



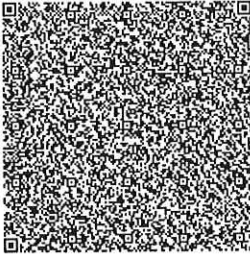
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL08889937091430Q  
Certificate Issued Date : 28-Nov-2018 11:39 AM  
Account Reference : IMPACC (IV)/ dl916803/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL91680322872065827791Q  
Purchased by : LUCY RANA  
Description of Document : Article Others  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : LUCY RANA  
Second Party : Not Applicable  
Stamp Duty Paid By : LUCY RANA  
Stamp Duty Amount(Rs.) : 100  
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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY  
(Appointed by .IN Registry- National Internet Exchange of India)

#### ARBITRATION AWARD

Disputed Domain Name: <BOLLORELOGISTICS.IN>

IN THE MATTER OF:

BOLLORE  
Odet  
29500 ERGUE GABERIC,  
France,

.....Complainant

-----versus-----

Mr. Karthikeyan,  
OCEAN SOFTWARES  
Sholinghur,  
Vellore,  
Tamil Nadu- 631102,  
India.

.....Respondent

#### Statutory Alert:

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### **1. The Parties**

The **Complainant** in this arbitration proceeding is **BOLLORE**, of the address Odet, 29500 ERGUE GABERIC, France.

The **Respondent** in this arbitration proceeding is **Karthikeyan**, an individual, on behalf of the entity **OCEAN SOFTWARES**, and having address at Sholinghur, Vellore, Tamil Nadu-631102, India.

### **2. The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <bollorelogistics.in> with the .IN Registry. The Registrant in the present matter is **Karthikeyan**, on behalf of **OCEAN SOFTWARES**, and the Registrar is **Endurance Domains Technology LLP**.

### **3. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated October 01, 2018, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day.

Thereafter, NIXI announced appointment of Mrs. Lucy Rana as the sole arbitrator in respect of the matter and forwarded soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated October 09, 2018.

The Arbitrator confirmed receipt of the soft copy of the Complaint along with Annexures as filed on October 10, 2018 and further noted certain deficiencies in the Complainant's submissions. The Arbitrator granted the Complainant seven (7) days to rectify the deficiencies and requested NIXI to withhold sending the Complaint and Annexure documents to the Respondent in hard copy until the duly rectified documents had been submitted by the Complainant.

Thereafter, vide email dated October 11, 2018, the Complainant's counsel submitted duly rectified documents whereupon the Arbitrator commenced proceedings vide email on October 12, 2018 granting the Respondent fourteen (14) days to respond to the Complaint as filed.

Respondent vide email dated October 12, 2018 acknowledged receipt of the Domain Complaint in soft copy (but not hard copy) and further informed that he had bought the impugned domain from the provider Big Rock, LLC under instructions from his client, one Mr. Ashwin. Respondent requested for direction from the Arbitrator as to his next actions.

Thereafter, NIXI, vide its email dated October 15, 2018 confirmed that the hard copies of the domain complaint along with annexures had been sent by speed post to the address of the Respondent.

*Arang*



The Arbitrator, vide email also dated October 15, 2018 informed the Respondent that as the impugned domain stands registered in his name, he is therefore required to submit a reply thereto within the stipulated time failing which the matter shall be accordingly considered on the basis of materials already available on record.

Thereafter, the Respondent once again sent an email dated October 18, 2018, once more requesting specific guidance on how to respond from the Arbitrator and proposing that they are willing to surrender the impugned domain to the Complainant, however only upon receiving due compensation.

The Complainant's counsel also communicated to the Respondent (copying the Arbitrator) vide email dated October 18, 2018 that they had confirmed from their client as well as their Indian subsidiary that they do not have any associate/employee by the name of 'Mr. Ashwin' and therefore confirming that the impugned domain name is indeed an infringing registration. The Complainant's counsel also intimated that they are willing to terminate arbitration proceedings and settle the matter provided the Respondent voluntarily transfers the impugned domain to them or to their client.

