise permitted the Respondent to use it well-known trade/service mark BOSE or to apply for any domain name incorporating its trade/service mark in full.
34. The Respondent had constructive notice of the Complainant's rights in the trade/service mark BOSE by virtue of the Complainant's widespread reputation, use and registration of the said trade/ service mark-

Research In Motion Limited v. Privacy Locked LLC/Nat Collicot, WIPO Case No. D2009-0320 & *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. D2001-1092 are some notable decisions stating that: Respondent should have known of a Complainant's trademark if it is shown to be well- known or in wide use on the Internet or otherwise and; Such knowledge of the Respondent is an indicator of the bad faith of the Respondent in registering the disputed domain name. **ANNEXURES J & K.**

35. That the impugned domain name <boseindia.co.in> was created by the Respondent on 23rd April 2024. The factum of argument is that the Respondent has deliberately acquired a confusingly similar name in which the Complainant has substantial interest being its registered trade/service mark. That the Respondent was aware of the commercial value and significance of the domain owned by the Complainant of which the word "BOSE" forms a conspicuous part. It is for the exact same reason why the Respondent grabbed the impugned domain name <boseindia.co.in>. The registration of the disputed domain name bearing the registered trade/service mark of the Complainant is nothing but an opportunistic bad faith registration on the part of the respondent.
36. The Complainant submits that the Respondent was aware, prior to its registration of the impugned domain, that there was substantial reputation and goodwill associated with the Complainant's trademark and/or service mark, which inure to the benefit of the compliant.
37. That to reiterate the pleadings of the preceding paragraph, the impugned domain name <boseindia.co.in> incorporates the Complainant's well known and famous mark BOSE in entirety. It is evident that the Respondent can have no rights or legitimate interest in the disputed domain name and the sole purpose of him having adopted the Complainant's well known and famous mark "BOSE" was to misappropriate the same along with the goodwill and reputation accruing to it, and to dupe the Complainant into buying similar products from the respondent.

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38. The Complainant has submitted facts that would clearly illustrate as to how the instant case is a classic case of registration of the domain names in bad faith-
- a) The Respondent uses the Complainant's registered and well-known trademark "BOSE" as a part of the impugned domain name <boseindia.co.in> in which the Complainant has immense common law and statutory rights.
 - b) The Respondent is well-aware of the insurmountable reputation and goodwill associated with the Complainant's trade/service mark BOSE which inure and continues to inure to the Complainant.
 - c) The registration of the impugned domain name <boseindia.co.in> by the Respondent is not bona fide since the Respondent is trading on the fame and recognition of the Complainant's well known trademark "BOSE" in order to cause confusion, and befool internet users to visit the impugned domain, which accrues some monetary benefit to the Respondent as it appears that the impugned domain is a pay-per-click website.
39. That the registration of a domain name incorporating a well-known trademark of the Complainant is in bad faith has been upheld by numerous UDRP decisions. Some notable cases reaffirming this proposition are-
- Marie Claire Album v. Marie-Claire Apparel, Inc.*, Case No D 2003 0767 ;
Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.
 Case No D 2000 0163 ; and
Adidas-Salomon AG v. Domain Locations Case No D 2003 0489 mentioned in ANNEXURE-L, M & N respectively, wherein it has been held that the registration of a well-known trademark of which the Respondent must reasonably have been aware is itself sufficient to amount to bad faith.
40. That the actual or potential visitors to the website parked on the impugned domain name <boseindia.co. in> will be induced to believe that the Complainant has authorized, endorsed or licensed the use of its trade/service mark BOSE by the Respondent including the registration of the impugned domain name <boseindia.co.in>.
41. The disputed domain name completely incorporates the trademark/service mark of the Complainant and the gTLD *.co.in* (According to Google, gTLD means- a generic Top-Level Domain – the last part of a domain name after the final dot (that makes up the URL of a web address aka the site's domain name) will not distinguish the disputed domain name from the Complainant's Trademark.
42. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use their registered and famous trademark "BOSEINDIA". The Respondent's domain name is identical to the trading style and trademark in which the Complainant has prior rights.
43. It is again submitted that the Complainant already owns and operates the domain name *boseindia.com* worldwide with the same domain name and website. Therefore, the disputed domain name *boseindia.co.in* would inevitably confuse and deceive the consumers, the members of the trade and the public.

