



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL21724319331191R
Certificate Issued Date	: 15-Jul-2019 12:22 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1749257129012775R
Purchased by	: DIVYA BALASUNDARAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DIVYA BALASUNDARAM
Second Party	: Not Applicable
Stamp Duty Paid By	: DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (National Internet Exchange of India)

Before the Sole Arbitrator, Divya Balasundaram

Disputed Domain Name – "kia.co.in"

In

Kia Motors Corporation

Versus

Mr. Raghav Bansal

Statutory Alert:

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

ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name – “kia.co.in”

IN THE MATTER OF:

Kia Motors Corporation,
12, Heolleung-Ro, Seocho-Gu,
Seoul, South Korea.

Complainant

Versus

Mr. Raghav Bansal
4 Silver Drive Apt 9,
Nashua, New Hampshire – 3060
United States

Respondent

1. THE PARTIES

- 1.1 The Complainant in these proceedings is Kia Motors Corporation, a company incorporated under the laws of Republic of Korea, having its registered office at 12, Heolleung-Ro, Seocho-Gu, Seoul, South Korea, represented by Khurana & Khurana, Advocates and IP Attorneys, E-13, UPSICD Site IV, Kasna Road, Behind Grand Venice Mall, Greater Noida – 201310, UP, NCR India.
- 1.2 Respondent in these proceedings is Mr. Raghav Bansal, 4 Silver Drive Apt 9, Nashua, New Hampshire-3060- United States.

2. DISPUTED DOMAIN NAME AND REGISTRAR

- 2.1 This dispute concerns the domain name kia.co.in which was registered on 18.08.2014 (the ‘disputed domain name’). The Registrar with which the disputed domain name is registered is GoDaddy.com, LLC, 14455 North Hayden Rd, Ste. 226, Scottsdale, AZ 85260, USA.

3. PROCEDURAL HISTORY

- 3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).
- 3.2 NIXI vide its email dated July 5, 2019 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on the same day.
- 3.3 Arbitrator was appointed vide NIXI's email of July 12, 2019.
- 3.4 Arbitrator sent email on July 12, 2019 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days.
- 3.5 Subsequently, the Arbitrator received an email dated July 15, 2019 from Primus India stating as follows: 'We purchased the domain name kia.co.in before Kia Motors had started operations in India and before Kia trademark was registered in India. We have not done anything affecting the Company image in any manner whatsoever and had not solicited the customers from the above mentioned website, therefore, we have not earned a single rupee from the website. This website is lying dormant since mid of 2018 or maybe before that and there is hardly any traffic on website. We have clearly mentioned source of all the news article given on the website. We have also clearly put website disclaimer as per screenshot here under: (image provided). We were not aware that the images of Kia cars were patented by kia and therefore we could not use them. If company has any issues with the content of the website, we are happy to bring down the website / website contents completely. However, as mentioned earlier we have bought this domain name and incurred cost in development/maintenance/renewal of domain. We are the legal owner of the domain and therefore, we are not willing to part with the domain name.'
- 3.6 To this the Arbitrator responded saying that since the arbitration process is already underway, Respondent could give its additional submissions if any, within 10 days. After this period, arbitrator would consider the submissions of both sides from a legal perspective and pass the award.
- 3.7 Further, an email dated July 21, 2019 from the Respondent to the Complainant's counsel was forwarded to Arbitrator whereby Respondent stated he was unaware he owned this domain name and indicated willingness to transfer it.



- 3.8 Another email dated July 24, 2019 was received from Primus India inter alia stating that Respondent has no role for listing of domain which is managed by Primus India. Contents of Primus India's previous email were also reiterated, but willingness was expressed for a conditional transfer of the domain name.
- 3.9 After reviewing all the above submissions, the Arbitrator addressed an email of July 29, 2019 to all concerned parties that the Panel would proceed to pass its award.
- 3.10 The language of these proceedings is English.

4. BACKGROUND OF COMPLAINANT AND ITS RIGHTS IN TRADEMARK KIA

- 4.1 The Complainant is a Korea based company founded in December 1944. It is now principally engaged in the manufacture and distribution of automobiles and also manufacture of automobile components, as well as provision of rental and maintenance services.
- 4.2 The Complainant commenced its operations with production of steel tubing and parts of bicycle. The Complainant progressed to manufacturing its very first domestic bicycle in 1951. It then ventured into making cars, motorcycles and trucks from 1957. Complainant entered the automobile arena again in 1986 through a partnership with Ford Motor Company and went on producing Mazda-derived automobiles which were sold in South Korea as well as were exported to countries like America and Australia. Beginning 1992, the Complainant started expanding one region at a time in America and by 1995, it had over one hundred dealerships across thirty states and it set a record by selling 24,740 automobiles. In the year 1998, the Complainant came to an agreement with Hyundai Motor to exchange ownership between the two companies. As a result, Hyundai acquired 51% stake in the Complainant, and the Complainant became an owner of 22 Hyundai Motor subsidiaries.
- 4.3 The Complainant is a maker of world-class quality vehicles for the young-at-heart and is Korea's oldest manufacturer of motor vehicles. Over 3 million vehicles a year are produced at 14 manufacturing and assembly operations in five countries which are then sold and serviced through a network of distributors and dealers covering around many large numbers of countries. The Complainant today has over 40,000 full time employees' worldwide and annual revenues of over US\$14.6 billion.
- 4.4 The Complainant distributes its products within domestic market and to overseas markets, such as North America, Europe and other Asian countries, among others. The Complainant is the major sponsor of the Australian Open and an official automotive



partner of FIFA – the governing body of the FIFA world Cup. The Complainant's brand slogan – “The Power to Surprise” – represents the company's global commitment to surpassing customer expectations through continuous automotive innovation.

- 4.5 The Complainant has become one of the world's fastest growing automakers, selling vehicles in large number of countries. To build a successful long-term brand vision that can truly be shared with customers, the Complainant has placed 'design' at the very core of its strategy and has reformulated its entire operational philosophy to achieve this goal. The move towards a design-led expanded product range has resulted in new models such as Soul, Optima and Sportage which have won influential design awards and attracted thousand of new customers of Complainant. In 2010, Complainant's global sales surpassed the 2 million unit mark for the first time in company history.
- 4.6 The Complainant is investing heavily in India, having recently completed construction of a US\$1.1 billion manufacturing facility in the Anantapur District following the signing of an MOU with the State Government of Andhra Pradesh in April 2017. The plant, employing roughly 3000 persons, is scheduled to begin mass production in the second half of 2019 with an initial production capacity of 300,000 units per year. The Complainant has publicly stated their plans to invest US\$2 billion in India by 2021, resulting in the creation of an estimated 10,000 jobs.
- 4.7 In the year 1952, it adopted the term “KIA” as its trade mark and has been openly, continuously and extensively using the same worldwide alongwith variants for its business. The Complainant's goods and services under the mark “KIA” are well known and available in 172 countries.
- 4.8 Apart from the protection it has under common law, in order to preserve its statutory rights in its trademarks, the Complainant has applied for and/or secured registration for KIA and its variants in many countries of the world which include United Kingdom, the United States, Korea, India, Malaysia, Bulgaria, Switzerland, Philippines, Italy, Turkey, European Community, Singapore, Vietnam, Indonesia and many other countries in the relevant classes.
- 4.9 The Complainant is the owner of the websites <https://www.kia.com>(since 1996) and <http://www.kia-motors.in>(registered in 2017). Additionally, the Complainant has to its credit various other websites, which contain extensive information about the Complainant and its products and services marketed and sold under the trademark and corporate name “KIA”.
- 4.10 In and around April 2019, the Complainant became aware of the Respondent's disputed domain kia.co.in.



5. LEGAL SUBMISSIONS

- 5.1 The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
- 5.2 The Complainant submits that the disputed domain name `kia.co.in` contains the Complainant's complete trademark / trade name registered in various countries. The disputed domain name is visually and phonetically identical and confusingly similar to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to violation of Para 3 of the INDRP which states that a Registrant is solely responsible to ensure before the registration of the disputed domain name that such domain name registration does not violate the rights of any proprietor / brand owner.
- 5.3 The Respondent has no rights or legitimate interest in respect of the disputed domain name.
- 5.4 The disputed domain name was registered by the Respondent on 18.08.2014. Hence, such subsequent adoption and registration of the disputed domain name shows that the Respondent has no right or legitimate interest in the domain name `kia.co.in`.
- 5.5 The Complainant submits that the Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark "KIA" or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India.
- 5.6 The Complainant submits that the disputed domain name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.
- 5.7 The Respondent has registered the disputed domain name in bad faith.
- 5.8 The Complainant states that the Respondent was duty-bound to conduct the bare minimum due diligence before applying for the registration of the impugned domain name in order to ensure that it does not infringe the rights of any third party. A simple Google search of the term "KIA" would have established whether or not they were violating the rights of any third party. The impugned domain name was registered a considerable period of 62 years after the Complainant's trade mark. The Respondent registered it with the intent to disrupt the Complainant's business or to attract internet users to other websites by creating likelihood of confusion.



