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Property Description : Not Applicable
Consideration Price (Rs.) : 0
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IN-DL10847915771025U

NATIONAL INTERNET EXCHANGE OF INDIA
B Wing, 9th Floor, Statesman House Building
148, Barakhamba Road,
New Delhi-110001



PACCAR Inc.
V/s
M/S Puravankara Limited,

[Signature]

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AWARD

1. THE PARTIES

The Complainant is **PACCAR Inc.** Address: P.O. BOX 1518 BELLEVUE WA-98009 UNITED STATES OF AMERICA ,by its authorized representative Remfry & Sagar, E-mail: remfry-sagar@remfry.com, ca.brijesh@remfry.com, dhruv.grover@remfry.com Address: Remfry House at the Millennium Plaza Sector-27, Gurgaon-122009 Telephone: 0124-2806100; 4656100, Fax: 0124-2806101; 2572123.

The Respondent is **Devendra Naidu**, Puravankara Projects Ltd., Address: 130/1, Ulsoor Road, Bangalore, Karnataka-560042, India.

Email: devendra@puravankara.com , sales@puravankara.com , Phone: +91.8043439999

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name KENWORTH.IN

The disputed Domain name is KENWORTH.IN

The abovesaid domain registered particulars in detail is provided along with the complaint.

Registrar Name: Endurance Digital Domain Technology LLP

IANA ID : 801217

Date of creation: 01.09.2015

Date of Expiry : 01.09.2022

Registrant Client ID : EDTRP-11227524

Registrant ROID: C52124E3128094D948EECOD5455EF4276-IN

Email: devendra@puravankara.com

Phone: +91-8043439999

3. PROCEDURAL HISTORY

- (a) The Complainant has filed a complaint on 08.02.2022 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-A to J**. The exchange verified the complaint, satisfied

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the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.

- (b) The NIXI has appointed Sh. R.K. Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 25.02.2022. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence on 26.02.2022, as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 28.02.2022 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice, it has also been mentioned that the respondent to file the reply/response within 10 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with and the complainant sent the notice to the respondent, who has sent the response through mail on 15.03.2022. Hence, the award is being passed on the merits.

4. Factual Background:

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

- a) PACCAR Inc. is a complainant and is global technology leader in the design, manufacture and customer support of premium light, medium and heavy- duty trucks under the *Kenworth, Peterbilt and DAF* nameplates. The Complainant also designs and manufactures advanced diesel engines, provides financial services, information technology, and distributes truck parts related to its principal business.
- b) KENWORTH was founded in the year 1923, and is named after its two principal stakeholders, Harry Kent and Edgar Worthinton. It is currently headquartered in Seattle, USA. With customization being KENWORTH's hallmark, it sold 80 trucks in 1924, and produced nearly two trucks per week in the next year. In 1927, when Harry Kent became the Company's President, the Company saw steady growth, which lead to the opening of its factory in Seattle. When the Complainant bought KENWORTH in 1944, Paul Pigott struck a

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deal with the owners, and KENWORTH became a wholly owned subsidiary of the Complainant. KENWORTH has been producing military as well as commercial vehicles. By 1950, the Company's foreign sales accounted for 40 per cent of its total sales.

- c) In the year 1905, William Pigott, Sr. founded *Seattle Car Mfg. Co.* to produce railway and logging equipment at its plant in West Seattle. The Company later merged with Twohy Brothers of Portland to become 'Pacific Car and Foundry Company' (PACCAR), a name it retained for the next 55 years. The Complainant entered the heavy-duty truck market in 1945 with its first major acquisition, *Kenworth Motor Truck Company* of Seattle. Pacific Car and Foundry greatly expanded its heavy-duty truck capability with the purchase of *Peterbilt Motors Company* in 1958. In the year 1960, the Complainant became an international truck. In the year 1986, the Complainant signed a merger agreement with *Trico Industries, Inc.*, and became a recognized world leader in manufacturing oil field pumps and accessories.
- d) The acquisition of *DAF Trucks N.V.* in 1996 and *Leyland Trucks* in 1998 established the Complainant as one of the major truck manufacturers in the world. In the year 2010, the Complainant unveiled its *PACCAR MX engine line* for North America. The Complainant invested \$400 million in the PACCAR Engine factory and technology center in Columbus, Mississippi, to assemble the proprietary engines.
- e) The Complainant having extensive dealer network of 2,200 locations, including in India. PACCAR Global sells its products in more than 100 countries and is expanding its dealer network in Asia and throughout the world. Approximately half of the Complainant's revenues and profits are generated outside the United States. *PACCAR Parts* operates a network of parts distribution centers offering aftermarket support to Kenworth.
- f) PACCAR Financial Services provides finance, lease and insurance services to dealers and customers in 24 countries including a portfolio of more than 1,80,000 trucks and trailers and total assets in excess of \$13 billion, the entire detail in this regard is available in Annexure-A.
- g) It started producing a record number of trucks, year after year. In 1972, when KENWORTH was celebrating 50 years of excellence,

