



# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

सत्यमेव जयते

Certificate No.  
Certificate Issued Date  
Account Reference  
Unique Doc. Reference  
Purchased by  
Description of Document  
Property Description  
Consideration Price (Rs.)  
First Party  
Second Party  
Stamp Duty Paid By  
Stamp Duty Amount(Rs.)

: IN-DL37394466376838S  
: 16-Mar-2020 05:52 PM  
: IMPACC (IV)/ dl916503/ DELHI/ DL-DLH  
: SUBIN-DL91650383594978918149S  
: LUCY RANA  
: Article Others  
: Not Applicable  
: 0  
: (Zero)  
: LUCY RANA  
: Not Applicable  
: LUCY RANA  
: 100  
: (One Hundred only)



Please write or type below this line.

**BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY**  
(Appointed by .IN Registry – National Internet Exchange of India)  
**ARBITRAL AWARD**

Disputed Domain Name: <www.crabtreestore.in>

#### IN THE MATTER OF

1. **Havells India Limited**  
904, 9<sup>th</sup> Floor, Surya Kiran Building  
K.G. Marg, Connaught Place,  
New Delhi – 110001, India.

And

2. **ORG Enterprises Limited**  
904, 9<sup>th</sup> Floor, Surya Kiran Building  
K.G. Marg, Connaught Place,  
New Delhi – 110001, India.

Kalinga Kalinga  
NA NA, NA  
Odisha, 2222  
India

---versus---

.....Complainant/s

.....Respondent

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

*Handwritten signature*



### **1. The Parties**

The Complainants in this arbitration proceeding are **Havells India Limited** and **QRG Enterprises Limited** (hereinafter "**Havells**" and "**QRG Enterprises**" respectively), *both at the address* 904, 9th Floor, Surya Kiran Building, K.G. Marg, Connaught Place, New Delhi – 110001, India, companies duly incorporated under the laws of India.

The Respondent in this arbitration proceeding is "**Kalinga Kalinga**".

### **2. The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**WWW.CRABTREESTORE.IN**> with the .IN Registry. The Registrant in the present matter is "**Kalinga Kalinga**", and the Registrar is **NameSilo LLC**.

### **3. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

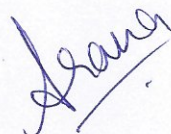
NIXI vide its email dated January 24, 2020, had sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on January 24, 2020. Thereafter the Arbitrator received the hard copy and soft copy of the Domain Complaint and the annexures thereto and confirmed receipt of the same vide email dated January 31, 2020, and also sought NIXI's confirmation regarding service of the Domain Complaint as well as the annexures thereto upon the Respondent.

Thereafter NIXI vide email dated February 06, 2020, confirmed that the email along with complaint and complete set of documents/annexures was successfully sent to and received by the Respondent via their email provided in the WHOIS details. Thereafter NIXI vide a subsequent email on the said date confirmed service of the hard copy upon the Respondent (via DTDC courier).

Thereafter, the Arbitrator, vide email dated February 07, 2020, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email as well as hard copy. The Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of fourteen (14) days from the date of receipt of the email dated February 07, 2020, within which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from February 07, 2020.

On February 21, 2020, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondents to respond in the matter having elapsed on February 21, 2020, and in the interests of justice the Respondent was being granted an additional but final and non-extendable period of seven (7) days within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of seven (7) days, the Arbitrator, vide email dated February 28, 2020, reserved the award to be passed on the basis of facts and documents available on the record.





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

The Complainants have submitted that Havells (Complainant #1) is a billion-dollar company and is one of India's largest & fastest growing electrical and power distribution equipment manufacturer with products ranging from Industrial and Domestic Circuit protection Switchgear, Cables & Wires, Motors, Fans, Power Capacitors, CFL Lamps, Luminaires for Domestic, Commercial & Industrial applications, Modular Switches, Water Heaters and Domestic Appliances covering the entire gamut of household, commercial and industrial electrical needs. Havells is also the Fast Moving Electrical Goods (FMEG) company and is a major power distribution equipment manufacturer with a strong global footprint, with extensive production and distribution network across India and the World. The Complainant #1 has been assigned AAA rating, during the year 2018-19 by CARE, to the long term facilities; has reconfirmed CARE A1 rating assigned to short-term facilities; and has also reaffirmed CARE CGR 2+ rating to the corporate governance practices of Havells. In addition to this, Complainant #1 has also acquired various international certifications such as BASEC, KEMA, TUV Rheinland and CB, for its various products to expand research in the international arena. During the year, CB certification for Fans, SABS Approval – AB Cable – South Africa and CE for Consumer Lighting were also acquired. Havells' products have also been certified by both national and international quality certification bodies including Bureau of Indian Standards, KEMA KEUR | DEKRA [Netherlands] Metrology, CB, CE, EDD [Bahrain], ESMA [Emirates Authority for Standardization and Metrology], GSO [GCC Standardization Organization], SONCAP [Nigeria], Bureau Veritas, TÜV Rheinland, and UL. Some other market specific certification process, are also obtained by the Complainant #1 such as TIS [Thailand Industrial Standards] for RCBO; King Saud University Approval- Panel Wire- KSA [WIP Stage] and G-Mark: Certification: Middle East [EWA range].

Complainant #1 has also participated in major industry events like ELECRAMA and ACETECH, showcasing its latest products across various categories and also listed as one of the Super 50 Companies by Forbes India in the years 2015 and 2016 and listed 125th among 1200 of India's most trusted brands according to the Brand Trust Report 2014, a study conducted by Trust Research Advisory. Complainant #1 has also been recipient of various awards such as:

- a. Digital Marketing of the Year 2018- Consumer Durable Category
- b. Best Digital Display Campaigns 2018- Gold
- c. Havells fans won Effies bronze award for 5th Wall- Ceiling Art campaign in Durable Category.
- d. Havells – “School of Grooming campaign” was awarded “The Best Content marketing launch/ relaunch award” by the Audacity e4m Indian Content Marketing Awards
- e. Havells got “Best Incentive program in the Middle East” award at MALT Excellence Award 2019 at Dubai for exemplary role played in the field of MICE, business & luxury travel.
- f. Havells won BrandZ India rankings of the Most Valuable Indian Brands 2018. Havells has featured as a new comer at Rank #41, with a Brand Value of \$1510 Million
- g. Havells won the Gold award for Buzziest brand in the building segment by Afaqs
- h. Bhamashah Award
- i. Shiksha Vibushan Award
- j. Indwood Award for excellence in CSR in Child health and education

The Complainant #1 has also been consistent in brand promotion with sponsorship of Cricket events like ICC Cricket World Cup 2019, T20 World Cup, India-Australia Series and first four seasons of the Indian Premier League [IPL]. In order to increase its brand value and goodwill, the Complainant #1 has sponsored major Indian television programmes including but not limited to KAUN BANEGA CROREPATI, Big Boss, HAVELLS School of Grooming airing on MTV, as well as movies such as Kaala starring Rajinikanth and October starring Varun Dhawan. The Complainant #1 has also had brand ambassadors such as Deepika Padukone, Ranveer Singh, Lt. Rajesh Khanna, Ranjeet, Satish Kaushik, Amitabh Bachchan, Prem Chopra, Shakti Kapoor and Alia Bhatt to name a few.





The Complainants have further submitted that QRG Enterprises (Complainant #2) was earlier known as Havells Industries Limited and had acquired all statutory and common law rights in the trademark **Crabtree** on December 19, 2000 from Electrium UK Limited and Crabtree Electrical Industries Limited along with goodwill in India, Nepal, Pakistan, Bangladesh, Bhutan and Myanmar. The Complainants have further submitted that subsequently, Complainant #2, vide assignment deed dated May 09, 2016 w.e.f. April 01, 2016, assigned the rights to the mark **Crabtree** in certain categories of goods to Complainant #1. In support of the submissions the Complainant has annexed the Trademark Assignment Deed dated December 19, 2000 detailing the list of trademarks assigned including **Crabtree** clearly mentioning the assigned territories, vid Annexure C. The Complainant has also provided with Assignment deed dated May 09, 2016, as Annexure D, wherein the Complainant #1 has been assigned the exclusive rights in mark **Crabtree**.

The Complainants have submitted that the trademark **Crabtree** is used in connection with modular switches incorporating state-of-the-art technology, which have been adorning walls in homes and offices for years. Additionally, the Complainants have introduced a new category of switchgear under the brand **Crabtree**, i.e. Xpro, in respect of a smart and efficient range of products that are designed to stand the test of time. The Complainants under the brand **Crabtree** offer a wide range of products including but not limited to switchgear range – distribution boards, circuit breakers, time switches, switches, sockets, motor starters, plugs, home automation and video phones.

The Complainants have also submitted that **Crabtree** has become a well-known brand and boasts of a vast outreach and technological expertise in the manufacturing of modular switches and switchgear. The Complainants have further submitted that a group company by the name of Crabtree India Limited (formerly known as Crabtree Aqua Tech Limited) was amalgamated with the Complainants by an order dated April 19, 2006 by the Hon'ble Delhi High Court, and in support thereof, the Complainants have annexed a copy of the said Order as **Annexure E**.

The Complainants have submitted that it has a presence across all segments of FMEG with products in Switchgear, Cable, Lighting and Fixtures and Electric Consumer Durables. The Complainants have further supported their presence by contending that they have posted a revenue contribution for Financial Year 2019 under various segments as under:

Segment	Revenue (FY 2019) (INR) (in crores)
Switchgear	1680
Cables	3235
Lighting and Fixtures	1293
ECD	1994
High Valued Consumer White Goods	1856

The Complainant has further submitted that they have spent huge amount of money on the promotion and advertisement of its services and products under the trade/service name/mark **Crabtree** since its adoption and use. An approximate of INR Forty Nine Crores has been spent by the Complainant on promoting the **Crabtree's** services and products including advertising and producing literature/brochures from 2012-13 to 2016-17. Copy of the CA Certificate indicating the promotions/advertisement and sales/revenue figures claimed by the Complainant is annexed as **Annexure F**.

The Complainants have submitted that they consider their trade/service name/mark to be an important and extremely valuable asset and in order to protect the same, have secured trade mark registrations for the mark **Crabtree** in India as well as several other jurisdictions including Bhutan, Myanmar, Nepal,

*Drang*



Pakistan and Bangladesh. The Complainants have annexed a list of its trademark registrations in this regard as **Annexure G**.

The Complainants have submitted that their present official website <www.crabtreeindia.com> is a comprehensive, unique and acclaimed introduction to **Crabtree** and the said domain was registered in the year 2004. The Complainants have further submitted that the trademark **Crabtree** has a prominent presence on social media and networking websites, including on Facebook, YouTube, Twitter, etc. The Complainants have also submitted that products under the brand **Crabtree** are available through online portals such as Amazon, Snapdeal, Flipkart, Indiamart etc. Complainants have further submitted that a search for the term **Crabtree** on the search engine Google yields a large number of results, most of which pertains to the Complainants. In this regard, the Complainants have annexed a copy of the WHOIS domain page for their official Crabtree website as well as a copy of the search result page for the term Crabtree on the search engine Google, as annexures **Annexure H** and **Annexure I** respectively.

The Complainant submits that the profile and popularity of its trade/service name/mark **Crabtree** has been continuously increasing since the date of adoption and use of the said mark, and the purchasing public identifies the products under the said trade/service name/mark with the Complainants and therefore the Complainants have acquired enormous goodwill not only in India but in several other countries across the globe.

#### **5. Complainant's Contention**

The Complainants have submitted that they came across the Respondent's domain name registration for <www.crabtreestore.in> and upon conducting a WHOIS database search, found out that the disputed domain name was registered in the name of **Kalinga Kalinga**, with the registrar of the disputed domain name being **NameSilo LLC**.

#### **6. Legal Grounds Submitted by the Complainant**

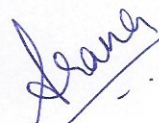
The Complainant has submitted the following legal grounds in support of its complaint:

##### **A. The domain name <www.crabtreestore.in> is confusingly similar to the Complainants mark Crabtree**

The Complainants have contended that a mere glance at the disputed domain name gives rise to enormous confusion as to its origin, as the domain name used by the Respondent is identical to their trademark/service mark. The Complainants have further contended that the Respondent's malafide intention is evident from the fact that the Respondent has copied the registered trademark of the Complainant followed by the generic work 'store'.

The Complainants have relied on the decisions in *Reuters Ltd. v. Global Net 2000 Inc.*, D2000-0441; *Altavista Company v. Grandtotal Finances Ltd.*, D2000-0848; *Playboy Enterprises v. Movie Name Company*, D2001-1201, wherein it was held that mere omission of one letter of a trademark has no effect on the determination of confusing similarity between a trademark and a domain name, and have submitted that the present case is on an even higher footing as the Respondent has picked up the registered trademark of the Complainants and has suffixed the term 'store' after it, which will lead to the impression that the disputed domain name is an online store for the Complainants **Crabtree** products. In view of the above, the Complainants have submitted that the use of the disputed domain name by the Respondent is a *prima facie* case of cyber-squatting and trade/service name/mark infringement.

The Complainants have contended that a domain name which wholly incorporates a Complainant/s registered trademark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks, and in this regard has relied on the decision in *Farouk Systems, Inc. v. Yishi Case No. D2010-0006*.





The Complainants have further submitted the addition of the term "store" after the Complainant's mark **Crabtree** is bound to mislead members of the general public into believing that the disputed domain name is an online store for the Complainants product under the **Crabtree** mark. In this regard, the Complainants have relied on the decisions in *Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd.*, Case No. D2001-0110; *Diageo Brands B.V., Diageo North America, Inc. and United Distillers Manufacturing, Ind. V. iVodka.com a.k.a. Alec Bargman*, D2004-0627; *BHP Billiton Innovation Pty Ltd., BMA Alliance Coal Operations Pty Ltd. v. Cameron Jackson*, D2008-1338; *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, D2000-0113, *Santa Fe Transport International Limited and Anr. v. Achyut Khare*, INDRP/886; *Dell Inc. v. Varun Kumar*, INDRP.922; *Lockheed Martin Corporation v. Aslam Nadia*, INDRP/947; *Indeed Inc. v. Deepak Singh*, INDRP/987 - wherein it was held that addition of a generic term that is descriptive of goods or services offered under the Complainant/s mark increases the confusing similarity of the domain name with the Complainant /s mark).

The Complainants have contended that specific top level domain, such as ".com", ".in", ".co.in", ".net" or ".travel", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar to a mark. In this regard, the Complainants have relied on the decisions in *Magnum Piering, Inc., c. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Wells Fargo and Company v. Jessica Frankfurter*, INDRP/392.

The Complainants have contended that the mark **Crabtree** was adopted in the year 1943 in India and the said mark has been used extensively since adoption and is now exclusively associated with the Complainants in India, Nepal, Pakistan, Bangladesh, Bhutan and Myanmar. The Complainants have further contended that the mark **Crabtree** has been used by the Complainants for its stationary articles, promotion/ advertisements, business commercial information etc. in India as well as abroad. In this regard, the Complainants have submitted brochures showing the instances of use of the mark **Crabtree** therein as **Annexure J**.

The Complainants have contended that use of an identical/deceptively similar mark (by any other concern) to that of the Complainants **Crabtree** mark is bound to lead to confusion and deception and that the same amounts to passing off as well as trademark infringement. The Complainants have also contended that the mark **Crabtree** due to its extensive use, advertisement, publicity and awareness throughout the world has acquired enormous goodwill and status of well-known trademark under Article 6-bis of the Paris Convention as well as section 2(1)(zg) of the Indian Trade Marks Act 1999. In this regard, the Complainants have relied on the decisions in *Yahoo! Inc. v. Jorge O. Kirovsky*, D2000-0428; *Kabushiki Kaisha Toshiba v. Shan Computers*, D2000-0325; *Parfums Christian Dior v. Javier Garcia Quintas and Chistiandior.net*, D2000-0226; *Nike, Inc. v. B.B. de Boer*, D2000-1397.

The Complainant has also relied on the past administrative panel decisions which ruled in favour of the brand owners even where the mark was not registered. The Complainant has relied on decisions in *Satyam Computer Service Limited v. Vasudeva Varma Gokharaju*, D2000-0835; *Express Publications [Madurai] Ltd. v. Murali Ramakrishnan*, D2001-0208 and *Hindustan Petroleum Corporation Limited v. Neel Punatar*, D2004-0351

**B. The Respondent has no rights or legitimate interests in respect of the domain name <www.crabtreestore.in>**

The Complainants have contended that the Respondent has no proprietary or contractual rights in any registered or common law trademark which corresponds (either or toto or in part) to the disputed domain name.



The Complainants have further contended that **Crabtree** is a registered trade mark and that the Respondent's knowledge of the same is apparent from the fact that the Complainants (through their predecessors in title) adopted the Crabtree marks in the year 1943 whereas the disputed domain name was adopted in the year 2019, and hence it is highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. In this regard, the Complainants have relied on the decision in *Telstra Corporation Limited v. Nuclear Marshmallows*, D2000-0003; *Kelemata S.p.A c. Mr. Bassarab Dungaciu*, D2003-0849.

The Complainants have contended that the Respondent has no connection with the Complainants or any company licensed by Complainants and that the Respondent is not commonly known by the disputed domain name or the trademark. It has further been contended that the Respondent was not and is not authorized by Complainants to register, hold or use the disputed domain name.

The Complainants have contended that the Respondent ('Kalinga Kalinga') is not commonly known by the disputed domain name, nor the Respondent actually engages in any business or commerce under the name 'Crabtree'. In this regard, the Complainants have relied on the decisions in *Etro S.p.A v. M/S Keep Guessing*, INDRP/024 (June 27, 2007); and *Tata Sons Limited v. Jacob W.*, Case No. D2016-1264].

Further, the Complainants have asserted that considering the uniqueness of the domain name <www.crabtreestore.in> which contains the Complainant's trademark in its entirety, it is difficult to foresee any justifiable use that the Respondent may have with the disputed domain name and that such registration of the domain name gives rise to the impression of an association with the Complainants which is not based in fact. In this regard, the Complainants have relied on the decisions in *Telstra Corporation Limited v. Nuclear Marshmallows*, D2000-0003; *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, Case No. D2000-0598.

Complainants have also contended that the Respondent has no connection with the Complainants and nor has the Respondent ever been authorized by the Complainants to use their trademarks or register the disputed domain name. Further, the Respondent is not a licensee of the Complainants. In this regard, the Complainants have relied on the decisions in *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO, June 27, 2000); *ITC Limited v. Mr. Mark Segal*, INDRP/079 (February 10, 2009); *Wells Fargo & Co. and Anr. v. Krishna Reddy*, INDRP/581 (May 15, 2014); *Aon PLC and Ors. v. Gangadhar Mahesh*, INDRP/632 (October 31, 2014); *Aon PLC and Ors. v. Guanrui*, INDRP/633 (October 28, 2014).

The Complainants have further asserted that the Respondent has provided misleading and inaccurate WHOIS contact information which clearly indicates that the Respondent does not have legitimate rights in the disputed domain name. Further, it is contended that providing inaccurate and unreliable information is in violation of section 2 of the terms and conditions for Registrants issued by .IN Registry, a copy of which has been annexed as **Annexure K**.

The Complainants have contended that the illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity, and that the Complainants herein are in the business of manufacturing and selling electrical goods mainly switches and switch gear and their official website <www.crabtreeindia.com> serves as an information portal for potential buyers and customers. Complainants have further submitted that a domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark, and that it is also the internet address of a company.

The Complainants have contended that the Respondent cannot have any rights or legitimate interest in the disputed domain name because the disputed domain name incorporates their mark **Crabtree** in its entirety, a mark in which they have statutory and common law right. Complainants have further asserted that the absence of any website on the disputed domain name further indicates that the Respondent does



not have any rights or legitimate interests either in the 'Crabtree' mark or the impugned domain name. In this regard, the Complainants have annexed a print out of the Home Page of the disputed Domain Name as **Annexure L**.

