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## INDIA NON JUDICIAL

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#### e-Stamp

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Certificate Issued Date	: 14-Oct-2019 02:53 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1745517640853449R
Purchased by	: POOJA DODD
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DODD
Second Party	: Not Applicable
Stamp Duty Paid By	: POOJA DODD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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#### ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure



#### Statutory Alert:

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**Disputed Domain Name: kabbage.in**

**Decision of Ms. Pooja Dodd, Sole Arbitrator**

**INDRP Case No. 1138**

IN THE MATTER OF:

Kabbage, Inc.,

730, Peachtree Street Suite 1100,

Atlanta, Georgia 30308,

United States of America.

...Complainant

Versus

Ziming Wu

Huliq youija,

#58 Xiamen Fuijan 3601019,

China.

Telephone: (86) 15926837

Email: domain2buy@foxmail.com

...Respondent

**1. The Parties:**

1.1. The Complainant in this arbitration proceeding is Kabbage, Inc, with its office at 730, Peachtree Street Suite 1100, Atlanta, Georgia 30308, United States of America. The Complainant is represented by Mr. Douglas M. Isenberg, Esq, of The GigaLaw Firm, LLC, with office at One Glenlake Parkway, Suite 650, Atlanta Georgia 30328, USA.

1.2. The Respondent is Ziming Wu, a resident of Huliq youija #58, Xiamen, Fujian 361019, China. The email address connected with the Respondent is

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[domain2buy@foxmail.com](mailto:domain2buy@foxmail.com) and the phone number connected with the Respondent is (86) 15926837.

2. **Domain Name and Registrar:**

2.1. The Disputed Domain Name is <kabbage.in> which was registered on July 21, 2017.

2.2. The accredited Registrar with whom the Disputed Domain Name is registered is Dynadot, LLC situated at P. O. Box 345, San Matteo, California, United States of America.

3. **Procedural History:**

3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

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- 3.2. The Complaint was filed by the Complainant with NIXI, against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.3. On August 16, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.4. NIXI notified the Parties of my appointment as the Arbitrator *via* email on August 26, 2019 and served an electronic of the Complaint on the Respondent. I informed the Parties about the commencement of arbitration proceedings on August 26, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.5. On September 6, 2019, I informed the Parties that though no Response was received from the Respondent within the time period granted, in the interest of justice, I was granting an additional time of 5 days, and that if no reply was filed by September 11, 2019, the award would be passed on merits. The additional time granted lapsed, but no Response was received. In fact, there has been no communication from the Respondent, till date.

#### **Grounds for Arbitration Proceedings**

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the domain name; and

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C. The Disputed Domain Name was registered and is being used in bad faith.

4. Summary of the Complainant's Contentions:

In support of its case, the Complainant has made the following submissions:

- 4.1. Complainant was founded in 2009 and has pioneered a financial services data and technology platform that leverages data generated through business activity such as accounting data, online sales, shipping and other sources to deliver fast, flexible funding in real time, and to provide access to automated funding to small businesses, in minutes. The Complainant asserts that it has provided more than 185,000 customers with access to more than US \$7 billion, including more than US \$10 million per day to up to 1,400 small businesses *via* its automated lending platform. A perusal of Annexure 2 substantiates the above.
- 4.2. Complainant owns at least 50 trademark registrations or applications bearing the KABBAGE trademark such as KABBAGE PLATFORM, KABBAGE PAYMENTS, KABBAGE FUNDING etc. (the "KABBAGE Trademarks"). KABBAGE is a strong trademark because it is entirely distinctive of the Complainant, because the Complainant coined the word "Kabbage" which has no denotive meaning. A perusal of Annexures 7 and 8 substantiates the above.
- 4.3. The Complainant further asserts that its KABBAGE Trademarks are well-known internationally, as a result of its business and media coverage around the world. The Complainant is frequently written about in the mainstream media, financial and technology press, including articles that have appeared in Fox Business, VentureBeat, Forbes, Bloomberg, TechCrunch, Fast Company,

Bloomberg and more. The Complainant also claims to have received numerous awards and accolades however, this has not been substantiated with evidence and therefore not in consideration.

- 4.4. The Complainant's domain name <kabbage.com> was registered on September 7, 2006, and is used in connection with business. Annexures 4 and 5 substantiate the above averments.
- 4.5. The Complainant has prevailed in numerous proceedings under various domain name dispute policies for domain names that are identical or similar to the KABBAGE Trademarks.
- 4.6. The Complainant alleges that the Disputed Domain Name is being used in connection with a pay-per-click ("PPC") website that includes links for goods and services that compete with the Complainant, including links labelled "Business Lending", "Business Lending Loans" and "Business Financing". The Respondent is advertising the Disputed Domain Name for sale for US \$9,500. A perusal of Annexure 6 substantiates the above.
- 4.7. The Complainant asserts that the Disputed Domain Name contains the KABBAGE trademark (and **only** the KABBAGE trademark) in its entirety. Accordingly, the Disputed Domain Name is identical or confusingly similar to the KABBAGE trademark.
- 4.8. The Respondent has no rights or legitimate interests in the Disputed Domain Name as the Complainant has never assigned, granted, licensed, sold,



transferred or in any way authorized the Respondent to register or use the KABBAGE Trademarks in any manner.