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its sales hit the five- digit mark for the very first time, the relevant detail is provided in **Annexure-B.**

- h) In addition to the aforesaid, the complainant's website, www.kenworth.com is its primary presence on the Internet for global promotion. Additionally, the website www.paccar.com clearly shows references to the Complainant's brand 'KENWORTH'. The website is accessible worldwide, including in India and the public can gather extensive information about the Complainant, and its KENWORTH brand. Further, the Complainant's recognition and appreciation can be assessed from **Annexure-C.**
- i) The Complainant has taken utmost care to secure statutory rights in the mark 'KENWORTH'. The mark KENWORTH stands registered across the globe for varied goods and services with the earliest registration dating back to the year 1954. An illustrative list comprising some of the Complainant's registrations in respect of the mark KENWORTH are as follows:

Mark	Registration No. / Country	Date of Application	Class
KENWORTH	0717452 US	October 19, 1960	7, 12, 22, 27
KENWORTH	174537 AU	June 26, 1962	12
KENWORTH	1121447 US	July 26, 1976	25, 26
KENWORTH	1160318 US	February 12, 1979	37
KENWORTH	1183931 US	July 16, 1979	28
	TMA316745 CA	October 22, 1985	12, 37

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KENWORTH	009897 BH	November 18, 1985	12
KENWORTH	1782381 US	March 04, 1991	6, 9, 11, 12, 20
	2000680 US	December 09, 1994	37
	2032057 US	February 05, 1996	12
KENWORTH	777145 IN	November 15, 1997	12
	2228607 US	February 27, 1998	37
   	300215 NZ	October 22, 1998	37

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 KENWORTH	2829724	US	May 27, 2003	37
KENWORTH	382704	UY	July 05, 2007	12
KENWORTH	877091	CL	July 24, 2009	12
 KENWORTH	1036824	WO	April 14, 2010	12
 KENWORTH	2090575	IN	January 28, 2011	37
 KENWORTH	2090574	IN	January 28, 2011	12
 KENWORTH	1241775	MX	May 23, 2011	12
KENWORTH	2303444	IN	March 21, 2012	7, 25, 28
KENWORTH	5130967	US	November 2012	1, 4
KENWORTH	2524431	IN	May 03, 2013	1, 4
KENWORTH	4501367	US	August 09, 2013	12
	5122229	US	April 21, 2016	37, 39, 42

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As is thus evident, the trade mark KENWORTH forms an integral part of the Complainant's business/activities and serves as its principal trade mark and domain name/website, the entire details is available in **Annexure-D.**

- j) The Complainant's domain name 'kenworth.com' stands registered since November 7, 1994. As evident from the aforesaid, the Complainant is the sole registered proprietor of several domain names containing 'KENWORTH'. The Complainant's website is very popular amongst Internet users, disseminates valuable information and is a source of knowledge of its activities under the KENWORTH marks, the relevant information is available in **Annexure-E.**
- k) In view of the foregoing, it is evident that the mark KENWORTH has on account of extensive and continuous use and trade mark registrations, become exclusively identified with the Complainant and its business. Therefore, the Complainant's trade mark/name KENWORTH has all the characteristics of 'well-known' mark and with Complainant's global presence, has acquired goodwill and reputation in the aforesaid mark.
- l) The said marks are representative of the Complainant's brand identity, business reputation and public identification throughout the globe, including India. The Complainant has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in the trade mark KENWORTH. In fact, Complainant has been extremely vigilant in protecting its intellectual property rights in the trade mark KENWORTH and has taken stringent legal actions against third party infringers across the globe. In this regard, complainant has secured successful orders from WIPO Arbitration and Mediation Center. Copies of the same are available in **Annexure-F.**
- m) Recently, the Complainant became aware of a domain name viz. 'kenworth.in' registered in the name of 'Puravankara Projects Ltd,

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the same was registered on September 01, 2015. Upon visiting the website of the Registrant, it is clearly visible that no website is being operated under the domain name 'www.kenworth.in'.

- n) On the other hand the respondent claiming is a reputed builder in India having business since 1975, carrying on business on several residential and commercial projects in different parts of India. Further claimed that the said domain was registered on 01.09.2015 and claiming leading real estate developers. The respondent clarified that the domain name www.kenworth.in is not operational, claiming registered trade mark. The respondent submitted that the complainant has honestly registered the domain and has legitimate rights and interest in the same. Further stated that the goods of the complainant and services of the respondent is completely differentiable. Further stated that the domain is not being used malafidely and illegally. The respondent states since the website is inoperable, it creates confusion and intends of tarnishing the reputation and goodwill of the complainant and claimed honest adoption of the domain kenworth in the year 2015.

5. **DISCUSSION AND FINDINGS:**

The Rules instructs this Arbitrator as to the Principles to be used in rendering its decision. It says that, "a panel shall decide a Complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable".

