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INDRP ARBITRATION CASE NO.1448
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA

KENT RO SYSTEMS LIMITED & MR. MAHESH GUPTA

VERSUS

3D LOGIC PRIVATE LIMITED

DISPUTED DOMAIN NAME : "KENTROCUSTOMERSERVICE.IN"

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Ajay Gupta

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THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)**

**ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA**

1. KENT RO SYSTEMS LIMITED
E-6, 7 & 8, Sector 59, Noida,
Uttar Pradesh, India

2. Mr. MAHESH GUPTA
H-35, South Extension,
Part-1, New Delhi 110049.

... Complainants

VERSUS

3D LOGIC PRIVATE LIMITED
Address : Haryana

...Respondent

Disputed Domain Name : <**www.kentrocustomerservice.in**>

AWARD

(1) The Parties :

The **Complainant** in this arbitration proceedings are 1. KENT RO SYSTEMS LIMITED & 2. Mr. Mahesh Gupta the founder of Kent RO Systems Limited, (Hereinafter collectively referred as **Complainant**) are manufacturer of appliances such as Water purifier, air purifier, vacuum cleaners etc. and having its principal place of business at E-6,7 & 8, Sector 59, Noida-201309, Uttar Pradesh, India. The complainant in this proceeding is represented by Vutts & Associates LLP, C-5/8GF, Safdarjung Development Area, New Delhi-110016, India.

The **Respondent**, in this arbitration proceeding, is, 3D Logic Pvt. Ltd. From Haryana, India as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

(2) The Domain Name and Registrar

The disputed domain name is **<www.kentrocustomerservice.in>**. The Registrar with which the disputed domain name is registered is **GoDaddy.com LLC**.

(3) Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and



Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

The history of this proceeding is as follows :

In accordance with the Rules 2(a) and 4(a), NIXI on 29.10.2021 formally notified the Respondent of the complaint, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under. That on 29.10.2021 Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

That commencing the arbitration proceedings an Arbitration Notice Dated 29.10.2021 was sent to the respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. The Copy of the Notice along-with complaint was served to the respondents by LegalNixi which was confirmed to this panel vide their mail dated 08.11.2021. The copy of complaint was also mailed to respondent by complainant on the directions of this panel on 08.11.2021. That the proof of service of Complaint to the respondent was supplied to this panel by complainant vide their mail dated 08.11.2021. That no reply of the notice and complainant was however, received from the respondent within stipulated time of 10 days. However, this panel in the interest of justice granted further period of 10 days to the respondent to file the reply and same was communicated to respondent by this panel through mail

dated 10.11.2021. The Respondent despite the further opportunity given to him again failed to file the reply of the Arbitration notice and complaint even within the extended period of 10 days despite the receipt of mail dated 10.11.2021 of this panel and subsequently the respondent was proceeded ex parte on 22.11.2021.

(4) The Respondent's Default

The Respondent failed to reply to the notice regarding the complaint. It is a well established principal 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 it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is **"kentrocustomerservice.in"**

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonable available means calculated to achieve actual notice to the Respondent of the complaint.

The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file reply of the Complaint if any but Respondent

neither gave any reply to notice nor to the complaint. The 'Rules' paragraph 12 provides that "In event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidences, inferences and merits only as the Respondent has not replied and is proceeded ex parte.

(5) Background of the Complainant and its statutory and common law rights Adoption :

- (i) The Complainants submit that the Complainant No.2 (Mr. Mahesh Gupta) formed a Partnership Firm under the name and style of M/s KENT RO SYSTEMS in and around 1999 and pursued his business activities of manufacture and sale of purifiers under the mark KENT. Thereafter, Complainant No.2 incorporated Complainant No.1 "Kent RO Systems Ltd." in 2007 and Complainant No.1 took over the partnership firm M/s Kent RO Systems. Accordingly, the rights in the mark KENT were assigned from KENT RO SYSTEMS to Complainant No.2. The Complainant No.2 (Mr. Mahesh Gupta) is the Chairman and Managing Director of the said Company along with his other family members as Directors. It is further submitted that the Complainant No.1 and Complainant No.2 have been carrying on their business activities under the well-known trademark/name KENT at-least since the year 1988. Complainants today are one of the largest manufactures of water purifiers in India.



- (ii) The Complainants further submit that the mark KENT and its variants are registered trademark of Complainant No.2 and forms a prominent part of the corporate name of the Complainant No.1 Company, i.e., "Kent RO Systems Limited". The mark KENT is being used by the Complainant No.1 by virtue of a licensee agreement with Complainant No.2 dated 27.06.2007 and the terms of said License Agreement has been amended/modified from time to time.
- (iii) The Complainants are the first to bring the revolutionary Reverse Osmosis (RO) technology to India and has now become the largest manufacturer of water purifiers, in India under its flagship brand KENT. In addition to water purifiers the Complainants now offer a wide range of healthcare products under the mark KENT such as HEPA Air Purifiers, Vegetable Cleaners, Water Softeners and the Smart Chef range of kitchen appliances. Apart from the above-named products the Complainants also provides maintenance services of the products. The mark KENT has come to be known for its innovative use of next-gen technology towards enhancing quality of everyday living and offering purity.
- (iv) They submit that they have more than 25 Lakh customers and 5000 persons associated, with them and the mark KENT. The Complainants have sale of more than 225,000 reverse osmosis purifiers every year and holds around 40% market share of India.
- (v) The Complainants submit that the goods and services of the Complainants under the mark KENT is available in

India and many countries abroad namely Fiji, Panama, Dominica Republic, Netherlands, Germany, Bulgaria, Portugal, Tunisia, Mali, Liberia, Nigeria, Zimbabwe, Zambia, Mozambique, Tanzania, Kenya, Sudan, Saudi Arabia, Qatar, Iran, Oman, Afghanistan, Bhutan, United Arab Emirates, Maldives, Mauritius, Sri Lanka, Nepal, Myanmar, Indonesia, Philippines, Cambodia, Bangladesh, Vietnam, Malaysia, Egypt, Malawi, Angola, Ghana, South Africa, Uganda, Seveyol, Mexico, Chile, Kuwait, Bahrain, Irag, Turkey, Singapore, Thailand, Romania, Spain, Greece, Ireland, United Kingdom, France, Poland and New Zealand.

It is further submitted that the Complainants have a wide network with over 4000 distributors, 16000 dealers and over 600 direct marketing franchises. The deep penetration of marketing network is supplemented by a central CRM based service support network, backed by 2000 service franchises and a force of centrally trained service technicians who provide reliable after sales service to the KENT products.

- (vi) The Complainants submit that in pursuance of the growing business in India and abroad the goods and services provided by Complainants are accessible via its website <https://www.kent.co.in/> and <https://www.kentrosystems.com/>. These websites are accessible and interactive from anywhere in the world. Other than the above, the Complainant's mark KENT is also displayed on various third party e-commerce websites including but not limited to www.amazon.in, www.flipkart.com, www.snapdeal.com,



www.shopclues.com and www.indiamark.com regularly by its distributor's dealings for sale of the Complainant's product.

- (vii) The Complainants submit that the mark KENT is well known and carries high reputation in India is evident from the fact that the Complainants have been awarded with numerous awards and recognition for innovating excellent products.
- (viii) The Complainants further submit that it spends considerable amount of money to promote and advertise the mark KENT around the world. For example, the mark KENT and its products are endorsed and have brand ambassadors such the famous Indian actors and celebrities such Shahrukh Khan, Hema Malini, Ahana Deol, Esha Deol and Boman Irani.
- (ix) The Complainants further submit that they have generated huge revenues amounting to several crores of India Rupees from the sale of their products and services under the mark KENT and have also expended several crores of Indian Rupees in relation to the promotion and publicity of the mark KENT.
- (x) It is submitted that apart from the significant common law rights in the mark KENT, the Complainant also have statutory rights in the mark KENT through registration of the mark KENT in India and various other countries, i.e., Afghanistan, Bangladesh, China, EU, Indonesia, Iran, Kenya, Kuwait, Malaysia, Mauritius, Mexico, Nepal, Nigeria, Oman, Pakistan, Sri Lanka, UAE, UK, USA, Zanzibar etc.