- 5.9 Moreover, a simple Google search with the term “KIA” generates results that are solely related to the Complainant’s website and business, therefore, it is safe to infer that the Respondent must have been aware of the Complainant’s rights at the time of registering the impugned domain name.
- 5.10 Other pieces of evidence of bad faith include non-hosting of a regular website on the said domain name, absence of any rights or legitimate interests in acquiring the said domain name, absence of a conceivably legitimate use to which the domain name can be put and an attempt to prevent the owner of the trademark from reflecting the mark in a corresponding domain name. A simple perusal of the website at kia.co.in reveals that it is not adopted for any bonafide use by the Respondent as all the tabs present in the website namely Suv, contact, blog of the company are not updated and a click on the above tabs in the website takes the customers to the page displaying “NOT FOUND” and therefore, there is strong and reasonable likelihood that the domain name is adopted in absolute bad faith with mere intention to resell or rent the same to the Complainant or any third party which would cause irreparable damage to the Complainant.
- 5.11 Further the bad faith use and registration of the impugned domain name by the Respondent is evident from the fact that the Respondent has not only used the said domain name for depicting the automobiles; but also the automobiles as reflected on the impugned domain name belong to the Complainant which includes renowned models of Cars of the Complainant. This is also a clear violation of the proprietary rights of the Complainant which evidently conclude the bad faith use and registration of the impugned domain name by the Respondent and that the Respondent has no bonafide interest in the impugned domain name. Thus the Respondent has not only registered the impugned domain name but also projected Complainant’s products without any authorization from the Complainant causing confusion or deception among customers who are likely to believe that the website at the impugned domain name belongs to the Complainant meant for the Indian Consumers which is not the fact but a clear malafide and bad faith conduct on part of the Respondent.
- 5.12 The Complainant submits that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant’s name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent’s website or the products or services offered/available on the Respondent’s website thereby violating Para 6 of INDRP.
- 5.13 Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark “KIA” and its variants from reflecting the said trademark in its domain name in India and across the world.



- 5.14 The Complainant further submits that the Respondent knowing of the Complainant's imminent investment and development of production facilities in India, and aware of the subsequent public interest and web traffic such a development would generate, intentionally registered the disputed domain name to misleadingly divert the consumers or traders of the Complainant to the disputed domain name.

6. DISCUSSION AND FINDINGS

- 6.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant.
- 6.2 The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 6.3 The Arbitrator finds that the Complainant has satisfactorily established all the elements necessary to maintain its complaint. The disputed domain name is identical to Complainant's trade mark KIA. The Complainant has established its prior trademark rights in KIA – a perusal of the list of the trademarks in India registered/applied for with their online from the Trademark Office shows that the Complainant owned the KIA mark in India as early as 1983 (valid and subsisting on the Register even now) and there are a few other marks registered prior to 2014 (Respondent's registration of the disputed domain name). Mere addition of the TLD .co and .in do not serve to differentiate the disputed domain from Complainant's trademark. Apart from the statutory rights, the Complainant has also widely used its mark – being a sponsor of the Australian Open and official automotive partner of FIFA indicate its wide spread use and that Respondent is deemed to be aware of the Complainant and its business.
- 6.3 The Respondent is neither commonly known as KIA nor has applied for any registration of the mark "KIA" nor has registered his business under the said name. The Respondent was also not authorized or licensed by Complainant to use the domain name. The website corresponding with the disputed domain was not in bonafide use; the automobiles depicted belong to the Complainant. The Respondent has tried to attract Internet users to its website by creating a likelihood of confusion or association with the Complainant's name.
- 6.4 The Arbitrator has also gone through the contentions received from Respondent herein as well as Primus India who claim to manage the domain. It is an erroneous assumption that the disputed domain name was purchased before KIA trademark was registered in India (since registration for KIA trademark in India goes back to 1983). The domain name kia.com was also registered by the Complainant in 2006 which is well prior to year of registration of the disputed domain name being 2014. Further, corresponding website

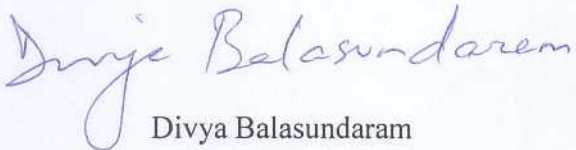


being dormant or mentioning source of all news articles and disclaimer cannot help the Respondent avoid its liability. Ignorance of rights of Complainant cannot be accepted, given that a simple search on the Internet / search through TM Office records would have showed up Complainant's rights. It is also significant to note that in its first response, Primus India was unwilling to transfer the domain name which reflects lack of good faith in its part.

- 6.5 In the light of all this, the Arbitrator finds that Complainant has established all elements essential to maintain its complaint and Respondent has not effectively countered any of the same. Be that as it may, Primus India has subsequently shown willingness to transfer the domain name, and the Respondent herein has stated the same in his response.

7. DECISION

- 7.1 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <kia.co.in > be transferred to the Complainant.



Divya Balasundaram
Sole Arbitrator

Date: July 29, 2019
Place: New Delhi.