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44. Prior panels have found under the .IN Policy that "where a Complainant makes out a *prima facie* case that a 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 fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element." See *Instagram LLC v. Ding RiGuo.*, INDRP/1183 (<instagram.in>).
45. In *Wacom Co. Ltd. v. Liheng*, INDRP/634 (<wacom.in>) "the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.
46. The Respondent registered the disputed domain name after the Complainant acquired common law trademark rights in its mark "BOSEINDIA". The disputed domain name appears to be registered by the Respondent with the sole purpose of selling it to the Complainant's competitors. This shifts the burden of proof on the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.
47. Clause 3(d) of the INDRP requires a Respondent to not knowingly use the domain name in violation or abuse of any applicable laws or regulations. The obligations imposed by clause 3(d) are an integral part of the INDRP applicable to all the Respondents, and cannot be ignored, as was observed by the Ld. Arbitrator in the case- *Momondo A/S vs. Ijorghe Ghenrimopuzulu*, INDRP Case No 882.
48. Thus, the Complainant prays for .IN Registry of NIXI to transfer the disputed domain name "boseindia.co.in" to the Complainant along with the costs of the proceedings of the Complainant.

• **By the Respondent-**

49. The Respondent has not replied to the Complaint.

⇒ **ANALYSIS-**

50. According to the above-mentioned facts of the case, the Tribunal has to decide the following points-

A. Whether the Respondent's domain boseindia.co.in is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.?

As per the Complainant, The Complainant, Bose is a 50-year-old company & the website www.boseindia.com was registered long back. The company produces high end musical and technical products. It was the first to introduce US FDA-cleared, self-fitting hearing augmentation technology for consumers with perceived mild to moderate hearing loss. The Complainant is known for making affordable hearing aids accessible to million of adults. The Complainant is also the registered proprietor of the trademark "BOSE" in classes 9, 12, 16, 18, 25 under the Trademarks Act 1999 in relation to electronics, and other diverse range of goods and services. The Complainant promoted by it has exclusively used

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“BOSE” as a trademark so that it is uniformly perceived as indicative of the source of the products/services emanating from the Complainant. Thereafter, the Trademark BOSEINDIA was assigned to the Complainant, and the necessary requests were made to bring the Complainant on record. Here, it is important to understand that a domain name is registered so that there is an internet address. A trademark is registered to identify a product or service. The meaning of the word “domain name” is “a unique name that identifies a website on the internet” which in this case is "BOSEINDIA" which came into use when the Complainant came into business in more than 50 years ago, in 1964. The domain name then further ends with an extension, without which the website is incomplete and cannot be opened such as - .in, .com, .org and so on. This extension is called gTLD (generic Top-Level Domain)- the last part of a domain name after the final dot (that makes up the URL of a web address aka the site's domain name). Thus, the Respondent's domain name is identical and similar to the trademark or service mark to that of the Complainant. In *ITC Limited vs. Travel India (INDRP Case No. 065)* it was opined that- the fact that a disputed domain name wholly incorporates a Complainant’s Trademark is sufficient to establish the identity or confusing similarity for the purpose of INDRP.

This proves that the Respondent is running its business under the Complainant’s domain name making the Respondent's domain name unauthentic. Thus, the Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights, and the Respondent should not think of it as its own and run its business using this name.

