



सत्यमेव जयते

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Chandigarh Administration

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Account Reference : NEWIMPACC (GV)/ chspicg07/ E-SMP KIOSK SEC-43/ CH-CH
Unique Doc. Reference : SUBIN-CHCHSPICG0700520969401909W
Purchased by : RAJESH KUMAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SAJAL KOSER
Second Party : Not Applicable
Stamp Duty Paid By : SAJAL KOSER
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1879 OF 2024

DISPUTED DOMAIN NAME: <LEYBOLD.CO.IN>

IRD 0021621382

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LEYBOLD GMBH Bonner Strasse 498 50968 Koeln Germany.

...Complainant

Versus

Madhuri Pawar, Leybold Pune, Maharashtra 411030 India (Newly Identified Respondent), Telephone Number: (+91).9049899899. Email madhuripawaroffice@gmail.com.

...Respondent

1. INTRODUCTION:

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain Dispute Resolution Policy (INDRP), and the INDRP Rules of Procedure framed there under.

2. PROCEDURAL HISTORY:

- i) In response to the email dated 29.07.2024, appointing undersigned as an Arbitrator in response to which vide email of the same day dated 29.07.2024, the undersigned submitted Statement of Acceptance and Declaration of Impartiality and Independence.
- ii) Thereafter, vide email dated 29.07.2024 from NIXI, undersigned received copies of the complaint alongwith the annexures, which were also emailed/sent to the Respondent at his/her email ID.
- iii) That thereafter, vide email dated 30.07.2024, Notice to the Respondent was issued in accordance with INDRP Rules of

Procedure calling upon the Respondent to furnish reply/response within 15 days from the date of this notice.

- iv) That as the Respondent did not file any reply/response within the stipulated period of 15 days, thereafter, vide order dated 15.08.2024, the opportunity given to the Respondent to file reply/response, if any, to the Complaint was closed by order and the case was fixed for passing award, ex-parte.

3. THE PARTIES, DOMAIN NAME AND REGISTRAR

As per the Complaint, LEYBOLD GMBH, (hereinafter referred to as "complainant") based in Cologne is part of the Swedish industry group Atlas Copco. The complainant's core competencies are based on the development of components and systems for the generation of vacuum and gas management engineering. The complainant is headquartered in Germany and has subsidiaries in over 100 countries worldwide. The complainant is the oldest vacuum pump manufacturer and has expanded its line of modern turbomolecular pumps to higher pumping speeds. The Complainant is a premium manufacturer of vacuum pumps for industrial and scientific purposes. The Complainant has been a leader in the range of products such as pumps, components, and instruments for more than 170 years. Further details of the Complainant is mentioned in paras 3 to 5 of the Complaint.

According to the Complainant, the details obtained from whois.com indicate that Leybold, Maharashtra, India, is the registrant in respect of the contested domain name and hence is the Respondent in this proceeding. A Copy of the search result for the impugned domain name www.leybold.co.in as found in the records of 'WHOIS' is annexed as 'Annexure - A' with the Complaint. Further, as per the

Complainant, the newly identified Respondent Madhuri Pawar, Leybold, Pune, Maharashtra 411030 is "Annexure-1A". Printouts of the web link page about the disputed domain are also annexed with the Complaint as 'Annexure-B'. Furthermore, when visiting the contested domain name, www.leybold.co.in, it appears that the website may have been compromised by hackers.

Further details of the Respondents, Domain name and Registrar has been mentioned in the Complaint in paras 8 and 9.

4. As mentioned in the Complaint, the Complainant has invoked the provisions of INDRP because of following reasons:

- a) That the Respondent's domain name www.leybold.co.in in question is identical to the Complainant's renowned trademark 'LEYBOLD'.
- b) That the Respondent has no claims, rights, or legitimate interests in respect of the disputed domain name.
- c) The impugned domain name www.leybold.co.in has been registered in bad faith.
- d) That 'LEYBOLD' is the principal trademark of the Complainant and forms the dominant part of the corporate name of the Complainant.
- e) The Complainant has obtained registration for the trademark LEYBOLD in India and several other countries.
- f) The Complainant has generated a good and valuable reputation, and a vast amount of goodwill has accrued to the Complainant in the brand/trade name LEYBOLD through a strong physical and digital presence over several years.
- g) The Respondent has adopted and registered the disputed domain name, which is identical to the trademark and

corporate name of the Complainant. Thereby wrongfully, illegally, and dishonestly trading upon the reputation of the Complainant. A true and correct copy of the INDRP policy and INDRP Rules of procedure that applies to the domain name in question is provided at 'Annexure-C' to this complaint.

