

हरियाणा HARYANA

K 320576

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Konecranes Plc
P.O. Box 661 Koneenkatu 8,
05830 Hyvinkaa,
Finland

.....Complainant

GaoGou
Yerect International Limited
Suite 1100 South Tower,
175 Bloor Street, East
East Toronto

.....Respondent

Disputed Domain Name: www.konecranes.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Konecranes Plc.** of P.O. Box 661 Koneenkatu 8, 05830 Hyvinkaa, Finland. The Complainant is represented by its authorized representatives Naqeeb Nawab, ZeusIP Advocates at C-4, Jangpura Extension, New Delhi - 110014, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is **GaoGou**, Yerect International Limited, Suite 1100 South Tower, 175 Bloor Street, East, Toronto as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.konecranes.co.in. The Registrar is Bharat Domains. d.b.a. Bharat.in The Registrant is GaoGou, Yerect International Limited, Suite 1100 South Tower, 175 Bloor Street, East, Toronto.

3) Procedural History:

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.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula 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 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.

The complaint was produced before the Arbitrator on September 20, 2012 and the notice was issued to the Respondent on October 01, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before October 22, 2012. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.



Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions

- a) The Complainant, Konecranes Plc. is a company organized and existing under the laws of Finland. Headquartered in Hyvinkää, Konecranes Plc. specializes in the manufacture and service of cranes and lifting equipment as well as the service of machine tools. Konecranes' history dates back to 1910 when the electrical motor repair shop KONE Corporation was founded. The company was initially a division of KONE, who began to manufacture cranes and hoists in the 1930s. The company began to expand internationally and made its first acquisition in Norway (Wisbech-Refsum). In 1983 the company established its first foothold in the U.S. (R&M Materials Handling) in Ohio, Springfield. In 1986 Konecranes acquires a company in France (Verlinde) headquartered in Venouillet. It became an independent company in 1994 when KONE underwent extensive restructuring. Konecranes Plc. was listed on the Helsinki Stock Exchange two years later and has since grown to become a constituent member of the benchmark OMX Helsinki 25 index. Konecranes is arranged into two business divisions - Equipment and Service (covering crane maintenance, safety and machine tool service). In 2011, Konecranes acquired 100% of the shares in WMI Cranes Ltd. (WMI). The acquisitions marked an important step in strengthening Konecranes' position in the Indian market. Today, the Complainant, Konecranes Plc. is a world-leading group of Lifting Businesses, serving a broad range of customers, including manufacturing and process industries, shipyards, ports and terminals.
- b) The Complainant is committed to providing its clients with quality lifting equipment services. To effect the same, the Complainant, for over 80 years, been dedicated improving efficiency and performance of businesses in all types of industries.
- c) Konecranes Plc. serves a broad range of customers, including manufacturing and process industries, shipyards, ports and terminals. The Complainant provides productivity enhancing lifting solutions as well as services for lifting equipment and machine tools of all makes. In 2011, Konecranes Group sales totaled EUR 1,896 million. The Group has 11,700 employees at 609 locations in 47 countries.
- d) The inherently distinctive term KONECRANES was adopted as a trade name as well as trade mark on 10 May 1995 and ever since its adoption the mark has been used continuously, exclusively and extensively by the complainant and owing to the same, the mark KONECRANES has acquired a formidable goodwill in the minds of the purchasing public and the members of the trade and is today associated with the



Complainant and Complainant alone.

- e) Konecranes has been known for its innovative and continuous focus on improved technologies to deliver responsible designs of innovative significance. Konecranes Smarter Cabin, launched in 2011, has received the Fennia Prize in 2012 for providing crane operators with an ergonomic and comfortable work place with improved visibility of the work area. They were also the recipient of the prestigious TKM Award in 2011 which was given in sincere appreciation for Konecranes' best efforts and commitment in the area of facility and equipment for the successful completion of ETIOS project. Their NearGuard system won Design for safety technology award at IMHX, Birmingham in 2010.
- f) Konecranes Plc. values its customers' right to expect consistent and impeccable service of high standards whenever and wherever they are. To meet its standards of service commitments, Konecranes has actively maintained its global website but also provides its customers with all products and services across a multitude of industries. The parent website also allows its global customer access to their local, country-specific websites; one of these being www.konecranes.in for the Indian Customers.
- g) Additionally the Complainant has spent enormous amounts of resources in publicizing, marketing, advertising and promoting its mark KONECRANES and by virtue of the same and the immense goodwill that has accrued to the mark KONECRANES, the mark KONECRANES is a well known mark as defined under Article 6*bis* of the Paris Convention, to which India is a signatory as well as Section 2(z) g(g) of the Trade marks Act, 1999.
- h) Konecranes Plc. made a foray into the Indian market with the establishment of Konecranes India Pvt. Ltd. in February 2007. Konecranes India Pvt Ltd. is a 100 % subsidiary of the Complainant and has its head office and factory in Pune. Konecranes India has 360 employees, including more than 100 trained service engineers all over India. Konecranes India's regional offices are spread over Delhi (North), Mumbai and Vadodara (West), Kolkatta (East) and Chennai, Hyderabad and Bangalore (South). To effectively manage the customer requirements from all over the country, Konecranes India provides specific information on its konecranes.in portal. This portal also allows its customers and any other visitor to share the information on popular social networking sites, micro-blogging sites and vide emails.
- i) Because of the extreme success and popularity of its websites, products and services, Konecranes Plc. is the subject of much third party press and media attention throughout the world. During the first quarter of 2012, Konecranes received an approximately EUR 9 million order for 21 heavy duty industrial cranes from steel manufacturer JSW Steel Ltd in India. This order, being one of the biggest single orders in terms of number of cranes and value to be supplied by Konecranes to the Indian crane industry, amassed great attention of the Indian press. Accordingly, the Konecranes mark is well-known and famous in India and throughout the world.
- j) The Complainant continues to diversify and expand its presence worldwide. In the year 2011, Konecranes made seven acquisitions in



