

**IN THE MATTER OF DISPUTED DOMAIN NAME: - `kennametal.in`
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

SOLE ARBITRATOR

**DELIVERED ON THIS 18TH DAY OF MARCH TWO THOUSAND
FOURTEEN AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -**

Kennametal Inc.
1600 Technology Drive
Latrobe, Pennsylvania 15650
U.S.A..

Through its authorized
representative

Matthew Gordon
1600 Technology Drive, U.S.A.

**02. Name and address of
The Respondent: -**

Guechi Raouf
11 cite zohour, sidi Mabrouk
Constantine 25000
Algeria.

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	24/02/2014
02	Hard copy of complaint received	03/03/2014
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 14.03.2014)	03/03/2014
04	Reply from the Registrant received	01/03/2014 & 03/03/2014
05	Notice to the Complainant for rejoinder (12/03/2014)	05/03/2014
06	Notice of closure of arbitration	14/03/2014
06	Award passed	18/03/2014

I] PRELIMINARY: -

- 1) Kennametal Inc., a limited company registered under the provisions of the U.S.A., having its office at 1600 Technology Drive, Latrobe, Pennsylvania 15650, U.S.A. (**The Complainant**) has filed complaint with National

Internet Exchange of India (NIXI) disputing the registration of domain name '**kennametal.in**' (the disputed domain name / domain name), through its authorized representative **Mr. Matthew Gordon**.

- 2) The Complainant has disputed registration of domain name '**kennametal.in**' in the name of **Guechi Raouf (The Respondent / Registrant)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 3rd March, 2014 with the instructions to file his reply / say latest by 14th March, 2014.
02. The Registrant had approached this Panel on 1st March 2014, even before issue of Notice of Arbitration by sending email wherein he tried to narrate his stand and reasons why and how he registered the disputed domain name. However again on 3rd March 2014 itself he sent another reply. Since it was not in English, this panel asked him to submit his reply in English. Accordingly he resent the reply in English.
03. A notice was sent on 3rd March 2014 to the Complainant to file his rejoinder, if any, latest by 12th March 2014.
04. The Complainant did not file any rejoinder and hence no further re-joinder was called for from the Registrant.
05. On 14th March 2014 notice of closure of arbitration procedures was issued.
06. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
07. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant is the owner of registered trademark No.279279 dated in India which is valid till 16.02.2019. The registered work mark is KENNAMETAL in class 7. Apart from this the complainant has at 99 registrations globally.
2. The Complainant is a U.S.A. based company and has presence in many countries and is associated with the machines for mining, boring, tunneling, quarrying, snow ploughing and so on.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF CIC: -

1. The Registrant's domain name is identical to that of the Complainant's name in which the Complainant has right and it would confuse the customers in India due to this similarity.
2. The Registrant has no rights or legitimate interests in respect of the domain name. The Respondent is not using the site in connection with a bonafide offering of goods and services. The domain was parked and offered for sale on 01.09.2014 (apparent mistake in respect of the year).
3. The Registrant is not known as Kennametal or any combination thereof.
4. The Registrant is not making any legitimate non-commercial or fair use of the domain name.
5. The Registrant is making illegitimate demands to release / relinquish the domain name in favor of the Complainant. The Respondent's company SARL Outiltech was a former Algerian Agent of Kennametal Inc.'s subsidiary Kennametal France. Kennametal France terminated the agency agreement with SARL Outiltech on 17.11.2013. The Respondent has registered disputed domain name on 18.11.2013- just after the termination of the agency of the Respondent.
6. The Respondent has asked for \$45000 (US Dollars) from Kennametal Inc. to transfer / sell the domain name to Kennametal.inc.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the Registrant's domain name and also the costs and fees for this arbitration proceedings. .

V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

As stated earlier the Respondent / Registrant had voluntarily approached this panel on 1st March 2014, even before the Notice of Arbitration was issued. He also filed his reply on 3rd March 2014.

In his replies the Registrant / Respondent has clearly admitted that he is ready and willing to sell / transfer the domain name to the Complainant. He has also offered commission to NIXI. He further sent mail to the Authorized Representative of the Complainant and offered to negotiate the price. There is nothing in his replies suggesting any other point of defense.

VI] REJOINDERS OF THE PARTIES: -

In view no rejoinder filed by the Complainant, no rejoinder was call for from the Registrant.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant’s domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant’s domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant’s website or other online location by creating likelihood of confusion with the Complainant’s name or mark?	Yes
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes



IX] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of trademark registered at Sr. No.2972790 in its name in India. The Complainant also owns about 99 domain names globally.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'KENNAMETAL' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its national presence as also its strong presence on the internet it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'KENNAMETAL'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Guechi Raouf. As such he has not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'kennametal'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-

commercial purpose. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The website is parked and open for sale. However any internet user when searches for this domain name, he would get confused about the Complainant, its business and present domain name. In fact the Registrant has registered the domain name very next day of the termination of agency agreement of his company with the subsidiary company of the Complainant. This leads to the conclusion that he was well aware that he is registering domain name which would infringe the rights and interests of the Complainant.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out mala fides of the registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website is parked and being offered for sale. But whenever anyone searches for kennametal.in he is directed to this webpage. Hence it can be said that internet users are being attracted to the website as if it is of the Complainant.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

There is clear evidence that the Registrant wants to sell domain name to the Complainant. Firstly he offered it for US \$ 45000 and now shown willingness to negotiate price.



Amusingly he has offered NIXI commission on the proposed sale and has shown willingness to negotiate on the said commission also.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name includes the registered marks and registered domain names of the Complainant. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
2. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'kennametal' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
3. The Registrant has not been commonly known by the disputed domain name.
4. The Registrant is not making bona fide and fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
5. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.
6. The Registrant has openly offered to sell the domain name for unreasonable price to the Complainant.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – 'kennametal.in' and hence the same be transferred to the Complainant.**
02. The Registrant shall pay to the Complainant the costs of this arbitration proceedings.

Dated: - 18.03.2014
Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR