

1. The Parties

The Complainant in these administrative proceedings is thyssenkrupp Bilstein GmbH, August-Bilstein-Str. 4, 58256 Ennepetal, Germany. The Complainant is represented by NAMESHIELD , 79 rue Desjardins 49100 Angers FRANCE (Email: legal@nameshield.net, Phone: +33.(0)2.41.18.28.28). The Respondent is Vijay Lalwani, 19/1103, Indradarshan Lokhandwala Andheri West Mumbai, Maharashtra, 400053 IN (Email: vijay_lalwani@hotmail.com, phone: (+91).96192324)

2. Domain Name and Registrar

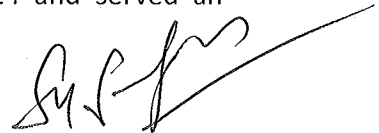
- (i) The disputed domain name is <bilsteinindia.in>.
- (ii) The Registrar with whom the domain name is registered is GO Daddy.COM LLC, 14455 North Hayden Rd Suite 219 Scottsdale , AZ 85260 United States . (email: legal@godaddy.com)

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure("the Rules") which were approved on June 28,2005 in accordance with the Indian Arbitration and Conciliation Act,1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

On March 07, 2024, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on March 08, 2024 and served an



electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on March 08, 2024 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit any response to the arbitration notice issued through email dated 08.03.2024 within the stipulated time. The Respondent was given another 5 (Five) days time, through email dated 18.03.2024, to submit his response to the arbitration notice. On March 19 2024, the Complainant submitted the proof of delivery of complaint through to the Respondent. The Respondent failed to submit any response to the arbitration notice issued through email dated 08.03.2024 and subsequent directions dated 18.03.2024. The Complainant's submission, of proof of delivery of complaint to the Respondent through email, is accepted. The Respondent was given final opportunity through email dated 28.03.2024 and directed to submit his response within five days from the communication dated 28.03.2024. The respondent submitted on 29.03.2024 that he has not received the copy of complaint. The Complainant was asked to ensure the delivery of complaint to the respondent by email/courier/post. However, it was communicated to the respondent that delivery of complaint through email will be treated as complainant delivered /serviced. The Respondent submitted his response on 30.03.2024. On 30.03.2024, the Complainant was directed to file his response, within five (5) days, to the submissions submitted by the Respondent. On 02.04.2024, the Complainant submitted his response to the submissions submitted by the Respondent.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical or confusingly similar to the trade mark or service marks in which Complainant has rights.
2. The Respondent has no rights or legitimate interests in respect of the domain name.
3. The domain name was registered or is being used in bad faith



5. Background of the Complainants

The Complainant submitted that the Complainant is a German shock absorber manufacturer. The Complainant further submitted that the company offers products for vehicle damping and suspension. The Complainant further submitted that the Complainant employs around 4,100 people worldwide. The Complainant further submitted that the Complainant owns a large portfolio of trademarks including the wording "BILSTEIN" in several countries including such as: International trademark BILSTEIN n° 383704 registered since September 30th, 1971; International trademark BILSTEIN n° 612596 registered since October 28th, 1993; European trademark BILSTEIN n° 8732761 registered since November 18th, 2009; European trademark BILSTEIN n° 1282989 registered since October 22th, 2015; India trademark BILSTEIN n° 1881490 registered since November 6th, 2009. The Complainant further submitted that the Complainant owns multiple domain names consisting in the wording "BILSTEIN", such as <bilstein.com> registered since August 8th, 1996 . The Complainant further submitted that the disputed domain name is < bilsteinindia.in > redirects to an online store offering shock absorbers by using BILSTEIN trademarks as well as photographs from Complainant without being authorized by Complainant to use those trademarks and photographs .

The Respondent

The Respondent is Vijay Lalwani, 19/1103, Indradarshan Lokhandwala Andheri West Mumbai, Maharashtra, 400053 IN (Email: vijay_lalwani@hotmail.com, phone: (+91).96192324). The Respondent has registered the domain name <BILSTEININDIA.IN> on Jul 20, 2020.

6. Legal Grounds

A. The domain name <BILSTEININDIA.IN> is identical and confusingly similar to trade mark or service marks in which the Complainant has rights.

Complainant's Contentions

The Complainant submitted that the disputed domain name < bilsteinindia.in > is confusingly similar to Complainant's BILSTEIN trademarks. The Complainant

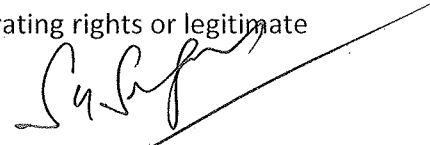


further submitted that the domain name includes in its entirety the Complainant's trademark rights BILSTEIN as well as part of Complainant's company name "thyssenkrupp Bilstein". The Complainant further submitted that the Complainant's company name "thyssenkrupp Bilstein" has a long history, beginning with its foundation in 1873. The Complainant contends that the addition of the geographical term "INDIA" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BILSTEIN, and it does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant further submitted that it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The Complainant further submitted that on the contrary, the addition of this term may refer to a Complainant's subsidiary or affiliated company in India and may therefore lead consumers to believe that the disputed domain name is related to the Complainant. The Complainant further contends that the addition of the ccTLD ".IN" is not sufficient to escape the finding that the domain is identical to its trademark BILSTEIN and does not change the overall impression of the designation as being connected to the trademarks of the Complainant. The complainant has relied on INDRP Case No. 1645 *wherein the disputed domain name contains the Complainant's mark in full and is almost identical to the mark of the Complainant exception addition of a generic number. The top level domain ".in" is irrelevant and does little to make it different.*

The Respondent's has no rights or legitimate interest in respect of the domain name

Complainant's Contentions

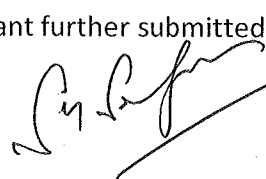
The Complainant submitted that according to the Case No. INDRP/776, Amundi v. GaoGou, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests and once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate

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interests in the domain name. The Complainant further submitted that if the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant further contends that the Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant further submitted that neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant. The Complainant further submitted that the Respondent is using the domain name for the purpose of creating a likelihood of confusion with the Complainant's trademarks. The Complainant further submitted that indeed, the website linked to the domain name appears to be an imitation of the Complainant's official website, reproducing in particular the Complainant's images and logos. The Complainant has relied on *iFinex Inc. v. Yuri Heifetz/Genie-Solution*, FA 1789385 (Forum July 9, 2018) wherein holding that the respondent's mimicking the complainant's web site in order to cause existing or potential customers of the Complainant's to believe they are dealing with the complainant is prima facie evidence of the respondent's lack of rights and legitimate interests in the disputed domain name. The Complainant further contends that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and therefore is not making a legitimate, fair or bona fide use of the domain name.

The domain name was registered or is being used in bad faith.

The Complainant submitted that the Complainant has established a strong reputation with this trademark all over the world. The Complainant further submitted that the Complainant represents innovation and high-tech in suspension technology around the world. The Complainant further submitted