Chile, India, Austria, Germany, Spain, Switzerland, and Saudi Arabia. In Saudi Arabia, Konecranes bought out Saudi Cranes & Steel Works Factory Company. In Spain, Konecranes acquired the service business assets of Spanish crane and service company Eleve SL. Konecranes has expanded its machine tool service business to Denmark and the UK by acquiring the assets of AH Maskinservice A/S and Axis Machine Tool Engineers Ltd. The demand for Konecranes' products is evident from the multitude of contracts being won by the Complainant. In March, 2012, Konecrane received an order for three new RTGs to be delivered to Slovenian port operator, Luka Koper. In May, 2012, Konecranes received an order for two rubber-tyred gantry cranes and two Boxrunner straddle carriers from Estonia's Muuga Container Terminal.

- k) The Complainant has registered and used its KONECRANES trademarks in over 111 countries around the world, including India. The KONECRANES trademarks are registered in connection with a wide range of wares, services and international classes thereof.

Mark	Registration Number	Registration Date	Goods/Services	Class
KONECRANES	662590	18/04/1995	CRANES, HOISTS AND WINCHES; ELECTRICAL MOTORS, CRANE COMPONENTS, GEARS, MOTOR DRIVES.	07
KONECRANES	1457791	07/06/2006	CRANES, HOISTS AND WINCHES; ELECTRICAL MOTORS, CRANE COMPONENTS, GEARS, MOTOR DRIVERS.	07
KONECRANES	1488661	19/09/2006	CRANES, HOISTS AND WINCHES; ELECTRICAL MOTORS, CRANE COMPONENTS, GEARS, MOTORS DRIVERS.	07
KONECRANES	1457791	07/06/2006	ELECTRIC, OPTICAL WEIGHING, MEASURING, SIGNALLING AND CHECKING APPARATUS	09
KONECRANES	1488661	19/09/2006	ELECTRIC, OPTICAL, WEIGHING, MEASURING, SNGALLNG AND CHECKING APPARATUS AND INSTRUMENTS	09
KONECRANES	1457791	07/06/2006	INDUSTRIAL	37

			MAINTENANCE SERVICES, INSTALLATION, MAINTENANCE, REPAIR AND MODERNIZATION OF MECHANICAL AND ELECTRICAL EQUIPMENT.	
KONECRANES	1488661	19/09/2006	INDUSTRIAL MAINTENANCE SERVICE, INSTALLATION, MAINTAINANCE, REPAIR AND MODERNAISATION OF MECHANICAL AND ELECTRICAL EQUIPMENT	37

- I) On August 11th, 2012, long after Complainant began using and/or registered its KONECRANES Mark in a number of jurisdictions including India and the United States; Registrant registered the domain name KONECRANES.CO.IN (the "Disputed Domain Name"). The webpage shows that the domain name <KONECRANES.CO.IN> has been activated by the Registrant for a website which provides sponsored listings and links to third parties' websites. The Registrant hails from Canada. The address, email id and the telephone number of the Registrant was traced from the allwhois records.

5) Decision/s Upholding the Complainant's Rights

The Complainant has relied on the ratio decidendi in the following decisions:

INDRP Case No. 221 for the domain BERKSHIREJN, decided July 13, 2011:

"The addition of '.IN' to Complainants' marks does not change the likelihood of confusion, as '.1N' is an irrelevant distinction."

Yahoo! Inc. v. Finance Ya Hoo a/k/a Victor Lashenko et al., D2002-0694 (WIPO Sept. 20, 2002)

"The arbitrary nature of the YAHOO! mark contributed to a likelihood of confusion with domain names incorporating the "yahoo" name."

INDRP Case No. 199 for the domain KETELONE.COM, decided April 18, 2011:

"...the Registrant's registration was a clear case of cyber squatting because the Registrant's "...intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet and thereby to confuse the public..."."

6) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

7) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'KONECRANES' leads to the conclusion that the Complainant has superior and prior rights in the mark KONECRANES. Thus it can be said a) the web users associate the word KONECRANES with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.konecranes.co.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'KONECRANES'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'KONECRANES' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'KONECRANES' trademark. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'KONECRANES.co.in'




(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Moreover, the Complainant has alleged that the Respondent has demanded amount far more than its out-of-pocket costs for registration. This has not been rebutted by The Respondent. Thus it can be concluded that the Respondent Registered the Domain name for the purpose of selling or transferring the domain name and is an evidence of bad faith registration.

8) Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.konecranes.co.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.konecranes.co.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

02 November, 2012