The Complainant has further contended that the Respondent has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name, and that the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed Domain Name.

**C. The Respondent registered the domain name <www.crabtreestore.in> in bad faith**

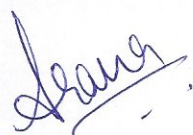
The Complainants have asserted that it is inconceivable that the registration of the disputed domain name was without full knowledge of the existence of the Complainants and its trademark, as the mark **Crabtree** was adopted in the year 1943.

The Complainant has further contended that their mark has also received extensive unsolicited media attention, having been prominently featured in numerous publications with local, national and international audiences.

The Complainants have contended that the Respondent's possession of the disputed domain name is in bad faith and a clear attempt to take advantage of the Complainant/s' goodwill and reputation and is an attempt to misuse the domain name by registering the word 'Crabtree' along with the generic word 'store' with a country specific domain name extension variant. The Complainants have further asserted that on account of the high degree of acquired distinctiveness with respect to the name/mark 'Crabtree', the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off.

The Complainants have contended that the Respondent has registered the impugned domain name in bad faith for the following reasons:

- i. The mark 'Crabtree', having been extensively used in relation to the business of the Complainants, has acquired distinctiveness and is understood and associated by consumers in India as the mark of the Complainants denoting their goods, services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith. Complainants have asserted that the Respondent clearly knew of the Complainants' prior rights when registering the domain name and the same by itself constitutes "bad faith".
- ii. Customers and potential buyers would be induced to believe that the Respondent's domain name has some connection with the Complainant/s in terms of a direct nexus or affiliation with the Complainant/s and that the Respondent is carrying on activities that have been endorsed by the Complainant/s on its behalf and the services or products that are sought to be offered by the Respondent are at the same level of quality and reliability as that offered by the Complainant/s and its group of companies.
- iii. The Respondent has provided inaccurate WHOIS contact details, which is a violation of Section 2 of the 'Terms & Conditions for Registrants'.
- iv. Respondent had registered the disputed domain name in February 2019, and it is inconceivable that the Respondent was not aware about the popularity of the mark 'Crabtree' at the time of registration of the impugned domain name, especially so because the mark is regularly featured in advertisements and news articles across all mediums - including the internet.
- v. Considering the presumed knowledge of the Complainants rights, it is reasonable to infer that the Respondent registered the domain name without any intention of using it for genuine business or commercial activity and the Respondent must have had the intention to sell it for





financial gain or misuse the disputed domain name by redirecting visitors to Pay Per Click ads or provide 'click through' links to other websites for revenue in the near future.

- vi. The passive holding of the domain name by the Respondent amounts to bad faith under the present circumstances. In this regard, the Complainants have relied on the decision in *Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003*.
- vii. It would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the Complainant/s' rights. In this regard, the Complainants have relied on the decision in *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011)*.
- viii. Since the trademark of the Complainants is so distinctive and famous, the Respondent must have had actual knowledge of the trademark prior to registering the disputed domain name. By registering the disputed domain name with actual knowledge of the Complainants trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property Rights of another entity. In this regard, the Complainants have relied on the decisions in *Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011)*; *Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)*.

The Complainants have asserted that the following circumstances are material to the issue in the present case:

1. The Complainants' trademark has a strong reputation and is widely known across jurisdictions.
2. taking into account the nature of the disputed domain name, which would inevitably associate the disputed domain name closely with the Complainant/s' group of domains and companies in the minds of consumers, no plausible actual or contemplated active use of the disputed domain name by the Respondent would not be illegitimate, such as by being passing off, an infringement of consumer protection legislation, or an infringement of the Complainant/s' rights under trademark law;
3. the Respondent is engaging in other similar cyber-squatting activities.
4. The Respondent registered the domain name of late in February 2019.

The Complainants have relied on the decision in *Xpedia Travel.com, D2000-0137*; *Goodfoodguide.net, D2000-0019*, that any use of the impugned domain name by the Respondent would necessarily be in bad faith.

Further, reliance is placed on *Guerlain S.A. v. Peikang, D2000-0055*; *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., D2000-0163*, wherein it was held that where domain name is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith.