B. Whether the Respondent has any rights or legitimate interests in respect of the domain name?

The Respondent has not replied to the Complaint. This point was to be proved by the Respondent. The Complainant’s domain name and the Respondent's domain name are similar since it has used the gTLD “.co.in” and the Complainant has used “.com” which are identical and confusing. It is clear from record that the Complainant started its business, more than 50 years ago, way before the Respondent, which establishes that the Complainant is the first and only user of the domain name "BOSEINDIA" and not the Respondent. It is also important to note that the term "BOSEINDIA" is the disputed domain name, and any gTLD following this name is irrelevant, as the Complainant is the sole holder of the disputed domain name. In the decision of INDRP in the case-

Nike Inc. v. Nike Innovative CZ Zhaxia (Case No- INDRP/804) which said that- the disputed domain name completely incorporates the trademark/service mark of the Complainant and the gTLD “.co.in” will not distinguish the disputed domain name from the Complainant’s Trademark. It is a settled principle that gTLD is not to be considered when determining the similarity of the domain name with a mark under the first element. So, to answer the above-mentioned question, the Respondent has no rights or legitimate interests concerning the domain name “boseindia.co.in”.

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C. Whether the Respondent's domain name is registered or is being used in absolute bad faith?

The Complainant in its statement supported with evidence has contended that the Respondent registered the disputed domain on 23.04.2024 and is providing similar services to its consumers as is the Complainant. The Complainant is a world known high-end brand and has a website, it is hard to never come across such a prominent brand, which in today's day and age is known by almost everyone, all over the world. So, the doubt that the Respondent could have missed such an important fact about the Complainant is not believable. The Respondent has registered this website only to mislead and divert customers and to tarnish the trademark or service mark "BOSEINDIA". It is to be noted that, the practice of selling domain names is a common practice but the practice is valid only when the domain name is of the rightful and legitimate owner.

The Complainant registered the domain name "boseindia.com" earlier in time (1993-1995) in comparison to the Respondent which was registered in 2024. Again, the registration by the Respondent was for reasons un-known since it has not bothered to comply with the orders of this Tribunal but can only presume that it was done malicious reasons and to probably get monetarily benefits.

The above-mentioned facts themselves disclose the malice of the Respondent. To answer the question above - the Respondent's domain name registered is being used in absolute bad faith and such use demonstrates that the Respondent has used the disputed domain name to derive a commercial benefit and to tarnish the Complainant's website and domain name image.

⇒ **CONCLUSION-**

34. Considering the above facts, this Tribunal is of the view that the Complaint has merit. The Respondent did not have the Complainant's permission to use its domain name and hence it had no right to treat the domain name as its own. It is being mentioned again, that without the domain name, there is no gTLD. So, even though the Respondent's domain name is "boseindia.co.in", the name "BOSEINDIA" belongs to the Complainant. The whole dispute in this Complaint is for the domain name and the mere alteration of a domain name or its extension does not affect or alter the ownership thereof.
35. The Complainant brought the name "BOSEINDIA" to life, so the Respondent does not have any standing in this domain name anymore.
36. In addition to everything mentioned above, it is pertinent to mention that the Respondent is using the Complainant's domain name but it has not once responded to the Complaint made against it. The Respondent was given notice by the Complainant and by the tribunal. The hard copy of the Complaint was also sent to it through courier (receipt enclosed). This clearly shows that the Respondent has nothing to say and is not interested in its domain name and it's all just fable.
37. The Complainant has the full right and ownership of the domain name "BOSEINDIA" & "boseindia.co.in." So, the Complaint is allowed.

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38. This Award is being passed as per Clause 5 (e) of the INDRP Rules, and Arbitration Act, 1996.

⇒ **ORDER-**

39. The.IN Registry of NIXI is directed to transfer the disputed domain name “boseindia.co.in.” to the Complainant forthwith. Registry to do the needful.
40. Parties to bear their own costs.
41. This Award is passed today at New Delhi on 7.03.2025.

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VP Pathak
Sole Arbitrator
Date- 7.03.2025