Agrees

- (xi) The Complainants submit that their rights in the mark KENT has been recognized in various legal proceedings recognizing the rights of the Complainants in the mark KENT and observing that KENT is well known mark. Additionally the Complainant has also been successful in a WIPO domain complaint against a domain name comprising the mark KENT.

The Complainant in the present arbitration proceedings to support their case has relied and placed on records documents as Annexures and made the following submissions :

(6) The issues involved in the dispute

The complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

"TYPES OF DISPUTES

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises :-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.

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

The disputed domain name has been registered or is /are being used in bad faith.

The Respondent is required to submit to mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this policy and Rules thereunder."




According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.

(7) Parties Contentions

7.1 The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Complainant

The Complainant has referred to INDRP - (Paragraph 3(b)(vi) (1) of Rules; Paragraph 4(i) of Policy) and submits that the disputed domain comprises the Complainants prior and well-known Mark and trade name in its entirety. The Complainant's adoption, use and registration of the Mark predates the registration of the disputed domain. Pertinently, the Mark had achieved global notoriety prior to the registration of the disputed domain and is immediately associated with the Complainant's commercial activities and various businesses across the globe. The disputed domain incorporates the Mark in its entirety. The Complainant further submitted that many WIPO decisions have affirmatively held that incorporation of the trademark/trade name of the Complainant in its entirety is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered Mark. The Complainant relied upon the precedent, WIPO Case No. D2017-0445 *Ruby life Inc. v. Tom Fu*, WIPO Case No. D2010-1059, *RapidShare AG, Christian Schmid Vs. InvisibleRegistration.com, Domain Admin*.



The Complainant submits that for purposes of comparison, the top-level suffix in the disputed domain i.e. ".in" should be disregarded because it is a necessary requirement to register and use the disputed domain and would not be considered distinctive element of the disputed domain by Internet Consumers. Previous Panels have ruled that the specific top level of a domain name such as ".com" etc. does not serve to distinguish the domain name from the trademark. See, for e.g., WIPO Case No. D2000-0834 *CBS Broadcasting Inc. v. Worldwide Webs, Inc.*

The Complainant further submitted that the additional word "customer service" succeeding the trademark KENT and KENT RO in the disputed domain name **<www.kentrocustomerservice.in>** are generic or descriptive. The words are not sufficient to distinguish the Domain Names from Complainant's dominant trademark KENT and thus do nothing to negate an inference of confusing similarity between them. The Complainant relied upon., WIPO Case No.D2019-0946 *Petróleos Mexicanos Vs. Registration Private, Domains By Proxy, LLC/ Marta Ramos* and WIPO Case No.D2007-1412 *MasterCard International Incorporated Vs. North Tustin Dental Associates.*

The Complainant submits that the complainant is the owner of two domain names with "KENT" and "KENT RO"; and the primary rights of the Complainant are in the mark "KENT" i.e. presence of "KENT/ KENTRO" in conjunction with descriptive elements which shall result in inevitable association with the Complainant.

The Complainant further submits that since, the Mark has achieved notoriety and significant transnational reputation

and goodwill, it is very likely that internet consumers, in particular consumers searching for KENT RO services would believe that there is a real connection between the disputed domain and the Complainant and its business. In fact, as disclosed below, it is apparent that the Dent banked on the likelihood of such consumer confusion to profit from the disputed domain.

Accordingly, the Complainant submits that the disputed domain should be considered identical/confusingly similar to the Complainants' Mark and name KENT. The Complainant has relied on the decision of Division Bench decision of Hon'ble High Court of *Delhi in Stephen Koeing Vs. Arbitrator NIXI and Ors. (02.11.2015 - DELHC) : MANU/DE/3419/2015*, it has been held that the Complainant will succeed if the Complainant proves Paragraph 4(i) of Policy itself. As per the Hon'ble Court's decision, the Complainant does not need to prove Paragraph 4(ii) & 4(iii) of Policy and can succeed on Paragraph 4(i) of Policy itself.B.