On October 22, 2018, Arbitrator requested the parties to intimate prior to the Respondent's deadline if they are willing to settle the matter inter se so that proceedings may be suspended in order to accommodate the same.

On October 23, 2018, the Respondent sent another email addressed to the Arbitrator as well as the Complainant's counsel inter alia acknowledging receipt of both hard copy and soft copy of the complaint documents, stating that he is ready to transfer the impugned domain to the Complainant, however only upon receipt of due compensation, informing that the only document available with him pertaining to the impugned domain is the purchase receipt from the domain provider Big Rock, LLC, and seeking guidance on any further requirements expected from him.

Thereafter, the Arbitrator vide email dated October 23, 2018 granted the Complainant seven (7) days to submit a rejoinder to the Respondent's email reply, to which the Complainant's counsel responded on the same day reiterating that they are willing to terminate arbitration proceedings provided the Respondent voluntarily transfers the impugned domain to them.

The Arbitrator granted the Respondent another period of seven (7) days vide email dated October 24, 2018 to respond to the email as sent on behalf of the Complainant, however, per the Respondent's subsequent email of November 02, 2018, it appeared that the Respondent had misunderstood that time had been granted to him for the purpose of submitting a reply.

The Arbitrator therefore issued a clarification on November 02, 2018 and granting a final period of three (3) days for submission of the Respondent's response (if any). Further, the parties were informed vide the same email that no further submissions would be entertained from either party thereafter.

The Respondent replied shortly thereafter on the same day, once again reiterating that he is seeking compensation for transferring the domain to the Complainant.

Upon receipt of the Respondent's email, the Arbitrator concluded the submissions stage of proceedings and reserved the award vide email dated November 05, 2018. However, per the



Respondent's follow up email of November 09, 2018, it once again appeared that there had been a misunderstanding pursuant to which the Arbitrator once again issued a clarification vide email dated November 13, 2018.

The Respondent once again sent a follow up email addressed to the Complainant and Arbitrator on November 17, 2018 to which the Arbitrator once again issued a clarification vide email dated November 20, 2018 inter alia reiterating reservation of the Award, to be passed within the deadline of sixty (60) days as stipulated under the INDRP.

#### **4. Factual Background- Complainant**

The Complainant has submitted that it was founded in 1822, and that thanks to a diversification strategy based on innovation and international development, it now holds strong positions in all its activities across three business lines- Transportation and Logistics, Communication and Media, and Electricity Storage and Solutions.

The Complainant has submitted that it is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the Complainant has submitted that the majority interest of its stock is always controlled by the Bollore family. The Complainant has submitted that the Bollore Group has 81 420 employees world-wide, with a turnover that equals Euro 18,325 million, having net income of Euro 2,081 million, and shareholders' equity amounting to Euro 31, 858 million based on results in 2017. The Complainant has evidenced its statements with an extract from its official website annexed as **Annex 2**.

The Complainant has submitted that its subsidiary, **Bollore Logistics**, is one of the 10 leading worldwide transport and logistics companies. That with a presence on five continents (607 offices in 106 countries and more than 20,200 employees), including in India, Bollore Logistics aims to consolidate the strength and reach of its international network through organic growth and targeted acquisitions. The Complainant has annexed additional extracts from its official website in support of its statements as **Annex 3**.

The Complainant has submitted that it owns a number of trademarks including the wording "**BOLLORE LOGISTICS**" in several countries around the world, including in India, and has further submitted details of its relevant registrations, including annexing relevant status pages as **Annex 4**.

The Complainant has submitted that it owns and operates websites at various domain names, including the domain <**bollore-logistics.com**> which was registered on January 20, 2009. The Complainant has annexed the WHOIS record for the said domain in support of its statements as **Annex 5**.

#### **5. Contentions and Legal Grounds submitted by the Complainant**

The Complainant has submitted that the impugned domain name <**bollorelogistics.in**> was registered by the Respondent on July 23, 2018. The Complainant has annexed the WHOIS record for the said domain in evidence thereof as **Annex 1**.