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that with competence for the entire chassis has production facilities in Europe, America and China, supplying products for the complete spectrum of shock absorbers. The Complainant further submitted that the Complainant has for many years been a partner in high demand in the fields of motorsport and car tuning. The Complainant further submitted that its trademarks and company name "BILSTEIN" are well known in the relevant market and enjoys a high reputation. The Complainant further submitted that nowadays the Complainant produces around 13 million shock absorbers every year with more than 4,000 employees at locations in six countries. The Complainant further submitted that the term "BILSTEIN" does not have a specific meaning in any language and there is no other reason to choose a domain name comprising the Complainant's well-known trademarks and company name as the distinctive and therefore dominant element for a domain, except of the fact, that the Respondent obviously intends to participate in the Complainant's reputation and economic success. The Complainant further submitted that the Respondent has registered the disputed domain name and uses it to disrupt the Complainant's business activities and to profit economically from the complainant's good reputation. The Complainant further submitted that it is obvious that Respondent was fully aware of the Complainant and its "BILSTEIN" trademarks and it seems when choosing the domain name the Respondent wanted to give the impression that he is part of Complainant's company group or an authorized dealer of the Complainant – which is not the case. The Complainant further submitted that given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademarks. The Complainant further submitted that the disputed domain name redirects to an online store which offers shock absorbers which are the products that are offered by the Complainant and which are protected by the BILSTEIN trademarks. The

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Complainant further submitted that using a domain name in order to offer competing services is often held to disrupt the business of the owner of the relevant mark is bad faith. The Complainant has relied on NAF Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't wherein the Complainant asserts that Respondent registered and is using the disputed domain names to disrupt Complainant's business, because Respondent is using the disputed domain names to operate a competing website and the Panel finds that Respondent has registered and used the disputed domain names in bad faith according to Policy 4(b)(iii). The Complainant has also relied on NAF Case No. FA2208002009487 Charter Communications Holding Company, LLC v. Agha nauroz wherein Respondent's site is confusing and disruptive in that visitors to the site might reasonably believe it is connected to or approved by the Complainant when it is not as it uses material from the Complainant's web site and the Complainant's logo to offer competing services showing that the Respondent is aware of the Complainant and its rights, business and services and accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain internet users to his website by creating likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the web site or services on it likely to disrupt the business of the Complainant. The Complainant has also relied on iFinex Inc. v. Yuri Heifetz/Genie-Solution, FA 1789385 (Forum July 9, 2018) wherein holding that the respondent's mimicking the complainant's web site in order to cause existing or potential customers of the Complainant's to believe they are dealing with the complainant is prima facie evidence of the respondent's lack of rights and legitimate interests in the disputed domain name.

On those facts, the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

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Respondent's Contentions

The Respondent submitted that " the notice states that I mislead people and use the website in bad faith but that's not the case I've been importing bilstein performance suspensions from your UK dealer and selling them here I have not misrepresented you in any form in our country none the less have created a market and demand for you in this country by spreading awareness about your product the website in question is only for informational purpose you can't buy from the website have been a bilstein user and reseller in-fact have helped bilstein do good business in India by reselling their products via various dealers from UK / EU . I can provide a list of kits I have sold for bilstein over the past couple years and I'm sure it's more than your official dealers do here .I'm ready to return the domain to you please compensate me for all costs incurred for designing the website and acquiring the Domain and the hosting fees and good will created in The Indian market for Bilstein."

Complainant's Response

In response to the submissions of the Respondent, the complainant submitted that "To our knowledge, the Respondent is not known to our client and is not identified as an official trademark reseller. The Respondent is invited to provide contact details that clearly identify its identity and/or its business relationship with the Complainant. Furthermore, the information page on the website does not make it possible to identify the Registrant and/or its relationship with the Complainant. In the absence of this information, the Complainant considers that the Respondent has no commercial relationship with its company. With regard to the website, the Respondent states that it is an informative website (*"the website in question is only for informational purpose you can't buy from the website"*). However, the copy of the internet page attached clearly shows an offer of goods. The Complainant contends that the domain name is being used to create a likelihood of confusion with the Complainant's official trademarks

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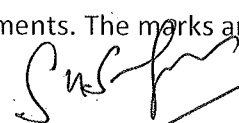
and domain names in order to attract consumers to its website. The Complainant is willing to stop the proceeding if the domain name is transferred without financial compensation (The domain name was registered and used without the Complainant's consent)."

