

उत्तर प्रदेश UTTAR PRADESH

FD 172825

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

ELLATION INC. V KENNETH PALO <crunchyroll.co.in>

SOLE ARBITRATOR: ANKUR RAHEJA, FCS LLB MCA

In the matter of:

ELLATION INC.

...Complainant

835 Market St #700, San Francisco  
CA 94103, USA

Versus

KENNETH PALO

...Respondent

4203 Maple Court, Risco  
Missouri - 63874, USA

*Arheja*

## ARBITRATION AWARD

**Disputed Domain Name: *crunchyroll.co.in***

### 1. The Parties:

Complainant is Ellation Inc. ("Complainant"), USA represented by M/s Khurana and Khurana, Noida, India. Respondent is Kenneth Palo ("Respondent"), USA.

### 2. The Domain Name and Registrar:

The domain name at issue is **<*crunchyroll.co.in*>**, created on 13th January 2014, registered with Endurance Domains Technology LLP.

### 3. Procedural History:

The Complaint was originally filed with .IN Registry. Arbitrator received an email, inquiring if Nixi can avail of its services as an arbitrator for the dispute pertaining to the domain name **<*crunchyroll.co.in*>**. Arbitrator confirmed availability and sent the signed Statement of Acceptance and Declaration of Impartiality and independence as required by rules.

Arbitral Proceedings commenced on 12th November 2019 by issue of a notice by the Arbitrator by email to the Respondent, directing Respondent to file his response to the Complaint by 23rd November 2019, which was successfully delivered on the WHOIS Email ID.





In the meantime, Nixi served soft copy of the Complaint with Annexure, while the hard copy of the same was dispatched through courier to the WHOIS address of the Respondent, but remain undelivered due to incorrect WHOIS. That on failure of the Respondent to file any response to the first notice, another opportunity was provided to the Respondent on 25 November 2019 but he failed to comply with the same as well.

The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was delivered successfully. NIXI had already delivered Soft Copy of the Complaint upon Respondent on 07th November 2019. Though, the hard Copy of the Complaint remained undelivered due to incomplete address.

In the facts and circumstances of the case, an order for ex-parte proceedings were issued on 06 December 2019, as no response was received from the Respondent. In any case, the WHOIS info was the only contact information available for the Domain name owner as per the WHOIS records and which is assumed to be provided correctly and on which various notices were otherwise attempted to be served. Therefore, service of notice has deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.

No personal hearing was requested / granted / held. The language of these proceedings is in English.

#### **4. Factual Background:**

Complainant is a subsidiary of Warner Media Entertainment's Otter Media, having its head office in San Francisco, CA, USA. Complainant on its website

displays the largest library of Japanese anime and manga content for video-streaming in various genres and across all online platforms.

The Complainant is engaged in providing subscription based video services from its website based platform *crunchyroll.com*. The Complainant's website boasts of 50 million users, including 2 million premium subscribers.

Complainant merged with CrunchyRolls Inc. on 10 May, 2016 under the US Laws. While the Domain Name *CrunchyRoll.com* was registered on 14 May, 2006 and is being used along with the trademark "CRUNCHYROLL" exclusively, continuously, uninterruptedly, ever since mid 2006 only.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant submits that in and around May 2006, it coined, conceived and adopted the trademark "CRUNCHYROLL" and has been openly, continuously and extensively using the mark "CRUNCHYROLL" trademark worldwide, since then.

Complainant's services under the mark "CRUNCHYROLL" are well known and available worldwide, including India, through the Complainant's website <https://www.crunchyroll.com>. It is pertinent to note that the internet is not bound by any jurisdictions like the physical world and anyone can access website from anywhere in the world. The Complainant's website is not merely accessible in India but is highly popular among its users and has unquestionably acquired distinctiveness, reputation and enormous goodwill in India.



The Complainant reiterates that it is the owner of the trademark "CRUNCHYROLL" in different jurisdictions namely United States of America, United Kingdom, Japan, Singapore, Malaysia, Hong Kong, Canada, Australia, etc. Further, Complainant is in the process of applying trade mark registrations in other jurisdictions including India and has mostly used the trademark "CRUNCHYROLL" in respect to goods and services covered under classes 09, 41 and 42.

The Complainant submits that the disputed domain name <crunchyroll.co.in> contains the Complainant's complete trademark "CRUNCHYROLL" registered in various countries. The disputed domain name is visually and phonetically identical and confusingly similar to the trademark of the Complainant.

Further, the Complainant submits that it has registered the domain name on 14/05/2006 whereas the disputed domain name <crunchyroll.co.in> was registered by the Respondent on 13/01/2014. Hence, such subsequent adoption and registration of the disputed domain name shows that the Respondent has no right or legitimate interest in the domain name <crunchyroll.co.in>.

Further, the homepage of the Disputed Domain Name clearly states that the Registrant/Respondent has offered the Disputed Domain Name for sale. The homepage of the Disputed Domain Name states, "The domain <crunchyroll.co.in> may be for sale. Click here to inquire about this domain- " When the inquiry link is clicked it redirects the user to the webpage <http://crunchyroll.co.in/listing>, which contains a form to send an inquiry to the owner of crunchyroll.co.in.

