



भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100

ONE  
HUNDRED RUPEES



सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

दिल्ली DELHI

S 736039

**VISHESHWAR SHRIVASTAV**

**SOLE ARBITRATOR**

**IN**

**ARBITRATION PROCEEDINGS OF DOMAIN NAME**

**“electrolux-professional.co.in”**

**AB ELECTROLUX**

**...COMPLAINANT**

**AND**

**RUO CHANG**

**...RESPONDENT**

**AWARD**

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 03/03/2012. However, while checking

the records of the proceedings, this Tribunal found that besides an email dated November 29, 2011 to the Respondents there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by DHL/ FedEx Courier and also send a paginated & indexed copy of the Complaint to this Tribunal. The Attorney for the complainant had to be told twice i.e. vide order dated 07/03/2012 after which the compliance of the order was done by the Complainants vide their letter dated 08/03/2012 in which they sent a copy of a courier receipt of M/s DHL Courier waybill No. 3895671942 . However, there was no compliance of the directions regarding pagination and indexing which was probably due to the complainants not being represented by a practicing/ Licensed Counsel, hence this Tribunal was left with no other option but to do the pagination at its end. Be it as it may, this Tribunal vide order dated 14/03/2012 directed the Respondent to send their



Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 21<sup>st</sup> March, 2012. However, there was a complete silence from the side of the Respondents.

2. This Tribunal finds that the Complainants have tried their level best to serve the Respondents on the address provided by him in WHO IS. However, it is noted that the tracking records of the courier sent by the complainant showed "Delivery arranged no details expected" (dated 12/03/12) and then "Shipment on hold" 13/03/12. Be it that as it may this Tribunal notes that the copy(s) of the order(s) have also been emailed to the Respondent at his notified email id hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings.
3. In view of the above this Tribunal vide order dated 22/03/2012 reserved the award giving liberty to the Respondent to send



communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

4. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

### **CLAIM**

The claim as put forward by the complainant is briefly as under:

5. The Complainant claim that AB Electrolux, is a Swedish joint stock company founded in 1901 and is registered as a Swedish company since 1919. Further it is claimed that AB



Electrolux is a world leading producer of appliances and equipment for kitchen and cleaning and is one of the largest producers in the world of similar equipment. It is also claimed that claimants are the market leaders in many of the individual product categories and are selling home appliances and appliances for professional use to more than 40 million customers in 150 countries every year including in China and India. It is stressed that the complainant company focuses on innovations that are thoughtfully designed, based on extensive consumer insight, to meet the real needs of consumers and professionals. Some of Electrolux products include refrigerators, dishwashers, washing machines, vacuum cleaners and cookers sold under esteemed brands such as ELECTROLUX, AEG, AEG-ELECTROLUX, Zanussi, Eureka and Frigidaire. It is claimed that in 2010 Electrolux had sales of SEK 106 billion and had 52,000 employees. Reliance is placed on **Annexure 5** in support of the same. It is claimed that the trademark ELECTROLUX has extensive and long-term use and the Complainants have incurred tremendous



costs in connection with the production, distribution and advertising with respect to the products and services that are marked by the trademarks acquired. It is also claimed that the trademarks and the products and services of the complainants enjoy a good reputation and international recognition.

6. The Complainant claim that they have registered the trademark ELECTROLUX as word and figure marks in several classes in more than 150 countries all over the world and the said mark was registered long before the registration of the disputed domain name. To fortify their claim the Complainant state that they have registered the trademark ELECTROLUX in China with registration numbers 70055, 862864, 380211, 989130 and 986904 and place their reliance on **Annexure 4**. The complainants have registered various domain names like Electrolux.com, electroluxprofessional.com, Electrolux.in, Electrolux.com.cn and relies upon **Annexure 6** to fortify their stand and they state that the marks ELECTROLUX has



acquired distinctiveness. Reliance has also been placed upon Article 6bis of the Paris Convention for protection of Industrial Property ("PC") confirmed and Article 16.2 and Article 16.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").

7. Further the Complainants allege that the disputed Domain Name is identical and confusingly similar to the trademark / service mark of the Complainant. It is also alleged that the Respondent have no rights or legitimate interests in the Domain Name, as the Respondent has not been given any authorisation to use the Complainant's mark . The complainants state that the Respondent is not known by the Domain Name and has no trade mark rights in the name. It is also alleged that the Respondent has not made any demonstrable right for bonafide use of the Domain Name and is not making legitimate or fair use of the Domain Name.



8. It is alleged that the Respondent is using the Domain Name to trade off the good will of the brand ELECTROLUX by associating the Domain Name to a pay per click website and also offering the Domain Name for sale on the auction site [www.sedo.com](http://www.sedo.com) for the listed price EUR 6200. This Tribunal notes that the allegation is supported by **Annexure 9**.
9. It is also alleged that the complainants on November 29, 2011, sent a cease and desist notice to the Respondent. Two reminders were sent on December 13 and 29, 2011. Reliance is placed on **Annexure 8**.
10. It is again repeated by the Complainant that the Respondent is using the Domain Name by connecting to a website with a display of pay per click and is thus profiting from the ELECTROLUX brand to intentionally create confusion with the Complainant's mark. Reliance is placed on **Annexure 9**.





11. The main thrust of Complainant is 1) that the Domain Name is confusingly similar to the Complainant's trade mark, 2) that the Respondent has no rights or legitimate interests in respect of the Domain Name, and 3) that the Domain Name was registered in bad faith. The Complainants have also placed following decisions to buttress their claims. *Morgan Stanley v. Bharat Jain, INDRP Case No.156 dated October 27, 2010 (morganstandleybank.co.in); WIPO Case No. D2004-0312 Dr. Ing. h.c. F. Porsche AG v. Ron Anderson; Case D2007-1912, Villeroy & Boch AG v. Mario Pingerna*

#### ORDER

12. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.



13. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <Electrolux-professional.co.in> hence this Tribunal directs the Registry to transfer the domain name <Electrolux-professional.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 2<sup>nd</sup> day of April, 2012.

NEW DELHI  
02/04/2012



V. SHRIVASTAV  
ARBITRATOR