- 4.9. The Complainant alleges that upon information and belief, the Respondent has never used, or made preparations to use, the Disputed Domain name in connection with a *bona fide* offering of goods or services and therefore the Respondent cannot establish rights or legitimate interests under Paragraph 7(i) of the Policy. Bad faith in the registration of the Disputed Domain Name is evident from the fact that the Respondent is using the Disputed Domain Name in connection with a PPC website that includes links for goods and services that compete with the Complainant. The Respondent's attempt to sell the Disputed Domain Name further substantiates the bad faith in the registration of the Disputed Domain Name by the Respondent.
- 4.10. To the best of the Complainant's knowledge, the Respondent has never been commonly known by the Disputed Domain Name and therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name under Paragraph 7(ii) of the Policy. According to Annexure 1 the registrant of the domain name is "Ziming Wu"- not Kabbage or any variation thereof.
- 4.11. The Complainant submits that the Disputed Domain Name was registered in bad faith, as the Complainant's use of the KABBAGE Trademarks pre-dates Respondent's registration of the Disputed Domain Name by seven years. Given the long term use and global protection of the KABBAGE Trademarks, it is inconceivable that the Respondent was not aware of the popularity of the

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KABBAGE Trademarks at the time of registration of the Disputed Domain Name.

4.12. In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure 1	Whois record for domain name <kabbage.in>, and Whois details provided by NIXI
Annexure 2	“Small Businesses Access More Than \$10 Million Per Day with Kabbage,” press release dated October 24, 2018.
Annexure 3	Profile of Complainant from Crunchbase
Annexure 4	Whois record for Complainant’s domain name <kabbage.com>
Annexure 5	Copy of the printout of the home page of the website using Complainant’s domain name <kabbage.com>.
Annexure 6	Screenshot of home page of Respondent’s website using Disputed Domain Name.
Annexure 7	Printout of select registrations for the KABBAGE Trademarks from the website of the United States Patent and Trademark Office.
Annexure 8	Schedule of registrations for the KABBAGE Trademarks

A duly executed Power of Attorney has also been granted in favor of Douglas M. Isenberg, Attorney at Law, of The GigaLaw Firm.

**5. Discussions and findings:**

5.1. As per paragraph 4(i) of the Policy, the Complainant merely needs to show that it “has rights in a name, trademark or service”. The submissions and documents provided by Complainant lead to the conclusion that the KABBAGE Trademarks form an integral part of the Complainant’s business. Kabbage is the Complainant’s corporate name and



the Complainant has registered the domain name <kabbage.com> since September 7, 2006. Even though no trademark registrations are held by the Complainant in India, all of the above including the prior registrations of the KABBAGE Trademarks globally, prove trans-border reputation of the KABBAGE Trademarks within the field of finance in India and are sufficient for the purposes of the Policy to establish the Complainant's rights in the KABBAGE Trademarks.

5.2. The Respondent does not have any legitimate interests in the Disputed Domain Name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the KABBAGE Trademarks in any manner. As such, the Respondent does not have any relationship with the business of, or authorization from of the Complainant. From the averments made on behalf of the Complainant, the Respondent is neither the licensee of the Complainant nor has it otherwise obtained authorization of any kind whatsoever to use the Kabbage Trademarks and therefore the Respondent does not have any legitimate interest in the Disputed Domain Name. It seems that the Respondent has registered the Disputed Domain Name to enrich itself unjustly from such unauthorized adoption and registration.

5.3. It is a well-established principle that that once a Complainant makes a *prima facie* case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that he has some legitimate interest in the Disputed Domain Name, to rebut this presumption. The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the

Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present its case. Even though sufficient time (including additional time) was granted, the Respondent chose to refrain from submitting any Response to the Complaint.

5.4. Paragraph 11(a) of the Rules empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, I initially gave the Respondent 10 days and in the absence of a Response, I granted an additional 5 days to the Respondent to file a Response, but the Respondent failed to file any Response to the Complaint and has sought not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend himself. Thus, this *ex parte* award.

5.5. Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to respond to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions, evidence presented and inferences drawn

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from the Respondent's failure to submit a Response, despite having been given sufficient opportunity and time to do so.