The Complainant has also relied on the decisions in the below cases with respect to 'famous names' vis-a-vis bad faith registration:

1. Complainant's name was famous at the time of registration: *Cho Yong Pil v. Sinwoo Yoon, D2000-0310*
2. Bad faith registration and use [generally]: "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": *America Online Inc. v. Chinese ICQ Network*, WIPO/D2000-0808; *thecaravanclub.com*, NAF/FA95314

3. The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: *America Online Inc. v. Chinese ICQ Network*, WIPO/D2000-0808

The Complainants have further asserted that the Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives:

1. The domain name could be used by the Respondent to extract huge sums of money from the Complainant/s who have legitimate interest in the said domain name. This is evident as the Respondent is not running any website on the disputed domain name.
2. The Respondent desires to cash-in on the reputation of the Complainant/s' mark by using the domain name for advertisements or setting up a business.
3. The Respondent can transfer or sell the domain name to some competing interest of the Complainant/s who may damage the goodwill and reputation of the Complainant/s by inserting prejudicial material in relation to the Complainant/s' companies. This will lead to complete tarnishment of the Complainant/s' image if valuable property like this domain name falls into the hands of competing interests.

#### **Prayer/Remedies Requested**

The Complainant has claimed for the disputed domain name, i.e. <www.crabtreestore.in>, the following reliefs:

- A. That the disputed domain name be transferred to the Complainant/s; and
- B. Costs to be awarded to the Complainant/s, if deemed fit by the Arbitration Panel, under paragraph 10 of the .IN Dispute Resolution Policy.

#### **7. Respondent's Contentions**

As already mentioned in the Factual Background of the matter, despite being duly served with a copy of the Domain Complaint as filed and thereafter adequate time granted to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

#### **8. Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.: -

- I. The Registrant's domain name is identical and confusingly similar to a name, trademark or service mark in which the Complainant has rights.
- II. The Registrant has no rights and legitimate interest in respect of the domain name;
- III. The Registrant's domain name has been registered or is being used in bad faith.

#### **I. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights** **(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has established its rights in the mark **Crabtree** in India. Based on the evidence placed on record, the Complainants have shown reputation and goodwill in the trademark **Crabtree** dating





back to the year 1943 through its adoption and extensive use made therein. The Complainant has also submitted details of several trademark registrations for the mark **Crabtree** in India as well as other countries, such as Bhutan, Myanmar, Nepal, Pakistan and Bangladesh. These rights substantially pre-date the registration of the domain name <www.crabtreestore.in> by the Respondent, which is February 2019.

In this regard, the Complainants have made out a *prima facie* case of being the owner of the mark **Crabtree** in India.

The Complainants have also submitted documents showing extensive use of the mark **Crabtree** in India, including promotions/ advertisements and sale/revenue figures with respect to the brand **Crabtree**.

The complainants have also established online use of the mark **Crabtree** on its official website <www.crabtreeindia.com> since year 2004 and have also established prominent presence of the said mark on social media and networking websites. Considering that the disputed domain name <www.crabtreestore.in> incorporates the trademark **Crabtree** in *toto* coupled with the extensive use of the mark **Crabtree**, it can be stated that the Respondent had knowledge/awareness of the Complainants' mark **Crabtree** prior to registration of the disputed domain name. The disputed domain comprises of the generic term "store" in addition to the mark **Crabtree**, which indicates that the domain name relates to a store providing products under the name/mark **Crabtree** and therefore, that addition of the aforesaid term is not sufficient to distinguish the disputed domain name.

In the present dispute, the use of the term "store" does not distinguish the disputed domain name from the Complainants trademark and the mere addition of a generic/descriptive term cannot be said to diminish the similarity. Such establishment of confusing similarity has been observed by the Delhi High Court in the case of *Yahoo Inc. v. Akash Arora*, 1999 PTC (19) 201 (Del), as well as by *NIXI in Lockheed Martin Corporation v. Aslam Nadia* (INDRP Case No. 947) as well as several UDRP decisions as cited by the Complainant.