Respondent

The respondent has not replied to the complainant contentions.

Panel Observations

This Panel on pursuing the documents and records submitted by Complainant observe that Complainant's mark "KENT" is being used in various commercial and business activities in India and other countries. The adoption , use and registration of the mark by Complainant is also predates the registration of disputed domain.



The suffix "in" and word "customerservice" are not sufficient to distinguish the Domain Name from trade Mark KENT, hence there is confusing similarity between the disputed domain name and Complainant's trade mark KENT.

This panel observe that the Complainant who are owner of domain names "KENT" and "KENT RO" have significant reputation and goodwill and any customer searching for KENT RO services would believe that there is a real connection between the disputed domain name and its business. The disputed domain name "kentrocustomerservice.in" will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the complainant and further the addition of "in" is not sufficient to escape the finding that the domain is confusingly similar to complainant's trademark.

Therefore, the panel is of opinion that disputed domain name "kentrocustomerservice.in" being identical/confusingly similar to the trade mark of complainant will mislead the public and will cause unfair advantage to respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "KENT" of the Complainant.

It has to be noted that the paragraph no.4 of the INDRP policy starts with following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises."This is a positive assertion and sentence.

Further paragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(i) is upon complainant. To succeed he must prove them."

It has been proved by the Complainant that it has trademark rights and other rights in the mark "KENT" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering the trademark "KENT" in its entirety, the disputed domain name "kentrocustomerservice.in" is confusingly similar to the trade mark of complainant.

Paragraph 3 of the INDRP states that, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduce below :

"The Respondent's Representations :

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that :

- 1. the statements that the Respondent made in the Respondent's Application form for Registration of Domain Name are complete and accurate;*
- 2. to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- 3. the respondent is not registering the domain name for an unlawful purpose; and*
- 4. the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

Agly

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights".

The respondent has not replied to the Complainant's contentions despite the opportunity given for same.

This Panel therefore, in light of the contentions raised by the Complainant comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(i) of the INDR Policy.

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

Complainant

The Complainant has referred to INDRP (Para 3 (b) (vi) (2) of Rules; Para 4(ii) of Policy) and submits that the Respondent does not have any right or legitimate interest in the disputed domain. The Complainant is a prior user and registered proprietor of the well-known and highly distinctive Mark KENT. The Respondent is not sponsored or affiliated in any way with the Complainant, nor commonly known by the Disputed Domain Name. The Complainant has not authorized or given permission to the Respondent to use the Complainant's trademark in any manner and that the Respondent does thus not have any rights or legitimate interests in the Disputed Domain Name. It appears from the Respondent's website that the Respondent is providing customer care services for various water purifier companies and not just that of the Complainant. Therefore, the Respondent has no right or

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legitimate interest to use the mark KENT in the disputed domain name.

The Complainant further submitted that the Respondent is neither affiliated with the Complainant nor has it obtained any authorization or license to register or use any domain name incorporating the Mark. The Respondent does not have any right or legitimate interest in the Mark KENT and has wrongfully registered the disputed domain for the purpose of encashing upon the goodwill and reputation of the Complainant. The Respondent is not an authorized service provider of the Complainant.