DISCUSSION AND FINDINGS

The Complainant, Thyssenkrupp Bilstein GmbH, is a German shock absorber manufacturer for vehicle damping and suspension. The Complainant operates in many countries of the world. The Complainant is owner of number of trademarks containing "BILSTEIN" which are registered in many jurisdictions including India where the respondent is based. The Complainant is using the trademark since 1971 and these are well known in relevant categories. The Complainant is also owner of many domains containing mark "BILSTEIN". The Complainant owns top level domain <bilstein.com> which was registered by the complainant in August 1996 decades before registration of disputed domain name <bilsteinindia.in> by the Respondent in July 2020. The Respondent registered the disputed domain name <bilsteinindia.in> on July 20, 2020. The Complainant has not licensed or authorized the Respondent to use the mark "BILSTEIN". In response to the arbitration notice issued by this panel, the Respondent submitted that he is willing to transfer the disputed domain to the Complainant if compensated. The Respondent submitted that he has promoted the products of the Complainant through his efforts. The Respondent has used the well-known mark of the Complainant in his disputed domain <bilsteinindia.in> without any authorization from the Complainant. The disputed domain name resolves to website offering products those of the Complainant.

The domain name <BILSTEININDIA.IN> is identical or confusingly similar to trademarks or service marks and trade name in which the Complainant has rights.

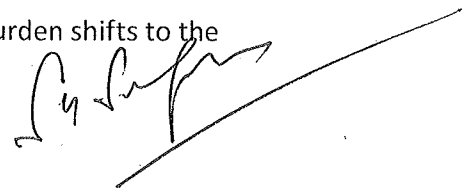
The Complainant has been able to prove that it has trademark rights and other rights in marks 'BILSTEIN' by submitting substantial documents. The marks are

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widely used by the Complainant group in relation to their business. The disputed domain name <BILSTEININDIA.IN> contains well known mark 'BILSTEIN' mark of Complainant completely. Addition of word 'INDIA' is insufficient to make it different. The addition of ccTLD ".in" also does not make it different as this is also country specific code. There can't be coincidence that the Respondent has chosen domain name identical/similar to the marks of the Complainant. The top level domain <BILSTEIN.COM> was registered by the Complainant years before registration of disputed domain <BILSTEININDIA.IN> by the Respondent in July, 2020. The disputed domain name <BILSTEININDIA.IN> identical and confusingly similar to the mark/domain of the Complainant. The domain resolves to a website dealing in products/services those of the Complainant. The intent of the Respondent appears to commercially gain from the popularity of Complainant's mark. The Respondent has used the well-known mark of the Complainant without any authorization. Based on the forgoing analysis, I am of the opinion that the disputed domain name is identical and confusingly similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'BILSTEIN'. The Complainants have never authorized the Respondent to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate non-commercial use of disputed domain name. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the

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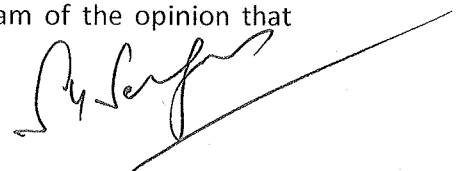
registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has failed to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered or is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been the using the marks for several decades before registration of the disputed domain name in 2020 by the Respondent. The panel finds that the Respondent has used the well-known mark of the Complainant in disputed domain name giving impression that this domain is affiliated to the Complainant. The Complainant has not authorized the Respondent to use their well-known mark. The unauthorized use of well-known mark by the Respondent is bad faith use. The sole purpose of the Respondent is to create confusion to an ordinary internet user in believing that the Respondent is associated with the complainant. The Respondent is involved in business promoting products those of the complainant and his motive appears to profit from the popularity of the Complainant's mark. The respondent has not able to submit any evidence to show that the Respondent is authorized or licensed by the Complainant to use their well-known mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.

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Decision


Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has used the well-known mark/domain of the Complainant without any authorization from the Complainant. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical and confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name <BILSTEININDIA.IN> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

APRIL 08, 2024


SUDHIR KUMAR SENGAR
8/9/24
SOLE ARBITRATOR