The Complainants have also submitted that they have not licensed or otherwise authorized the Respondent to use the trademark **Crabtree** and neither the Respondent has any association with the Complainants or their business.

It may be stated that the disputed domain name <www.crabtreestore.in> is confusingly identical/similar to the Complainant's trademark **Crabtree** and completely incorporates the said trademark of the Complainants. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the impugned name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia* INDRP/093, *Indian Hotel Companies Limited v. Mr. Sanjay Jha*, INDRP/148 <Gingerhotels.co.in>, *Carrier Corporation, USA v. Prakash K.R.* INDRP/238 <Carrier.net.in>, *Mis Merck KGaA v. Zeng Wei* INDRP/323 <Merckchemicals.in>, *Colgate-Palmolive Company & Anr. v. Zhaxia* INDRP/887 <Colgate.in> and *The Singer Company Limited v. Novation In Limited* INDRP/905.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy, that the Complainants have statutory and common law rights over the mark **Crabtree** and that the Respondent's domain <www.crabtreestore.in> is confusingly identical/similar to the Complainant's trade mark.

**II. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has contended that neither the Respondent is a part of/or related to the Complainants, nor has the Complainants licensed or otherwise authorised the Respondent to use the trade mark





**Crabtree.** In the present dispute, the Complainants have established that they have rights over the mark **Crabtree** and that the domain name <www.crabtreestore.in> is confusingly identical/similar to the Complainant's trade mark.

The element under Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy necessitates that the Complainants have to establish a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in *Huolala Global Investment Limited v Li Chenggong* (INDRP Case No. 1027) that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

Under paragraph 7 of the INDRP policy, it is stated that Respondent can demonstrate rights or legitimate interests in a disputed domain by showing - (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

It has further been held by numerous UDRP panels, including the ones cited by the Complainant, that the Respondent may be presumed to have constructive notice of the Complainant's trade mark if the Complainant can show that the mark has ubiquitous use, including online use and that such knowledge can be construed as an indicator of bad faith.

The Complainant has established a prima facie case of its rights in the mark **Crabtree**, and in view of the facts and circumstances and evidence on record, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bonafide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(ii) of the .IN Domain Name Dispute Resolution Policy.

**III. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(ili) and Paragraph 6 of the INDRP)**

Paragraph 6 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the Registrant 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 Registrant has engaged in a pattern of such





conduct; or (iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Based on the evidence on record, it appears that by registering and using the domain <www.crabtreestore.in> the Respondent has engaged in conduct as enumerated in paragraph 6 (iii) of the INDRP, that *it has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.* Further, as the Complainants have not licensed or authorised the Respondent to use the mark **Crabtree**, such use of the disputed domain name bearing the Complainants trademark **Crabtree** in toto as a prominent part thereof, can be established as a bad faith domain name registration.

Complainant has further contended that the Respondent has obtained the domain registration recently on February 19, 2019 and the said website is not active. Further, as the Respondent has no established any legitimate right or interest in the trade mark **Crabtree** or the disputed domain name, therefore mere registration of domain name bearing the brand name/ registered trade mark of the Complainants is sufficient to establish registration in bad faith.

Further, the Respondent's use of the disputed domain name has not been defended as having been *bona fide* and the Respondent has not submitted any reply nor rebuttal to the Complainants contentions, or evidence in support of its *bona fide* use of the disputed domain name.

In light of the above and evidence placed on record in support thereto, the Arbitrator finds that the disputed domain name was registered in bad faith. In view of the aforesaid, the Arbitrator concludes that the Complainants have satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

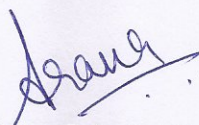
#### **9. Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainants have statutory and proprietary rights over the trade mark **Crabtree**. The Complainants have been able to prove that:

- I. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainants have rights.
- II. The Registrant has no rights and legitimate interest in respect of the domain name;
- III. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainants and directs the .IN Registry to transfer the domain name <www.crabtreestore.in> to the Complainants.

The Award is accordingly passed, and the parties are directed to bear their own costs.

  
Lucy Rana, Sole Arbitrator

Date: March 18, 2020.

Place: New Delhi, India.