The Complainant has further submitted that the impugned domain resolves to an under-construction webpage as maintained by the Respondent entity, i.e. **OCEAN SOFTWARES**.





The Complainant has annexed a screenshot of the said webpage as evidence thereof as **Annex 6**.

The Complainant has submitted the following legal grounds in support of its contentions And towards fulfilment of the three principal grounds as envisioned under the INDRP:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant has contended that the disputed domain name, i.e. <**bollorelogistics.in**>, is identical to its prior registered trademark **BOLLORE LOGISTICS**. That the impugned domain name includes the Complainant's said trademark in its entirety without any adjunction of letter or word.

The Complainant has cited the following cases in support of its contention:

- Case No. INDRP/927, *Society Generale v. Mr. Xi Da Hai* <qigo.in>;
- Case No. INDRP/776, *Amundi v. GaoGou* <amundi.co.in>.

The Complainant has contended that the addition of the ccTLD “.in” is not enough to escape the finding that the domain is identical to its trademark **BOLLORE LOGISTICS** and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

The Complainant has also contended that past WIPO Arbitral Panels have upheld the Complainant's trademark rights in respect of domain disputes under the UDRP. The Complainant has cited the following cases in support of its contention:

- CAC Case No. 101849, *BOLLORE v. jorge villalva*, <bollore-logistics.com>;
- CAC Case No. 101714, *BOLLORE v. Leny Gaspard*, <ci-bollore-africa logistics.com>;
- CAC Case No. 101732, *BOLLORE v. Yankees*, <bollore-loqistics.com>.

In view thereof, the Complainant has contended that the disputed domain name <**bollorelogistics.in**> is identical to its trademark **BOLLORE LOGISTICS**.

B. The Respondent has no rights or legitimate interests in respect of the domain name(s)

The Complainant has relied upon the decision in **Case No. INDRP/776, Amundi v. GaoGou**, and thereby contended that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case has been made out, then the burden of proof to demonstrate legitimate rights or interests in the disputed domain name falls upon the Respondent. If the Respondent fails to do so, then the Complainant shall be deemed to have satisfied the requirements of Paragraph 4(ii) of the INDRP.

The Complainant has contended that, based on the information regarding the Respondent as available in the WHOIS records for the disputed domain, the Respondent is known as **OCEAN SOFTWARES, Karthikeyan**. The Complainant has contended that past panels have held that a respondent cannot be said to be commonly known by a disputed domain name unless the WHOIS details are similar to the disputed domain name. The Complainant has relied on the following cases in support of its contention:

- NAF Case No. FA 699652, *The Braun Corporation v. Wayne Loney*;
- Case No. INDRP/999, *Accenture Global Services Limited v. Vishal Singh*.

The Complainant has contended that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way with the Complainant.

The Complainant has submitted that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant has submitted that no license or authorization has been granted to the Respondent to make any use of the trademark **BOLLORE LOGISTICS**, or apply for registration of the disputed domain name.

The Complainant has contended that since its registration, the disputed domain name resolves to an under-construction webpage operated by **OCEAN SOFTWARES**. Therefore, the Complainant has contended that the Respondent has not proved use of or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The Complainant has quoted relevant paragraph from **CAC Case No. 102041, AMUNDI v. Wilfried GRILLO** in support of its contention.

Therefore, based on the above, the Complainant has contended that the Respondent has no rights or legitimate interests in the disputed domain name. He has no relationship with the Complainant's business and is not authorized or licensed to use the trademark **BOLLORE LOGISTICS**.

C. The domain name(s) was/were registered and is/are being used in bad faith

The Complainant has contended that the disputed domain name is identical to its well-known and distinctive trademark **BOLLORE LOGISTICS** and associated domain names. The Complainant has further contended that past WIPO panels have confirmed the reputation of its trademark **BOLLORE LOGISTICS** and has cited extracts from the judgements in the cases- **CAC Case No. 102031, BOLLORE v. Donald Shillam** and **CAC Case No. 101500, BOLLORE v. Jessica Saxton**, in support of its contention.

The Complainant has submitted that it has an office in India as evidenced by its annexure **Annex 3**.

The Complainant has contended 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 trademark. The Complainant has referred to the judgement in the case **WIPO- D2004-0673- Ferrari S.p.A. v. American Entertainment Group Inc.**

Moreover, the Complainant has contended that the incorporation of a famous mark into a domain name coupled with an inactive website may be evidence of bad faith use and registration. The Complainant has relied on the following cases in support of its contention:

- WIPO Case No. D2000-0003, *Telstra Corporation v. Nuclear Marshmallows*;
- WIPO Case No. D2000-0400, *CBS Broadcasting, Inc. v. Dennis Toepfen*.

Therefore, the Complainant has contended that the Respondent has registered the disputed domain name in order to prevent the rightful owner of the trademark from reflecting its trademark in a corresponding domain name.



Therefore, the Complainant has contended that the Respondent has registered the disputed domain name and is using it in bad faith.

The Complainant has submitted that there are no other legal proceedings pending before any court of law in India with respect to the domain name that is the subject of the present dispute.

#### Reliefs claimed by the Complainant

The Complainant has requested for the disputed domain name, i.e. <bollorelogistics.in> to be transferred to the Complainant.

### **6. Discussions and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

**i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**  
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

It has been held by the Hon'ble Supreme Court of India in the case of *M/s Satyam Infoway Ltd. v. M/s Sifynet Solutions (P) Ltd.*, JT 2004 (5) SC 541, that a domain name has all the characteristics of a trademark and such principles as are applicable to trademarks are concurrently applicable to domain names as well.

In the opinion of the Arbitrator, the Complainant has been successful in establishing indisputably their rights in their trademark **BOLLORE LOGISTICS** by virtue, inter alia of their bona fide adoption ('**Bollore**' is in fact the family name of the founders/owners); long and extensive use of the same (i.e. since 1822) in their particular sphere of business (i.e. offering transportation, logistics, communications, media and electrical energy related services); corresponding (valid and subsisting) trademark registrations in jurisdictions worldwide including in India; as well as registration of domain names such as <bollore-logistics.com>, the Complainant's primary website-domain, registered since January 20, 2009.

The disputed domain name- <bollorelogistics.in>, evidently incorporates the Complainant's registered trademark **BOLLORE LOGISTICS** in its entirety, rendering it entirely identical to the Complainant's name and trademark **BOLLORE/ BOLLORE LOGISTICS**. The Respondent has in fact not disputed the Complainant's contentions in this regard.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its name and trademark **BOLLORE/ BOLLORE LOGISTICS** under Paragraph 4(i) of the INDRP has been established.



ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has established rights in their trademark **BOLLORE LOGISTICS** by virtue of prior, long and continuous adoption, use and registration worldwide, including in India. The Respondent gained registration of the disputed domain name, i.e. <**bollorelogistics.in**> as recently as July 23, 2018.

Prima facie, from the WHOIS records of the disputed domain as provided by the Complainant, the Registrant's name is listed as '**Karthikeyan**' and Registrant Organization is listed as '**OCEAN SOFTWARES**'. Moreover, the disputed domain features only an under construction parked webpage under the name of **OCEAN SOFTWARES** and no reference to **BOLLORE/ BOLLORE LOGISTICS** is being made therein. The Respondent further has not contested nor provided any evidence of bona fide adoption/use of '**bollorelogistics**' in his favour over the course of the proceedings. In fact, vide his several email responses over the course of the arbitral proceedings, the Respondent admitted a willingness to restore the domain to the Complainant thereby foregoing his proprietorship in the same. The facts and circumstances of his willingness in this regard, however, shall be dealt with in detail in subsequent relevant paragraphs.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

Paragraph 6 of the INDRP lists out the circumstances under which it may be established that a domain name has been registered and/or is being used in bad faith. Paragraph 6, INDRP, is extracted below for ease of reference:

