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NON JUDICIAL

₹100

₹100

കേരള സർക്കാർ
GOVERNMENT OF KERALA
e-Stamp

e-Stamp Serial Number : 20252600000458173

Verification Code : 684132845V

Govt. Reference No.(GRN) : KL003562478202526E
 Purpose : Bond
 Amount of Stamp Paper Purchased in Numeral : ₹ 100
 Amount of Stamp Paper Purchased in Words : Rupees One Hundred
 Stamp Paper Purchased on : 23/04/2025
 First Party Name : Adv SUNIL V MOHAMMED
 First Party Address : Arbitrator, NIXI, Delhi
 Second Party Name : LEGAL
 Second Party Address : NIXI, DELHI
 Vendor Code & Name : 11102955 - PADMANABHAN M R
 Treasury Code & Name : 1110 - Additional Sub Treasury, Ernakulam

Please write or type below this line

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

Adv. SUNIL V. MOHAMMED BA., LL.B.
(Sole Arbitrator)

AWARD

Dated 23rd April, 2025

Venue: New Delhi, India




This can be verified by
https://www.estamp.treasury.kerala.gov.in/index.php/estamp_search using e-Stamp
Serial Number and Verification Code.

In case of any discrepancy, please inform the competent authority.

M. R. PADMANABHAN
High Court Stamp Vendor
ERNAKULAM

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Adv. SUNIL V. MOHAMMED BA., LL.B.
(Sole Arbitrator)



1. The Parties to the Arbitration:

1.1 The Complainant in the Arbitration Proceedings is **INSTAKART SERVICE PRIVATE LIMITED**, Buildings Alyssa, Begonia and Clover, Embassy Tech Village, Outer Ring Road, Bangalore, Devarabeesanahalli Village Bengaluru, Karnataka, India, 560103 (e-mail: regulatory@flipkart.com). The Complainant is represented in these proceedings by its authorized representatives Cyril Shroff, Vadana Shroff, Swati Sharma, Revanta Mathur, Ashwin Sapra, Pallavi Singh Rao, Gauhar Mirza, Biplab Lenin, Gitika Suri, Rohin Koowal, Andri Shukla, Sannat Chandna, Sandeep Pandey, Cyril Amarchand Mangaldas, Level 1 and 2, Max Towers, C-001/A Sector 16 B, Noida-201301, Uttar Pradesh, India (e-mail: swati.sharma@cyrilshroff.com), as per Power of Attorney dated 10th January, 2025.

1.2 The Respondent in the proceedings is **Mr. Anand Raj, E Kart**, C132 Kendriya Vihar, Sector 51, Noida-201301, Uttar Pradesh, India (e-mail: anand.raj@hotmail.com), as per the contact details publically available in **Annexure-1** WHOIS record provided by the National Internet Exchange of India (hereinafter referred to as **NIXI**) to the Complainant. The Respondent is represented in these proceedings by its authorized representatives Adv. Kshitij Malhotra, Adv. