

उत्तर प्रदेश UTTAR PRADESH

FM 255644

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: RODNEY D. RYDER

Kent RO Systems Limited and Mahesh Gupta

v.

Kent RO System

INDRP CASE NUMBER - 1253

ARBITRATION AWARD

Disputed Domain Name: www.kentro-service.co.in

The Parties

The Complainants in this arbitration proceeding are Kent RO Systems Limited and its founder Mr. Mahesh Gupta, having its office at E-6, 7 & 8, Sector 59, Noida – 201309, Uttar Pradesh, India; represented by Vutts & Associates LLP.

The Respondent in this arbitration proceeding is Kent RO System as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

The Domain Name and Registrar

The disputed domain name is www.kentro-service.co.in. The said domain name is registered with GoDaddy.com LLC.

Details of the disputed domain name

The dispute concerns the domain name www.kentro-service.co.in. The said domain name was registered on October 14, 2016. The particulars of the said domain name are as follows:

<u>Registrant Name:</u>	Kent RO System
<u>Registrant Organization:</u>	Kent RO System
<u>Registrant Address:</u>	Gurgaon, Haryana – 122 001
<u>Registrant Phone:</u>	[+91] 9876543210
<u>Registrant Email:</u>	info@kentro-service.co.in

Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

In this matter, the arbitration proceedings commenced on July 27, 2020. The complete set of documents was sent to the Respondent via courier and electronic mail by NIXI on July 27, 2020. Subsequently, request for submission of a response by August 14, 2020 was sent to the Respondent by the Arbitrator on July 27, 2020 through electronic mail. Both these e-



mails sent to the Respondent by NIXI and the Arbitrator on July 27, 2020 could not be delivered. The Respondent did not respond or contact the Arbitrator or NIXI throughout the proceedings.

Grounds for the administrative proceedings

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant[s] has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

Parties Contentions

Complainant

The Complainants, Kent RO Systems Limited and Mr Mahesh Gupta [Hereinafter referred to collectively as 'Complainants'] in their complaint, inter alia, contended as follows:

The Respondent's domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.

The Complainants, based on their corporate name, business, common law rights and trademark registrations for the trademark 'Kent' and related variations, and based on the use of the said trademark in India and other countries, submitted that they are the lawful owner of the trademark 'Kent'.

The Complainants submit that as the disputed domain name is 'www.kentro-service.co.in', the disputed domain name is clearly identical/confusingly similar to the Complainants' trademark in which the Complainants have exclusive rights and legitimate interest.

This being said, it is to be noted that the Complainants have inadvertently referred to the Uniform Dispute Resolution Policy [UDRP] instead of the .IN Domain Name Dispute Resolution Policy in some parts of the complaint. This, in the Arbitrator's opinion, is a typographical error and the Arbitrator is thus inclined to read such references made to the UDRP in the complaint as INDRP.

Background of the Complainant and its statutory and common law rights Adoption:

Kent RO Systems Limited was incorporated in 2007 in India. Mr Mahesh Gupta is the founder of the said company. Prior to 2007, Mr Gupta had formed a Partnership firm under the name and style of M/s Kent RO Systems in 1999 to manufacture and sell water purifiers under the mark 'Kent'. The company is one of the largest manufacturers of water purifiers in India.

The company have more than Twenty-Five lakh customers and Five Thousand persons associated with it. More than Two Lakh reverse osmosis [RO] purifiers are sold every year by the company. Apart from India, the products and services under the brand 'Kent' are



available in several other countries such as South Africa, France, United Kingdom, Nepal, Sri Lanka, Bangladesh, etc.

Their primary websites of the Complainants are <www.kent.co.in> and <www.kentrosystems.com>. Kent is a well-established name in the field of water purifiers in India and elsewhere. By virtue of such long and continued use, the Complainants' trademark 'Kent' and other related variation and formative marks have therefore, acquired enormous goodwill, eminence and reputation in its field of business.

Statutory rights:

The Complainants have registrations for the mark 'Kent' in several jurisdictions including China, Bhutan, Kuwait and United Kingdom etc. Particularly in India, the Complainants' have trademark registrations for the mark 'Kent' and related variations in several classes.

The mark 'Kent' is registered in most of the classes, including: 1, 2, 3, 4, 5, 7, 8, 10, 14, 35, 36, 41 and 44.

Respondent

The Respondent failed to reply to the notice regarding the complaint.

Discussion and Findings

The Respondent does not have any relationship with the business of the Complainants or any legitimate interest in the mark/brand 'Kent'. Moreover, the Complainants have neither given any license nor authorized the Respondent to use the Complainants' mark. The Respondent has never been commonly known by the domain name in question and registered the domain name on October 14, 2016, that is subsequent to Complainants' usage of the trademark 'Kent'.

The disputed domain name contains the entirety of the Complainants' trademark 'Kent' followed by the generic/descriptive term 'RO Service'. Furthermore, the addition of the top-level domain ".co.in" is irrelevant in determining whether the disputed domain name is confusingly similar to the Complainants' mark. It is well established that the specific top level domain, such as ".com", ".net", ".in", ".in", ".org.in" etc. does not affect the domain name for the purpose of determining whether it is identical or confusingly similar [Relevant Decisions: *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Aon PLC and Ors. v. Guanrui*, INDRP/633].

The Complainants have been proactive in its approach to safeguard and protect its brand 'Kent'. In the past, courts as well as a WIPO Panel under the UDRP have recognised the Complainants' rights in the trademark 'Kent'.



It is a well-established principle that once the Complainants makes a prima facie case showing that a Respondent lacks the rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

The Respondent's Default

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."

Rule 11(a) empowers the Arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

"In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainants' assertions, evidence or contentions in any manner. The Panel finds that the Respondent has been given a fair opportunity to present his case.

The 'Rules' under paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules, paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainants' assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's / Panel's decision is based upon the Complainants' assertions and evidence and inferences drawn from the Respondent's failure to reply.

The issues involved in the dispute

The Complainants in their complaint have invoked paragraph 4 of the INDRP which reads:

"Types of Disputes -



Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant[s] has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the Respondent's domain name has been registered or is being used in bad faith.

The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

It has been proved by the Complainants that they have intellectual property, particularly trademark rights, and other rights in the mark 'Kent' and other variations by submitting substantial documents. The disputed domain name contains the Complainants' 'Kent' trademark in its entirety followed by the generic/descriptive term 'RO Service'.

It has been previously decided under the INDRP that incorporating a well-known trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name.

Furthermore, the addition of the term 'RO Service' in the disputed domain name is analogous to the Complainant's business activities and therefore creates a connection/affiliation to the Complainant's trademark and business in the minds of internet users. [Relevant Decisions: *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers* WIPO Case No. D2017-0754; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Achyut Khare*, INDRP/886]

According to paragraph 3 of the INDRP it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations -



By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:

- the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- the Respondent is not registering the domain name for an unlawful purpose; and*
- the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainants; the Panel has come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' trademark 'Kent'. Accordingly, the Panel concludes that the Complainants have satisfied the first element required by Paragraph 4 of the INDRP. [Relevant Decisions: *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Aon PLC and Ors. v. Gangadhar Mahesh*, INDRP/632; *Wells Fargo & Co. and Anr. v. DeepDas Kumar*, INDRP/628; *Natures Basket Limited & Ors. v. Dipti Singla*, INDRP/683; *General Motors India Pvt. Ltd. & Anr. v. Anish Sharma*, INDRP/799; *Havells India Limited and Anr. v. Whois Foundation*, WIPO Case No. D2016-1775; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers* WIPO Case No. D2017-0754; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Achyut Khare*, INDRP/886; *TransferWise Ltd. vs. Normand Clavet*, INDRP/1150]

The Respondent has no rights or legitimate interests in respect of the disputed domain name
The second element that the Complainants need to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate rights or interests in the disputed domain name.

The Complainants have never assigned, granted or in any way authorised the Respondent to register or use the Kent trademark or any other related mark. The Complainants have been using the 'Kent' mark for a bonafide purpose in relation to its business for several years.

Moreover, the burden of proof on the Complainants regarding this element of the domain name dispute lies most directly within the Respondent's knowledge. Once the Complainants have made a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.



The Respondent has not rebutted the contentions of the Complainants and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name.

Further, the Respondent has used the domain name to display a website deceptively similar to the Complainants' website in order to demonstrate association between the Respondent and the Complainants. The Respondent has no rights over the 'Kent' mark used in the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain. The Respondent is thus misleading consumers by using the Complainants' mark 'Kent' in the disputed domain name.

Moreover, the Respondent's use of the disputed domain name cannot be considered bona fide or legitimate since the Respondent has tried to portray an association with the Complainants and their brand. This clearly establishes that the Respondent is attempting to encash on the goodwill and reputation of the Complainants and their mark 'Kent'. In addition to this, the very fact that the disputed domain name was registered by the Respondent after the Complainants' use of the mark 'Kent' clearly establishes that the Respondent must have registered the domain name to cash-in on the popularity of the Complainants' brand.

It is apparent that the Respondent is using the disputed domain name to opportunistically divert / redirect internet users who may be seeking the Complainants' services to its own website.

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. [Relevant Decisions: *Aon PLC and Ors. v. Guanrui*, INDRP/633; *Wells Fargo & Co. and Anr. v. SreeDas Kumar*, INDRP/666; *QRG Enterprises Limited & Anr. v. Zhang Mi*, INDRP/852; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers WIPO Case No. D2017-0754*; *Havells India Limited and Anr. v. Whois Foundation*, WIPO Case No. D2016-1775; *Mahendra Singh Dhoni and Anr. v. David Hanley*, WIPO Case No. D2016-1692]

The disputed domain name has been registered or is being used in bad faith.

It has been contended by the Complainants that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or



to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

the Respondent 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 Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

From the circumstances of the case and from the evidences put before the Panel by the Complainants, the Panel is of the opinion that the Respondent had no previous connection with the disputed domain name or the mark 'Kent' and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainants and the Respondent's website or other online locations of the Respondent or product/services on the Respondent's website and otherwise, due to the use by Respondent of the Complainants' trademark 'Kent' in the disputed domain name, which trademark has been widely used by the Complainants and which trademark is associated exclusively with the Complainants.

The Panel is prepared to accept the Complainants' contention that its mark and the corresponding business is famous. With regard to famous names, successive UDRP panels have found bad faith registration because Complainants' name was famous at the time of registration: *WIPO/D2000-0310 [choyongpil.net]*.

Based on the submissions and evidences put forth before the Panel, the Panel is of the belief that the Respondent would have definitely known about the Complainants' mark 'Kent' and its reputation at the time of registering the disputed domain name.

The domain name is deceptively similar to the trademark of the Complainants and will lead to confusion with the Complainants' mark 'Kent' as to the source, sponsorship, affiliation or endorsement of the Respondent's business by the Complainants. Moreover, the portrayal of an association with the Complainants' brand, is in view of the Panel, an indication of bad faith on part of the Respondent.

Further, bad faith of the Respondent is evident from the fact that the disputed domain name contains a generic term which is related to the business activities of the Complainants, and that the disputed domain name had an active website [at the time of filing the complaint] offering services similar to those of the Complainants. This establishes



that the Respondent registered and was using the impugned domain name to mislead customers of the Complainants by trying to cash-in on the reputation and brand presence of the Complainants' trademark 'Kent'.

On bad faith registration and use [generally], panels have noted: "Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith": *NAF/FA95314 [thecaravanclub.com]*, *WIPO/D2000-0808* [very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith - *4icq.com*]; "Registration of a domain name that is confusingly similar or identical to a famous trademark....is itself sufficient evidence of bad faith registration and use" [*Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581*; *QRG Enterprises Limited & Anr. v. Zhang Mi, INDRP/852*].

Thus, all the three conditions given in paragraph 6 of the INDRP are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent is a registration in bad faith.

Decision

The Respondent has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights.

The Complainants have given sufficient evidence to prove extensive trademark rights over the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

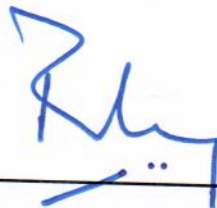
While the overall burden of proof rests with the Complainants, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore, the Complainants are required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus, it is clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name to cash-in on the reputation of the Complainants' mark and to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

[Relevant Decisions: *Lego Juris AS v. Robert Martin INDRP/125*; *Societe Air France v. DNS Admin INDRP/075*; *Kelemata SPA v. Mr Bassarab Dungaciu WIPO D2003-0849*; *Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO D2003-0455*; *Uniroyal Engineered Products, Inc. v. Nauga Network Services WIPO D2000-0503*; *Microsoft Corporation v. Chun*



Man Kam INDRP/119; AB Electrolux v. Liheng, INDRP/700; Equitas Holding Limited v. Sivadas K P, INDRP/724; BearingPoint IP Holdings B.V. v. Deborah R. Heacock, INDRP/822; Dell Inc. v. Jack Sun, INDRP/312; HID Global Corporation v. Zhaxia, INDRP/652; McDonald's Corporation v. Ravinder, INDRP/746; MontBlanc-Simplo G.M.B.H. v. M S Mohamed Salihu, INDRP/678; Orica Australia Proprietary Limited v. Bev Gran, D N Solutions, INDRP/237; Sopra Steria Group v. Xu Xiantao, INDRP/796; Panasonic Corporation v. Sun Wei, INDRP/527; Wal-Mart Stores, Inc. v. Machang, INDRP/539; PJS International S.A. v. Xiangwang, INDRP/616; Aon PLC and Ors. v. Gangadhar Mahesh, INDRP/632; Aon PLC and Ors. v. Guanrui, INDRP/633; Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581; Wells Fargo & Co. and Anr. v. SreeDas Kumar, INDRP/666; Wells Fargo & Co. and Anr. v. DeepDas Kumar, INDRP/628; Natures Basket Limited & Ors. v. Dipti Singla, INDRP/683; General Motors India Pvt. Ltd. & Anr. v. Anish Sharma, INDRP/799; QRG Enterprises Limited & Anr. v. Zhang Mi, INDRP/852; Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers WIPO Case No. D2017-0754; Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Achyut Khare, INDRP/886]

The Respondent's registration and use of the domain name [www.kentro-service.co.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Panel directs that the disputed domain name [www.kentro-service.co.in] be transferred from the Respondent to the Complainants; with a request to NIXI to monitor the transfer.



Rodney D. Ryder
Sole Arbitrator

Date: 20 August 2020