**6. The issues involved in the Dispute:**

6.1. The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for a domain name dispute, which are:

- 1) whether the domain name in question is identical or confusingly similar to a trade mark;
- 2) why the Respondent cannot claim any legitimate interest in the trade mark; and
- 3) why the domain name in question should be considered as having been registered and being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

Element 1- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

6.2. The Complainant has submitted sufficient documentary evidence to prove its rights in and to the ownership of the KABBAGE Trademarks arising out of prolonged use and almost 50 registrations in the United States and the European Union, numerous successful panel decisions in its favor under the UNDRP. The



Disputed Domain Name incorporates the Complainant's KABBAGE Trademarks in its entirety. Numerous panels have found that when a disputed domain name consists solely of a complainant's trademark, it is sufficient to hold that a disputed domain name is confusingly similar to the complainant's mark for the purposes of the INDRP. [Decisions relied upon: *Amazon Technologies Inc. v. Mr. Zhou Xiangsheng*, NIXI Case No. INDRP /347; *Puma SE v. Christian Schmidt*, NIXI Case No. INDRP/956; *Raytheon Company v. Randa Newsome*, NIXI Case No. INDRP/997; *Equifax Inc. v. Nikhlesh Kunwar*, NIXI Case No. INDRP/1038 and *HSBC Group Management Services Limited v. Chinmay*, NIXI Case No. INDRP/992].

6.3. In this case, the KABBAGE Trademarks, the corporate name Kabbage Inc. and the domain name kabbage.com all belong to the Complainant and any use by a third party, including the Respondent is likely to lead to confusion. Adoption of the corporate name and the KABBAGE Trademarks and domain name registration of the Complainant predate the registration of the Disputed Domain Name, which is identical to the KABBAGE trademark of the Complainant with no additions/deletions/substitutions with any other component. Therefore, in light of the Complaint, accompanying documents and cited case law, I am convinced beyond doubt that the Disputed Domain Name is confusingly similar to the Complainant's KABBAGE Trademarks, Complainant's corporate name and related domain. The use of the Complainant's trading name in its entirety in the Disputed Domain Name will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant. Hence, the first element is satisfied.

Element 2 - The Respondent has no rights or legitimate interests in respect of the  
Disputed Domain Name:

- 6.4. Through its submissions, the Complainant has established that it has never assigned, granted, licensed, sold or transferred or in any way authorized the Respondent to use its KABBAGE Trademarks. The Respondent does not have any relationship with the business of the Complainant which would entitle the Respondent to the KABBAGE Trademarks. The Respondent registered the Disputed Domain Name on July 21, 2017 which is many years after the Complainant's first use of the KABBAGE Trademarks. The Respondent clearly has no legitimate interest in the Disputed Domain Name.
- 6.5. Moreover, the burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent, and by not responding to the Complaint, within the timeline set, the Respondent failed to establish legitimacy in registering the Disputed Domain Name. [Decisions relied upon: *Orange Brand Services Limited vs. P.R.S. Reddy* <orangesms.in> - INDRP /644; *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250; *William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp./ WhoisGuard Protected, WhoisGuard, Inc.* WIPO Case No. D2016-1049].
- 6.6. The Disputed Domain Name is not being used to in connection with *bona fide* offering of goods and services, the Respondent is not commonly known as "Kabbage" and has in fact used the Disputed Domain Name with a PPC website and has also advertised it for sale at a highly inflated price leaving no room for the Respondent to claim legitimate interest.

6.7. Therefore, in light of the Complaint, accompanying documents and cited case law, I am of the opinion that the Respondent does not have any legitimate business offerings on the website that resolves at the Disputed Domain Name. Hence, the second element is satisfied.

Element 3 - why the domain name in question should be considered as having been registered and being used in bad faith.

6.8. Given the reputation and fame of the Complainant's KABBAGE Trademarks, the adoption of an identical domain name by the Respondent who is unaffiliated to the Complainant, does create a *prima facie* presumption of bad faith. The adoption of the Disputed Domain Name is without any justification by the Respondent and clearly intended to mislead and divert consumers. A cursory Internet search would have made it clear to the Respondent that the Complainant owns the KABBAGE Trademarks and uses them extensively. Being aware of the commercial value of the KABBAGE Trademarks, the Respondent seems to have adopted the Disputed Domain Name to derive revenue from it.

6.9. The fact that the Respondent advertises that the Disputed Domain Name is for sale for USD \$9,500 at a highly inflated price and the monetization as a result of the PPC advertisements heavily weigh in favor of bad faith on part of the Respondent. In my view the above is sufficient evidence to show bad faith in the registration of the Disputed Domain Name for the purposes of the INDRP. [Decisions relied upon: *L'Oréal v. Yerec International Limited*, NIXI Case No. INDRP/481, *Accor v. Tang Wei*, NIXI Case No. INDRP/127; *LaRoche-Posay Laboratoire Pharmaceutique v. EAC Internal Co. Limited*, NIXI Case No.



INDRP/457; *Midea Group Co. Ltd. v. Alexander K. Dobrenkov*, NIXI Case No. INDRP/917].

6.10. In view of the above, it is evident beyond reasonable doubt that the Respondent has adopted the Disputed Domain Name in bad faith. Thus, the third element is satisfied.

7. **Decision:**

7.1. In view of the foregoing, I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's well-known KABBAGE Trademarks, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

7.2. In the facts and circumstances as discussed above, I deem it appropriate to order the Respondent to pay cost of ₹ 1 lakh for present proceedings to the Complainant.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd

Sole Arbitrator

Dated: October 16, 2019