The Complainant submits that the Respondent cannot be said to have any legitimate rights in the disputed domain in the manner contemplated by paragraphs 7(i), 7(ii) & 7(iii) of the Policy because **a)** use of the domain name for providing unauthorized services of the Complainant is not a bona-fide use of the domain name or offering of services; **b)** the Respondent is neither known by the disputed domain nor has it been licensed by the Complainant; and **c)** there no non-commercial/fair use as the Respondent is offering unauthorized services of the Complainant, misleading consumers to believe that the services are being offered by the Complainant and its company. This negates the possibility that the disputed domain is used for non-commercial or fair purposes. The Complainant has stated that many WIPO decisions have affirmatively held that the existence of the foregoing elements is sufficient to conclude the lack of right or legitimate interest in a disputed domain. The Complainant has referred to WIPO Case No. D2017-0449 *Svapostore .r.l. v. Arcbo d.o.o. (Arcangelo Bove)* and WIPO Case No. D2018-1397 *Sanofi v. VistaPrint Technologies Ltd.*



The Complainant submits that where the Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever as in this case, to use the Complainant's Mark nor is the Respondent authorised service provider of the Complainant, the Respondent's lack of rights or legitimate interest is strongly indicated. The Complainant referred to precedent of WIPO Case No. D2003-0098 *Six Continents Hotels, Inc. v. Patrick Ory*, and WIPO Case No. D2018-1562 *Jungheinrich AG v. James White* wherein the Panel concluded that in the absence of any commercial relationship between the parties entitling the Respondent to use the Complainant's mark, the Respondent could not be thought to have any legitimate right or interest in the disputed domain comprising the Complainant's Mark. A similar conclusion should be reached in the instant case as the Respondent's sole motive to register the domain appears to be to trade off the immense recognition of the Mark KENT.

Respondent

The respondent has not replied to the complainants contentions.

Panel Observations

This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

Once the Complainant makes a prime facie case showing that the respondent does not have any rights or legitimate interest

in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The respondent despite every opportunity failed to provide evidence to rebut the contention of complainant that neither licence nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by complainant. The respondent further failed to rebut the contention of the complainant that Respondent has nor rights or legitimate interests in respect of the domain name and respondent is not related in any way with the Complainant.

For these reasons, the Panel holds that the Complainant has proved that the respondent does not have any rights or legitimate interests in the disputed domain name.

7.3 The Domain name was registered and is being used in bad faith.

Complainant

The Complainant has referred to INDRP (Para 3(b) (vi) (3) of Rules; Para 4(iii) of Policy) and submitted that the Respondent is providing various RO services including repair, installation and maintenance under the disputed domain name. At multiple points on the website, the marks KENT and KENT RO have been used by the Respondent while referring to its services, which shows that there is some nexus between the Complainant and the Respondent, where there is no connection or nexus. The use of the marks is in such a manner so as to create the impression that the respondent is the authorized service provider of KENT. The Complainant further submitted that it is evident that the Respondent is

taking benefit of the repute of the complainant and the contact details on the of the Respondent's website reflecting as Complainant's details are not in fact Complainant's details. The Complainant has relied on the extracts from the webpage of disputed domain name of Complaint and submits that it make amply clear that the use of the mark 'KENT' and 'KENT RO SERVICE' by the respondent is an attempt to deceive people into believing that they are associated with the complainant and are authorized service providers of KENT, which is not the case. The Complainant referred to Previous Panels such as WIPO Case no. Case No. D2018-1891 *Mou Limited v. Whois Agent, Domain Whois Privacy Protection Service, Domain Admin Privacy Protect, LLC (PrivacyProtect.org)/Luo Yuandong, Laoyuandong, Song Li Hong, Sun YanQi* have held that it is not conceivable that the Respondents would not have been aware of the Complainant's trademark rights at the time of the registration of the Disputed Domain Names particularly given that the Respondents have used the Complainant's marks on the website to which the Disputed Domain Names resolve. In addition, nowhere do the Respondents disclaim on its website the non-existing relationship between themselves and the Complainant. Therefore, the Panel concluded that the Disputed Domain Names were registered in bad faith.

The Complainant further submitted that the Mark "KENT" has no meaning except that of Complainants name and Mark. It is further reiterated that Complainant's business under the Mark is substantial, is well-known in India and its reputation extends beyond India. The Complainants being the largest manufacturers of water purifiers in India adds weight to the submission that there is bad faith acquisition of the disputed domain by the Respondent.



The Complainant submitted that the Mark KENT, is well known and has significant presence much prior to the creation date (14 October 2016) of the disputed domain. The complainant and its Mark are well known due to the extensive sale and marketing, endorsement by famous Indian celebrities and various awards and accolades awarded to the Complaint's company. It is evident that the Respondent has registered the disputed domain after being cognizant of the fact the huge presence of the Complaint and its Mark KENT. It is further submitted that a mere glance at the Respondent's domain name <www.kentcustomerservice.in/> makes it evident that Respondent is attempting to portray an association with the Complainant.

The Complainant further submitted that the Respondent in its Agreement with Registrar has given representational and warranty that the registration of the disputed domain does not infringe on the legal rights of any third party. In the Registrar's Dispute Policy, the Respondent has categorically given the following representation:

"2. Your Representations

By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your

responsibility to determine whether your domain name registration infringes or violates someone else's rights."

The Complainant submitted that it is evident that the representations made to the Registrar are in bad faith and submits that the Respondent's bad faith registration and use is established.

Respondent

The respondent has not replied to the complainants contentions.

Panel Observation

Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"Circumstances indicating that the Respondent has registered or has 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 Registrar's documented out of pocket costs directly related to the domain name; or

the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract internet user to its website or other on -line location, by creating a likelihood of confusion with

the Complainant's mark as to the source , sponsorship, affiliation or endorsement of its Website or location or of a product or services on its website or location."

The panel is of the view that from the documents/records and evidence put before it by Complainant has establish that Respondent has no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. It is very unlikely that Respondent before registering the domain name kentrocustomerservice.in had no knowledge of Complainant's rights in the trade mark KENT, which evidences bad faith.

It is also a well settled principle that the registration of a domain name that incorporates a well known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision : The Ritz Carlton Hotel Company LLC vs. Nelton Brands Inc., INDRP/250, December 30,2011]

By registering the disputed domain name with actual knowledge of the Complainant's trademark "KENT", the Respondent 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 case is the Complainant KENT.

The respondent has not replied to the Complainant's contentions despite the opportunity given for same.

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel

comes to the conclusion that the registration by Respondent is in bad faith. Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

(8) Remedies Requested

The Complainant requests this Administrative Panel that the disputed domain <www.kentrocustomerservice.in> be transferred to the Complainant.

(9) Decision

The following circumstances are material to the issue in the present case:

The complainant through its contentions based on documents /records and evidence has been able to establish that the complainant have been carrying on their business activities exclusively under the well known trademark/name KENT and it has presence not only in India but worldwide. The Complainant has also been able to establish that apart from significant common law rights in the Mark KENT, the complainant has statutory rights in the Mark KENT through registration of the Mark KENT in India and other countries. The Respondent however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.

Taking into account the nature of the disputed domain name and in particular the ".in" extension alongside the Complainant's mark which is confusingly similar , which would

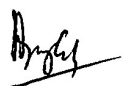
inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. {Relevant Decisions: Graco Children's Products Inc. V. Oakwood Services Inc. WIPO Case No.2009-0813: Ville de Paris V. Jeff Walter, WIPO Case No.D2009-1278}.

It is Registrant's/Respondent's duty under Para 3 of the .IN Dispute Resolution Policy to warrant and prove to the contrary that :

- "(a) the Registrant/Respondent has accurately and completely made the Application Form for registration of the domain name;*
- (b) to the Registrant's Knowledge, the registration of the domain name will not infringe upon or otherwise vitiate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Registrant's responsibility to determine whether the Registrants's domain name registration infringes or violates someone's rights."



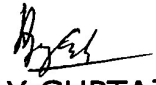
The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name. Whereas, the Respondent's adoption and registration of the disputed domain name is dishonest and done in bad faith.

This panel is of the view that it is for the Complainant to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent has registered the disputed name and is using it in bad faith.

RELIEF

The Respondent's registration and use of the domain name [kentrocustomerservice.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In accordance with Policy and Rules, the Panel directs that the disputed domain name [kentrocustomerservice.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India.
Dated :25 November, 2021


[AJAY GUPTA]
Sole Arbitrator