According to the Policy, the Complainant must prove that:-

- a) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;
- b) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- c) The Registrant's Domain name has been Registered or is being used in bad faith.

(A). **Identical or Confusingly Similar:**

That the Registrant's domain name is identical to the trade mark in which the Complainant has rights. The domain name 'kenworth.in' is identical to and comprises in its entirety the Complainant's trade/service mark/name KENWORTH, which is a registered trade

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mark of the Complainant, which was founded in the year 1923, the entire detail is provided here in before in para-I, whereas the dispute domain name got registered by respondent only on 01.09.2015, whereas the complainant's domain kenworth.com was created and registered many years from the impugned domain, on 07.11.1994. the trade and service mark kenworth stands registered since 19.10.1960 and has been in used as early as 1954. The trade and service mark has also been registered in India by the complainant since 05.11.1997. Hence, from the aforesaid facts it is crystal clear the complainant is a much prior adopter and user of the domain name and the respondent on the other hand has no legal right over the dispute domain name.

(B). Rights or Legitimate Interests :

1. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Registrant has to establish one or more of the circumstances enumerated in Paragraph 6 of the INDRP Policy to assert proprietary rights over the domain in question.

2. As regards Paragraph 6(a), it is submitted that the Registrant's adoption and use of a dishonestly adopted and confusingly similar domain name does not amount to a '*bona fide*' offering of goods and services. Given the Complainant's mark's well- known nature, its widespread use and repute in the world, including in India, and the factum of Registrant acquiring the impugned domain for the sole purpose of preventing the rightful owners from acquiring it, the Registrant's such adoption thereof to provide services under the impugned domain name is not *bona fide*. Intentional ignorance of the Registrant in disregarding the Complainant's pre- existing trade mark and domain name, and commencing use of the domain name comprising KENWORTH evidences its *mala fide*. It is trite law in respect of domain name proceedings that use which dishonestly and intentionally rides on the repute of another mark cannot constitute '*bona fide*' offering of goods and services.
3. The complainant never authorized or licensed to use its mark/name KENWORTH. Further, the Complainant has first used the mark KENWORTH in the year 1944 and registered the domain and trade/service mark comprising KENWORTH since the year 1960. Due to the extensive and continuous use of the KENWORTH trademarks, the same have become well- known and come to be exclusively associated with the Complainant and no one else.

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4. Registration of the impugned domain is aimed to benefit from the immense goodwill and reputation of the Complainant's trade mark KENWORTH, divert visitors/customers by creating initial Internet confusion and thereby commercially profit from use of the Complainant's trade/service mark/name KENWORTH. Thus, the Registrant is indulging in (i) unfair use of the domain name with an intention to reap profits therefrom, (ii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade/service mark/name KENWORTH. Therefore, the respondent have failed to justify any legitimate interest in the domain name 'kenworth.in'. Hence, the respondent have no legal right to use the disputed domain name.

(C). **Registered and Used in Bad Faith:**

1. *By using the domain name, the Respondent has intentionally attempted to attract Internet users by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement.*
2. *The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor.* It is clear that the respondent was aware of the Complainant's prior rights in its registered marks, as well as of Complainant's business, and yet chose to adopt the suspiciously similar domain name 'kenworth.in' which, when visited, shows that the webpage is not available, thereby indicating that the website is not operational in the first place. This clearly indicates the sole purpose of causing unnecessary damage to the Complainant by hoarding the impugned domain. Registration of the impugned domain name 'kenworth.in' is detrimental to the Complainant's statutory right in the registered trade mark KENWORTH. Further, unlike most of the domain names comprising KENWORTH, which are registered in the name of the Complainant, the impugned domain name comprising KENWORTH is being unnecessarily held by the Respondent, thereby preventing a rightful holder to register and use the same in relation to the Complainant's business/ services/ products.
3. *Its mala fide to divert Internet users to its website by using the mark/name of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation of the Registrant's website. Further, Internet users desirous of accessing the Complainant's website will inevitably get confused and therefore may be led to the impugned website. Thus, the Respondent's website may be accessed believing it to still be*

Dr. S. S. S. S.

affiliated with the Complainant.

4. The respondent with dishonest purpose registered the impugned domain name, solely looking to prevent the Complainant from using the same. The Respondent possession of the domain name in question is therefore an act of bad faith.

In view of the above, it is clear that the Domain Name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

6. **DECISION**

In light of the foregoing findings, namely, that the Domain name is confusingly/deceptively similar to Complainant's well-known brand "KENWORTH", a mark in which the Complainant has rights, that the Respondent has no claims, rights or legitimate interests in respect of the disputed Domain name, and that the disputed Domain name was Registered in bad faith and is being used in bad faith, in accordance with the policy and the rules, the Arbitrator orders that the Domain name " **KENWORTH.IN**" be transferred to the Complainant.

This award is passed at New Delhi on this 30TH day of MARCH, 2022.



R. K. KASHYAP
SOLE ARBITRATOR