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The Complainant states that the Respondent was duty-bound to conduct the bare minimum due diligence before applying for the registration of the impugned domain name in order to ensure that it does not infringe the rights of any third party. A simple Google search of the term "CRUNCHYROLL" would have established whether or not they were violating the rights of any third party. The impugned domain name was registered a considerable period after the Complainant's trade mark.

A simple perusal of the website at <crunchyroll.co.in> reveals that it is not adopted for any bonafide use by the Respondent, in fact listed for sale and there is strong and reasonable likelihood that the domain name is adopted in absolute bad faith with mere intention to resell or rent the same to the Complainant or any third party which would cause irreparable damage to the Complainant.

The Complainant submits that by using the disputed domain name, the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP.

Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark "CRUNCHYROLL" from reflecting the said trademark in its domain name in India and across the world.

**B. Respondent**





Respondent did not file any Response to Complainant's contentions.

## **6. Discussion and Findings:**

The Arbitrator has reviewed all the documents placed before it by the parties. The Complainant in its complaint has invoked Para 4 of the INDRP, wherein the Complainant is supposed to satisfy all three conditions provided under Para 4 of the .IN Domain Name Dispute Resolution Policy (INDRP).

### **A. Identical or Confusingly Similar**

Complainant asserts rights in the CRUNCHYROLL mark through its registration of the mark in different jurisdictions including United States of America in respect to goods and services covered under classes 09, 41 and 42. It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] that trademark registration constitutes prima facie evidence of the validity of trademark rights.

Further, the disputed Domain Name <crunchyroll.co.in> incorporates the said Trademark in it's entirety. In eAuto, LLC v. Triple S Auto Parts, D2000-0047, the Panel decided that when a domain name wholly incorporates Complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy.

Therefore, the Arbitrator concludes that the disputed domain name is confusingly similar to Complainant's mark.

### **B. Rights or Legitimate Interests**

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Where a Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the Complainant is deemed to have satisfied the second element.

The Respondent, having WHOIS address that of USA, hasn't come forward with any explanation or justification for the registration of the disputed domain name <crunchyroll.co.in> similar to Complainant's mark. In the matter of Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci [WIPO Case No. D2000-1244], it has been held that merely registering the domain name is not sufficient to establish a right or legitimate interests.

Further, no legitimate use of the Domain Name is apparent while the disputed domain name has been parked with PPC links with an option to buy and the sponsored links thereto make reference to some of the keywords used upon the Complainant's main website CrunchyRoll.com. In the matter of LEGO Juris A/S v. J.h.Ryu [WIPO Case No. D2010-1156] it was held that the disputed domain name directing towards a parking page displaying sponsored links... which does not constitute a bona fide offering of goods but rather mislead the visitors as to the source/origin of the information. Therefore, it is an indication that Respondent lacks rights or legitimate interests.

Complainant has not authorized, licensed or otherwise permitted the Respondent to use its name or the trademark. Moreover, none of the circumstances as provided under Para 7 of the .IN Domain Name Dispute Resolution Policy (INDRP) are present in the circumstances of the case, which may prove any legitimate rights or interests on the part of the Respondent.





Therefore, the Arbitrator concludes that the Respondent lacks rights or legitimate interests in the domain name. Hence, Complainant has prevailed on this part of its Complaint as well.

### **C. Registered and Used in Bad Faith**

That the disputed domain name <crunchyroll.co.in> was registered in 2014 by the Respondent who has WHOIS address that of the USA, where the Complainant has been commercially operating since 2006 and holds valid trademark rights in USA. A simple google search at the time of registration of the domain name could have proved the existence and the popularity of the Complainant's mark. In the matter of *Barney's Inc. v B N Y Bulletin Board* [WIPO Case No D2000-0059] it was held that only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar.

The Respondent has already been party to INDRP proceedings earlier this year, in the matter of *Apptio Inc. V. Kenneth Palo* [INDRP/1110; Domain: *apptio.co.in*], wherein the said other matter had almost similar facts and circumstances (*having almost the same domain registration date of January 2014*) as in the present case and the disputed domain name was ordered to be transferred away.

The above facts prove that 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 and he has in fact engaged in a pattern of such conduct. Moreover, by parking of the disputed domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other. It was held in the matter of *L'Oréal, Biotherm,*

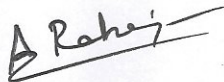
AL

Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623], exploitation of the reputation of trademarks to obtain click-through commissions from the diversion of Internet users is a common example of use in bad faith.

Therefore, the Arbitrator concludes that the Complainant has been able to prove Bad Faith use on the part of the Respondent. Hence, Complainant has been able to prove the third requirement under the INDRP as well.

## 7. Decision:

For the foregoing reasons, in accordance with INDRP Policy and rules thereunder, the Arbitrator orders that the disputed domain name <crunchyroll.co.in> be transferred to the Complainant.



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Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 15th December 2019

Place: Agra, India