5. **FURTHER, FACTUAL AND LEGAL GROUNDS TAKEN BY THE COMPLAINANT:**

- i) Complainant has submitted that the disputed domain name is identical to the trademark in which the Complainant has statutory and common law right in India. The Complainant's trademark LEYBOLD has been derived from the name of the founder "E Leybold" and was incorporated in the year 1850. The Complainant's group consists of several companies worldwide located in Africa, America, Asia Australia-Oceania, and Europe. The Complainant's core competency is vacuum technology, is an elementary component in the production of several products. Information about the Complainant can be accessed at www.leybold.com. A brief profile of the Complainant 'Annexure D' with the Complaint.

It is further case of the Complainant that the Complainant's primary business expertise is in the fabrication of vacuum systems and pumps, which are used to establish the production conditions required for the industrial manufacturing of solar cells, data carriers, displays coated architectural glass, semi-conductors, and data carriers, food processing, and packaging as well as the refinement of steel both employ vacuum systems in practically every field of contemporary

study, including mass Spectro meters and electron microscopes, vacuum is also essential.

The Complainant also submits that it has secured statutory protection for the trademark LEYBOLD in several jurisdictions, including in India. The details of a few such registrations have been mentioned in the tabular form from serial no. 1 to 138. Also, Annexed with the Complaint as 'Annexure E' are the registration abstract /certificate for a few of the aforementioned registrations. The Complainant has devoted enormous amount of time, effort, and energy in promoting and advertising the mark LEYBOLD and the said mark is consequently identified solely with the Complainant. The Complainant has a significant online presence. A snapshot of Google search results is marked and filed as 'Annexure F' with the Complaint. The Complainant as stated in the Complaint also has a significant customer base in India and hence incorporated a subsidiary LEYBOLD INDIA PRIVATE LIMITED on 7th January 2005, a copy of the incorporation certificate is annexed as 'Annexure G' with the complaint.

Further, Complainant in the Complaint has also placed on record domain registration secured by the Complainant and Whois records of the said domain name is annexed as 'Annexure H' with the complaint.

- ii) Towards fulfillment of legal grounds as required under INDRP & Procedure, the Complainant has made following submissions while taking **legal grounds**:-

- a) **The disputed domain name is identical to a trademark or service mark in which the Complainant has rights:**

According to the Complainant, the Respondent's domain name www.leybold.co.in is identical to the Complainant's trademark LEYBOLD. The Complainant has overwhelming common law and statutory rights in its trademark LEYBOLD in India. The Complainant's marks have been granted protection in India and the said mark LEYBOLD has also been extensively used in India. Therefore, the Complainant is the sole legitimate owner of the trademark LEYBOLD. Further, according to the Complainant, Respondent's registration and use of the domain www.leybold.co.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship, or approval of the Complainant when it is not so.

As per the Complainant, it is evident that the disputed domain name incorporates the famous trademark LEYBOLD of the Complainant in its entirety. Such adoption and use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In support of above pleas, the Complainant has relied upon the decisions of Arbitral Tribunal, NIXI passed in the case of INDRP/642 MOZILLA FOUNDATION Vs Mr. CHANDAN annexed as 'Annexure I' with the Complaint.

b) **To fulfill the Second Requirement that the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name,** the Complainant has pleaded that the Complainant is the sole legitimate owner of the trademark LEYBOLD. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark LEYBOLD or to apply for any domain name incorporating the said trademark. Further, it has been mentioned by the Complainant that the Respondent has not made any legitimate use of the domain name www.leybold.co.in since the date of its registration and is prejudicially blocking the domain register. It is pertinent to note that the impugned domain name is an identical copy of the Complainant's trade mark LEYBOLD. The Respondent has no plausible reason to adopt the domain www.leybold.co.in other than to exploit the commercial goodwill and reputation of the Complainant's trademark LEYBOLD. The malafide intent of the Respondent to infringe the Complainant's trademark rights is apparent. Further, on account of the popularity and the well-known status of the Complainant's trademark LEYBOLD, the disputed domain name www.leybold.co.in is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship, or approval of the Complainant, when it is not so.

According to the Complainant, considering the blatant infringement of the Complainant's trademark rights, it is

obvious that the sole purpose of the Respondent in registering and maintaining the disputed domain www.leybold.co.in is to misappropriate and usurp the reputation and goodwill of the Complainant's trademark LEYBOLD.

c) The domain name was registered and is being used in bad faith

Under this legal ground, the Complainant has stated in the Complaint that going by the identical imitation of the Complainant's mark, it is obvious that the intention of the Respondent is to attract the Complainant's customers and potential customers to the infringing website by misrepresenting an association. Considering the incessant use, reputation, and well-known status of the Complainant's mark in India and foreign jurisdictions, the illegitimate adoption and use of the impugned domain name will result in brand dilution which cannot be compensated monetarily.

Complainant has further submitted that it has been held in various precedents that the domain names are fast-emerging corporate assets and have evolved as a fulcrum of a company's visibility and marketing operations. Business transactions are primarily being carried out only through internet addresses rather than street addresses, post boxes, or even faxes. Hence, it becomes critical that unscrupulous individuals are not allowed to usurp renowned trademarks and domain names to unfairly benefit from such acts. In support to the above plea, Complainant has relied upon the

decision in JD SPORTS FASHION PLC Vs. LITESH SINGH WEBIZZOO TECHNOLOGIES copy of the said order is annexed hereto "Annexure J" with the Complaint. On the basis of above, Complainant requested for the transfer of ownership in www.leybold.co.in the Complainant herein and to pass any other appropriate favorable orders deemed fit.

6. RESPONSE/REPLY OF THE RESPONDENT:

As already stated since the Respondent has not submitted any reply/response, thereby, legally speaking, the contents of the Complaint and the annexures thereto have gone unrebutted and unchallenged, giving them the status of being admitted which is the form of best evidence, however, as the Complainant is also legally required to prove its case even if the same is being decided ex-parte, therefore, the undersigned has carefully gone through the contents of the Complaint and supported documents.

7. DISCUSSION/FINDINGS OF THE ARBITRATOR:

From the pleadings supported by documents on record, the Complainant has been sufficiently able to prove its case and also fulfilled the essential ingredients of the INDRP Policy in the legal and factual grounds. The decisions cited also support the case of the Complainant. From the averments and documents on record as evidenced by the Complainant, it has been established that the complainant has sufficiently established its rights in and to the ownership of the LEYBOLD Trademarks and that the Complainant has acquired the exclusive right to the use of the LEYBOLD mark and also the Complainant has been able to prove that the mark

"LEYBOLD" is a well- established name in India and other countries. The Complainant has further established that the "LEYBOLD", is popularly known exclusively concerning the Complainant and as the mark LEYBOLD of the Complainant is well-known, the inclusion of the well- known mark "LEYBOLD" in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Disputed Domain Name) and the Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known trademark tantamount to create confusion in the minds of the public at large. Also, as the contents of the Complaint and documents annexed which have gone unrebutted, the Complainant has been able to prove the ingredients of sub paras (a) to (c) of Clause 4 of the INDRP dispute Resolution Policy. From the contents and grounds mentioned in the Complaint, it has been proved on record that the Disputed Domain name is identically similar to the trademark/domain name in which the Complainant has full ownership rights. It has also been proved that the Respondent has no rights or legitimate interest in respect of the Domain name and also that the domain name has been registered by the Respondent malafidely as well as dishonestly and is being used in bad faith. The Complainant has been able to prove its case in terms of relevant mandatory clauses of the INDRP as and wherever applicable. Since, the Respondent has not chosen to contest the present case, therefore, this Tribunal has no other alternative but to consider and accept the unrebutted contentions of the Complainant as made out in the Complaint which, however, are supported and proved by the documents on record.



8. **CONCLUSION:**

In wake of the abovementioned facts, documents, response of the Respondent, discussions and findings given above, the present Complaint is allowed and the following award is being passed in favour of the complainant and against the Respondent.

9. **AWARD:**

In view of above, it is awarded that the disputed domain name <LEYBOLD> be transferred to the complainant. Accordingly, the registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark <LEYBOLD> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

10. **COST:**

In view of the facts and circumstances of the Complaint fully detailed in the Award, the cost of the proceedings are also awarded in favour of the Complainant and against the Respondent.



(Sajal Koser)
Arbitrator
23.08.2024