

तमिलनाडु TAMILNADU
Sridharan,
Chennai

23223
2/4/17

BL 923628

R. RAGUPATHI
STAMP VENDOR, L/No. C3/4839/83,
No. 37, VILLAGE ROAD, NOW KNOWN AS
No. 79/91, VALLUVARKOTTAM HIGH ROAD,
NUNGAMBAKKAM, CHENNAI-600 034.
MOBILE: 9445114347

BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION Award
Dated 23rd June 2017

Havells India Ltd & another - - - Complainant
- VS -
Sonoma Kulkarni - - - Respondent

Sridharan
Arbitrator

**BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

DATED: 23rd June 2017

1. Havells India Limited, New Delhi
2. QRG Enterprises Limited, New Delhi

Complainants

Versus

Soumya Kukreti, Hyderabad

...

Respondent

1. The Parties

- 1.1 First Complainant, Havells India Ltd, is a company incorporated under the Companies Act 1956, having its office at 904, 9th Floor, Surya Kiran Building, KG Marg, Connaught Place, New Delhi - 110001.
- 1.2 Second Complainant, QRG Enterprises Ltd, is a company incorporated under the Companies Act 1956, having its office at 904, 9th Floor, Surya Kiran Building, KG Marg, Connaught Place, New Delhi - 110001.
- 1.3 The Complainants are represented by its attorney Mr. Rodney D Ryder, of Scriboard, Advocates & Legal Consultants at Level 2, Elegance, Mathura Road, Jasola, New Delhi - 110025
- 1.4 Respondent is Soumya Kukreti at 8-2-684/3/25&26, Road No.12 Banjara Hills, Hyderabad - 500034

The Domain Name and Registrar

- 1.5 The disputed domain name <crabtree.co.in> created on 27.06.2014 is registered with the registrar, Endurance Domains Technology Pvt Ltd (R173-AFIN).

2. Procedural History

- 2.1 On 2nd June 2017, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 3rd June 2017, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially. I sent signed declaration of independency and impartiality to NIXI.
- 2.2 On 5th June 2017, NIXI by email informed the parties about the appointment of me as the arbitrator in the above dispute. In the same email, NIXI has also provided the contact details of the arbitrator.
- 2.3 On 7th June 2017, I received hard copy of the Complaint from NIXI. On the same day, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint in *MS-Word* format to me.
- 2.4 On 8th June 2017, I received soft copy of the Complaint from the Complainant.
- 2.5 I have not received any response from the Respondent till date.
- 2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.



- 2.7 I have returned to NIXI by courier all pleadings / documents that I received from it. I have not received any pleadings / documents by courier/post from the Parties.

3. Factual Background

A Complainant

- 3.1 The Complainant No.1, Havells India Limited, is a Fast Moving Electrical Goods [FMEG] Company with an extremely strong global presence and is a company duly incorporated under the laws of India. Complainant No.2 is the holding company of Complainant No.1.
- 3.2 Complainant No.1, commonly known as Havells, is a billion-dollar-plus organization, and is one of the largest & India's fastest growing electrical and power distribution equipment manufacturer with products ranging from Industrial & 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 has an extensive production and distribution network across India and the world. It manufactures 90% of its products in-house.
- 3.3 The Complainant No.2 acquired all statutory and common law rights in the trademark 'Crabtree' on December 19, 2000 from Electrium Limited, Electrium UK Limited and Crabtree Electrical Industries Limited along with the goodwill in India, Nepal, Pakistan, Bangladesh, Bhutan and Myanmar.
- 3.4 Subsequently, Complainant No.2 vide Assignment Deed dated May 09, 2016 w.e.f April 01, 2016, assigned the rights to the well-known mark 'Crabtree' in certain categories of goods to Complainant No.1.
- 3.5 The Complainant/s predecessors had adopted the trademark 'Crabtree' in 1943 in India in respect of its goods. The said trademark has been used extensively by the Complainant/s [and their predecessors] since adoption and, as of today, is exclusively associated with the Complainant/s and solely belongs to them and no one else.
- 3.6 The Complainant/s have achieved rapid success in the past few years with 94 branches / representative offices and over 5000 professionals in over 50 countries across the globe. Its 15 state-of-the-art manufacturing units in India located at Haridwar, Baddi, Noida, Faridabad, Alwar, Neemrana, and 6 state-of-the-art manufacturing plants located across Europe, Latin America & Africa churn out globally acclaimed products. Havells and 'Crabtree' are the names synonymous with excellence and expertise in the electrical industry.
- 3.7 The Complainant/s have acquired a number of International certifications, like CSA, KEMA, CB, CE, ASTA, CPA, SEMKO, SIRIUM [Malaysia], SPRING [Singapore], TSE [Turkey], SNI [Indonesia] and EDD [Bahrain] for various products. Today, Havells and its brands such as 'Crabtree' have emerged as the preferred choice of electrical products for discerning individuals and industrial consumers both in India and abroad.
- 3.8 Moreover, the Complainant/s have been consistent in brand promotion with sponsorship of Cricket events like T20 World Cup, India-Australia Series and IPL Season first, second, third and fourth.
- 3.9 The Complainant/s have a chain of exclusive brand showrooms called 'Havells Galaxy' that cater to both industrial and consumer products. Havells has more than 100 such Galaxies across the country. It is the first FMEG undertaking to offer 24X7 customer service that allows every product owner to avail services in their own language. The service team works in 9 different languages and caters to customers in over 400 districts.
- 3.10 The Complainant/s in connection with its business activities have adopted several trademarks and are the proprietor of various well-entrenched and renowned trademarks, including the trademark 'Crabtree'. The trademark 'Crabtree' is used by the Complainant/s in connection with

modular switches incorporating state-of-the-art technology, which have been adorning walls in homes and offices for years. The Complainant/s' endeavour is to always create products that adhere to the highest engineering standards. Additionally, the Complainant/s are introducing 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. High professionalism & product quality have made 'Crabtree' a distinguished brand all across the world. It is to be noted that 'Crabtree' has become a well-known brand and boasts of a vast global outreach and technological expertise in the manufacturing of modular switches and switch gear.

- 3.11 The Complainant/s have spent a 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. The amount spent on promoting Crabtree's services and products including advertising and producing literature/brochures from 2012 - 13 through 2016 - 17 in India has been approximately INR Forty Eight Crores. Further, the Complainant/s' Sales figures for the brand 'Crabtree' from the year 2012 - 13 through 2016 - 17 [last five years] has been approximately INR Eight Hundred and Fifty Six Crores. This amount can be broken down on an annual basis as follows:

Financial Year	Sales in Crores	Advertisement and Publicity in crores
2012 - 13	167.64	16.45
2013 - 14	170.87	7.68
2014 - 15	173.27	6.62
2015 - 16	171.24	9.80
2016 - 17	173.69	7.66

- 3.12 The Complainant/s considers their trade/service name/mark an important and an extremely valuable asset and thus 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, Pakistan and Bangladesh. The Registration certificates for the marks in India and a tabular list of all the trade mark registration[s] obtained by the Complainant/s in India and several other jurisdictions is annexed with this Complaint. The Complainant/s is the exclusive owner and proprietor of the registrations[s] listed above and said registrations are duly valid and subsisting as of this date.
- 3.13 The present official website <www.crabtreeindia.com> is a comprehensive, unique and acclaimed introduction to 'Crabtree'. A print out of the Home Page of the website is annexed hereto.
- 3.14 Google Search of the term 'Crabtree' throws up a huge number of results. Most of which pertains to the Complainant/s. A copy of the first page of the Google Search is enclosed.
- 3.15 The profile and popularity of the Complainant/s under the trade/service name/mark 'Crabtree' has been continuously increasing since the date of adoption and use of the mark. At present, the Complainant/s' trade name/mark is identified by the purchasing public exclusively with Complainant/s and has acquired an enormous goodwill not only in India but in several other countries across the globe.
- [16.] As the Internet has become an essential medium to conduct business, the Complainant/s in order to expand their presence decided to obtain a domain name registration. The Complainant/s settled for <www.crabtreeindia.com> as a natural extension of their corporate name for the registration of their domain name. The Complainant/s then spent considerable amount of money and skill to develop a website on the obtained domain name < www.crabtreeindia.com >. In addition to this, the Complainant/s also owns the domain name <www.crabtreeindia.xxx>.
- 3.16 Recently, the Complainant/s learned that somebody had obtained a domain name registration for <www.crabtree.co.in>. The Complainant/s immediately searched the WHOIS database for the disputed domain name and found that the impugned domain name is registered in the name of Ms. Soumya Kukreti. The Registrar for the disputed domain name is Endurance Domains

Endurance Domains

Technology Private Limited. The disputed domain name registration is a duplication of the Complainant/s' trademark/service mark and has not been obtained in good faith.

3.17 Being aggrieved by the registration of the disputed domain name i.e. <www.crabtree.co.in>, the Complainant/s has approached this Hon'ble Forum.

3.18 The Complainant has filed Annexure A to in support of its Complaint.

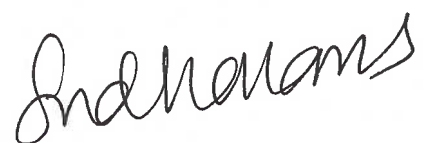
B Respondent

3.19 The Respondent has not filed any response till date of this award.

4. Parties Contentions

A Complainant

- 4.1 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 the trademark/service mark of the Complainant/s. The utmost malafide intention of the Respondent is evident from the fact that the Respondent has copied the entirety of Complainant/s' registered trademark.
- 4.2 Respondent has picked up the registered trademark of the Complainant/s verbatim without even changing a single letter. Thus, the use of the disputed domain name by the Respondent is a prima facie case of cybersquatting and trade/service mark/name infringement.
- 4.3 The disputed domain name contains the entirety of the Complainant/s' mark. It is well established 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.
- 4.4 The use by any other concern of an identical/deceptively similar mark to that of the Complainant/s' mark 'Crabtree' is bound to lead to confusion and deception and amounts to passing off as well as trademark infringement. Any person or entity using the mark/name 'Crabtree' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant/s.
- 4.5 The well-known mark 'Crabtree' has been in extensive, continuous and uninterrupted use since the year 1943 in relation to the Complainant/s' business. More specifically, the mark 'Crabtree' has been in use by the Complainant/s in relation to all its stationery articles including letterheads, visiting cards, order forms, bill books, envelopes, application forms and in relation to sales promotional materials, such as, brochures, catalogues, etc. The mark 'Crabtree' has also been used in relation to advertisements and related business/commercial information disseminated in several print media such as newspapers, magazines etc. both in India as well as abroad. In each of the instances of use, the mark 'Crabtree' is prominently displayed and has become the focus of the Complainant/s' entire business. Such promotional information, brochures are enclosed as "Annexure F".
- 4.6 The mark 'Crabtree' is one of the global brand names of the Complainant/s and has been used extensively over the years for its business as well as its corporate identity.
- 4.7 A mark is capable of being a trademark if it has acquired a secondary meaning in the market. The evidence is sufficient to show that Complainant/s' mark has acquired secondary meaning through continuous and extensive use by the Complainant/s. [See, Realmark Cape Harbour L.L.C. v. Lawrence S. Lewis, D2000-1435]. In the present dispute the Complainant/s have been using the mark 'Crabtree' as a trade name in an extensive and continuous manner for nearly eight decades and have thus acquired secondary meaning in the mark.
- 4.8 Moreover, in Living Media, Limited v. India Services, D2000-0973, it has been held that "trademark registration is itself prima facie evidence that the mark is distinctive". Similarly, in eAuto, LLC v. Triple S Auto Parts, D2000-0047, the Panel decided that when a domain name



wholly incorporates a Complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy.

- 4.9 The profile and popularity of the Complainant/s under the trade/service name/mark 'Crabtree' has been continuously increasing since the date of adoption and use of the mark. At present, the Complainant/s' trade name/mark is a name to reckon with and has acquired enormous goodwill not only in India but in several other countries across the globe due to its extensive use, advertisements, publicity and awareness throughout the world.
- 4.10 In the present case, it is very natural for an internet user, who wishes to visit the website of the Complainant/s to type its corporate / commercial name followed by the country specific Top Level Domain <.co.in>. This will lead the Internet user to believe that the Complainant/s are associated with or own the web site bearing the domain name <www.crabtree.co.in>.
- 4.11 The Complainant/s have shown that the disputed domain name has become a distinctive identifier associated with the Complainant/s or their goods and services. Relevant evidence includes length and amount of sales under the mark, the nature and extent of advertising, consumer surveys and media recognition.
- 4.12 The Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name.
- 4.13 The mark 'Crabtree' is a registered trademark and it is apparent that the Respondent knew of the Complainant/s' 'well known' mark and its business activities as the mark 'Crabtree' has been in use by the Complainant/s in relation to electrical products since the year 1943. It is thus highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. [Relevant Decision: Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003; Kelemata S.p.A. v. Mr. BassarabDungaciu, D2003-0849]
- 4.14 Respondent has no connection with the Complainant/s or any company licensed by Complainant/s. Respondent is not commonly known by the disputed domain name or the trademark. Respondent was not and is not authorized by Complainant/s to register, hold or use the disputed domain name.
- 4.15 Furthermore, the Respondent whose name is Ms. SoumyaKukreti is not commonly known by the disputed domain name, nor the Respondent actually engages in any business or commerce under the name 'Crabtree'.
- 4.16 In light of the uniqueness of the domain name <www.crabtree.co.in>, which is completely identical to Complainant/s' trademark, it is extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant/s, which is not based in fact.
- 4.17 The Respondent has no active business in the name of 'Crabtree'. The Respondent is not a licensee of the Complainant/s, nor has the Respondent ever been authorized by the Complainant/s to use the Complainant/s' trademarks or register the disputed domain name. The Complainant/s have no relationship with the Respondent.
- 4.18 Respondent has provided misleading and inaccurate WHOIS contact information. This clearly indicates that the Respondent does not have any legitimate rights in the disputed domain name. Moreover, by providing inaccurate and unreliable information the Respondent has violated Section 2 of the 'Terms and Conditions for Registrants' issued by the .IN Registry.
- 4.19 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. In this specific case, the Complainant/s 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. Moreover, a domain name acts as the address of the company

Indhavan

on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.

- 4.20 The Respondent thus cannot have any rights or legitimate interests in the disputed domain name because the disputed domain name incorporates the well-known mark 'Crabtree' in its entirety, a mark in which the Complainant/s have the sole and exclusive right and that has become well known owing to the Complainant/s' efforts.
- 4.21 The Respondent's e-mail id is associated with at least one other domain name which is identical or confusingly similar to a well-known trademark. The Respondent has registered the domain name <www.gingerinn.com> which is identical to the trademark 'Ginger', a famous and well-known hotel chain. The domain name has a parking page containing Pay Per Click [PPC] Ads. It appears that this domain name registration is unauthorised as there is no evidence that the Respondent is in any way related to the brand 'Ginger' or has any rights or legitimate interests in the said domain name. Thus, similarly, it is contended that the Respondent does not have any rights or legitimate interests in the impugned domain name as well.
- 4.22 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.
- 4.23 The Complainant/s contends 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. Furthermore, the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed Domain Name.
- 4.24 The Complainant/s asserts that it is inconceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainant/s and its 'well-known' trademark. The Complainant/s' 'Crabtree' trademark is globally 'well-known' as it has been continuously used since 1943.
- 4.25 Further, the mark has received extensive unsolicited media attention, having been prominently featured in numerous publications with local, national and international audiences. The Complainant/s submits that the 'Crabtree' brand is extremely valuable and is one of the major factors contributing towards the net value of the Complainant/s.
- 4.26 At present, the domain name <www.crabtree.co.in> is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant/s' goodwill and reputation. This is an attempt to misuse the domain name by registering the word 'Crabtree' with a country specific domain name extension variant. The mark 'Crabtree' as well as the official website <www.crabtreeindia.com> having been extensively used is understood and associated by consumers in India and elsewhere as the mark of the Complainant/s denoting their services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark 'Crabtree' is possessed of, 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 name/mark 'Crabtree' has acquired unique importance and are associated with the Complainant/s. A mere mention of the said name/mark establishes an identity and connection with the Complainant/s and none else.
- 4.27 The Respondent has registered the impugned domain name in bad faith for the following reasons:
- (a) The well-known mark 'Crabtree', having been extensively used in relation to the business of the Complainant/s, has acquired distinctiveness and is understood and associated by consumers in India as the mark of the Complainant/s denoting their goods, services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith. The Respondent clearly knew of the Complainant/s' prior rights when registering the domain name. This by itself constitutes "bad faith".

Indu Narani

- (b) More specifically, 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.
- 4.28 The Respondent has also provided inaccurate WHOIS contact details. As per Section 2 of the 'Terms & Conditions for Registrants', domain name registrants are mandated to provide complete and accurate contact details. Thus, the blatant disregard and violation of the Terms & Conditions by the Respondent constitutes strong evidence of bad faith.
- 4.29 Moreover, the Respondent registered the domain name on June 27, 2014. 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.
- 4.30 In light of the Respondent's presumed knowledge of the Complainant/s' rights, it is reasonable to infer that the Respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. The Respondent must have 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.
- 4.31 The Respondent appears to have registered atleast one other domain name which is identical or confusingly similar to a well-known trademark. A preliminary search on the internet revealed that the Respondent has registered the domain name <www.gingerinn.com>. The Respondent does not appear to be related to the brand 'Ginger', famous for its hotels all over the country. Moreover, the Respondent has placed a parking page on the said domain name containing Pay Per Click [PPC] Ads. This clearly indicates that the Respondent is a habitual cybersquatter. This pattern of conduct on the part of the Respondent constitutes bad faith.
- 4.32 The passive holding of the domain name by the Respondent amounts to bad faith under the present circumstances.
- 4.33 Furthermore, 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. Thus, the disputed domain name was registered in bad faith.
- 4.34 The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Since the trademark of the Complainant/s is so distinctive and famous that the Respondent must have had actual knowledge of the trademark prior to registering the disputed domain name. The Complainant/s have a long and well-established reputation in the Complainant/s' mark through its exclusive use in the electrical goods industry. By registering the disputed domain name with actual knowledge of the Complainant/s' 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, which in the present scenario is the Complainant/s.
- 4.35 The following circumstances are material to the issue in the present case:
- (a) The Complainant/s' trademark has a strong reputation and is widely known on a global basis;
 - (b) 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 a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant/s' rights under trademark law;
 - (c) The Respondent is engaging in other similar cyber-squatting activities.

Induvarans

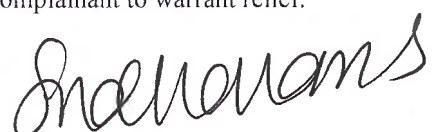
- (d) The Respondent registered the domain name of late in June 2014.
- 4.36 On account of the high degree of inherent and acquired distinctiveness which the well-known mark 'Crabtree' is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade.
- 4.37 That any use of the impugned domain name by the Respondent would necessarily be in bad faith. [See Xpedia Travel.com, D2000-0137 and Goodfoodguide.net, D2000-0019 wherein it was held that owing to a wide public knowledge of the Complainant's mark, the Respondent cannot be said to have a legitimate interest in the concerned marks since he ought to have known of the Complainant/s' mark.]
- 4.38 In cases such as Guerlain S.A. v. Peikang, D2000-0055 and VeuveClicquotPonsardin, MaisonFondéeeen 1772 v. The Polygenix Group Co., D2000-0163 it has been held that bad faith is found where a 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".
- 4.39 With regard to Famous Names, successive UDRP panels have found Bad faith registration where:
- (a) Complainant's name was famous at the time of registration.
 - (b) 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".
 - (c) The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith.
- 4.40 The Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives.
- (a) 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.
 - (b) 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.
 - (c) 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.

B Respondent

- 4.41 The Respondent has not filed any response.

5. Discussion and Findings

- 5.1 The Complainant No.1 and Complainant No.2 will be collectively referred to as Complainant hereunder.
- 5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
 - (III) Respondent's domain name has been registered or is being used in bad faith.
- 5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.



Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

- 5.4 The Complainant is the proprietor of the trade mark Crabtree. The Complainant has been using the mark Crabtree since 1943 in relation to electrical products. The Complainant has registered its Crabtree mark in India and other jurisdictions around the world. The Complainant's first registration in India under Application No.90876 for Crabtree mark in class 9 dates back to 31.12.1943. The Complainant also owns several domain names involving Crabtree. The Complainant's domain name www.crabtreeindia.com was created on 16.09.2004. The disputed domain name crabtree.co.in was created on 27.06.2014. Obviously, the Complainant is the prior adopter of the Mark Crabtree. The above facts have established that the Complainant has statutory and common law rights in respect of its Crabtree mark.
- 5.5 The Complainant's Crabtree Mark is famous and well known in India. It is obvious that the disputed domain name crabtree.co.in wholly incorporates the prior trade mark Crabtree of the Complainant. The expressions, ".co" and ".in" need to be discarded while comparing the marks with the domain names. Further, the disputed domain name crabtree.co.in is similar to the domain name www.crabtreeindia.com of the Complainant. Here again, Crabtree is the distinctive part and the expression "India", ".co", ".in" and ".com" need not be considered while comparing the domain names.
- 5.6 I, therefore, find that:
- (a) The Complainant has common law and statutory rights in respect of its Crabtree Mark.
 - (b) The disputed domain name crabtree.co.in is similar to the Complainant's prior registered Crabtree Mark, and the domain name www.crabtreeindia.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

- 5.7 It is already seen that:
- (a) The Complainant is the prior adopter and user of Crabtree Mark. The Complainant's Crabtree mark is well known in many countries across the globe including India.
 - (b) The Complainant's Crabtree Mark was adopted in 1943. The first Indian registration for the mark Crabtree was obtained on 31.12.1943. The Complainant's domain name www.crabtreeindia.com was created on 16.09.2004. The disputed domain name crabtree.co.in was created on 27.06.2014.
- 5.8 Respondent did not register the disputed domain name until 27.6.2014. Complainant has adopted and started using Crabtree Mark before Respondent registered the disputed domain name crabtree.co.in. It is unlikely that the Respondent was unaware of existence of Complainant's trademark rights and domain name rights before registering the disputed domain name crabtree.co.in.
- 5.9 I tried to visit the web site of the Respondent under the disputed domain name crabtree.co.in on 22nd June 2017 using Google Chrome Browser. It did not resolve into any web page. The browser returned with the message: "*crabtree.co.in's server DNS address could not be found*". It is evident that the Respondent has not put the disputed domain name into any use.
- 5.10 In the absence of any response from the Respondent, I agree with the contentions of the Complainant:
- a) The Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name.
 - b) The Respondent has no active business in the name of 'Crabtree'. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the

Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent.

- c) The Respondent whose name is Ms. SoumyaKukreti is not commonly known by the disputed domain name, nor the Respondent actually engages in any business or commerce under the name 'Crabtree'.
- d) The Respondent cannot have any rights or legitimate interests in the disputed domain name because the disputed domain name incorporates the well-known mark 'Crabtree' in its entirety, a mark in which the Complainant has the sole and exclusive right and that has become well known owing to the Complainant's efforts.

5.11 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name <crabtree.co.in>.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant is the proprietor of Crabtree Mark. Complainant has been using CrabtreeMark continuously since 1943. The first Indian registration for the mark Crabtree was obtained on 31.12.1943. The Complainant's domain name www.crabtreeindia.com was created on 16.09.2004. The disputed domain name <crabtree.co.in> was created on 27.06.2014. The Respondent could not have ignored, rather actually influenced by, the well-known CrabtreeMark of the Complainant at the time he acquired the disputed domain name <crabtree.co.in>.

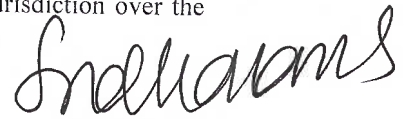
5.13 The Respondent has not filed any response. He has not come up with any answer or justification for the adoption of the disputed domain name.

5.14 In the absence of any response from the Respondent, I agree with the contentions of the Complainant as below:

5.15 I agree with the contentions of the Complainant as below:

- (a) The mark Crabtree has received extensive unsolicited media attention, having been prominently featured in numerous publications with local, national and international audiences. The 'Crabtree' brand is extremely valuable and is one of the major factors contributing towards the net value of the Complainant.
- (b) The disputed domain name <www.crabtree.co.in> is not being put into any use by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. This is an attempt to misuse the domain name by registering the word 'Crabtree' with a country specific domain name extension variant. The mark 'Crabtree' as well as the official website <www.crabtreeindia.com> having been extensively used is understood and associated by consumers in India and elsewhere as the mark of the Complainant/s denoting their services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark 'Crabtree' is possessed of, 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 name/mark 'Crabtree' has acquired unique importance and are associated with the Complainant. A mere mention of the said name/mark establishes an identity and connection with the Complainant and none else.
- (c) The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name. This is evident as the Respondent is not running any website on the disputed domain name.
- (d) The Respondent desires to cash-in on the reputation of the Complainant's mark by using the disputed domain name for advertisements or setting up a business.

- (e) The Respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant 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.
- 5.16 Thus it is clearly established that Respondent registered the disputed the disputed domain name <crabtree.co.in>in bad faith.
- 5.17 The actions of the Respondent should not be encouraged and should not be allowed to continue. The Respondent has not even chosen to respond to the Complainant. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.
6. **Decision**
- 6.1 For all the foregoing reasons, the Complaint is allowed as below.
- 6.2 It is hereby ordered that the disputed domain name <crabtree.co.in> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) towards costs of the proceedings. If the Respondent fails to pay, the Complainant may recover this amount by initiating execution proceedings in the Civil Court having jurisdiction over the Respondent in India.



S.Sridharan
Arbitrator