**6. Evidence of Registration and use of Domain Name in Bad Faith**

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark 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 related to the domain name; or*

*(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark 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 on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

The Respondent, vide his several email communiques has stated that he bought and registered the disputed domain name under instructions from his client, one **Mr. Ashwin**. However, the Respondent has provided no evidence to establish the fact of such engagement by Mr. Ashwin. The Respondent has further admitted to purchase of the disputed domain from the provider Big Rock LLC and claimed to have proof of such purchase. The fact of registration of the disputed domain in the name of the Respondent therefore stands admittedly undisputed.

The Respondent vide every one of his email communications has informed that he is willing to transfer the disputed domain to the Complainant, however only upon payment of consideration therefore. The Complainant, vide email dated October 23, 2018, through its authorized representative made it clear that it is willing to terminate arbitral proceedings only if the Respondent willingly transfers the disputed domain name, upon which the Complainant claims rights by virtue of its name and trademark **BOLLORE/ BOLLORE LOGISTICS**.

In light of the above, the Respondent's conduct in the matter evidences his clear intention to sale and therefore earn profits from the disputed domain name which satisfies Paragraph 6(i) of the INDRP.

Further, in light of the Complainant's assertion of its prior registered rights and interests in its name and trademark **BOLLORE/ BOLLORE LOGISTICS** vide the Complaint as filed, which were not contested by the Respondent at any time during the course of proceedings, the Respondent's persistent attempts to nevertheless profit from another party's rights and reputation acts as evidence of its lack of bona fide intentions regarding the matter.

The additional fact that despite the Complainant's assertion of its prior registered rights and interests in its name and trademark **BOLLORE/ BOLLORE LOGISTICS**, of which the Respondent would have come to knowledge since at least the date of service of the Complaint documents upon him (as acknowledged by the Respondent vide his email dated October 12, 2018), however the Respondent continued to maintain its parked webpage at the disputed domain displaying no bona fide use or even bona fide intention to use the disputed domain name, and thereby also preventing the Complainant's acquisition and/or use of a domain name entirely incorporating its registered trademark **BOLLORE LOGISTICS** and which can be said to satisfy the criteria under Paragraph 6(ii) of the INDRP.

It is pertinent to point out that the Respondent, over the course of his email correspondence, has persistently exhibited mala fide intent to profit financially from his misuse of a third party (Complainant's) registered trademark, allegedly upon instructions of his client which fact he has failed to prove over the course of the arbitration proceedings. Such demand for compensation by the Respondent in exchange for relinquishing the disputed domain name in favour of the Complainant tantamounts to evidence of bad faith on the part of the Respondent. This is supported by similar findings supporting bad faith registrations of domain names as held in the following cases:

- *Phoenix IT Solution Ltd. v. Mr. M. Ramesh*, INDRP 495, September 28, 2013;

- *Herbalife International of America, Inc. v. myherbalife.com*, WIPO Case No. D2002-0101, April 13, 2002;
- *Regeneron Pharmaceuticals, Inc. v. Wang Hui Min*, WIPO Case No. D2017-2530, March 01, 2018.

The Respondent cannot take the defence of ignorance of domain dispute proceedings under the INDRP as it is a fundamental legal principle that ignorance of the law cannot be an excuse or defence for illegal/ mala fide acts. Further, the Respondent being in the business inter alia of website development, can be expected to be aware of regulatory and enforcement proceedings related to such field of business which can arguably be said to encompass domain disputes.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved, in the absence of any substantive defence from the Respondent, the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

## 7. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark **BOLLORE LOGISTICS** and variations thereof. The Complainant has herein been able to prove conclusively that:

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

Under the facts and circumstances of the case, the Arbitrator did not feel that conducting oral hearings in respect thereto was required.

The Arbitrator therefore allows the prayer of the Complainant and directs that the domain <bollorelogistics.in> be transferred to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

**Sole Arbitrator**

**Date: November 28, 2018**

**Place: New Delhi, India.**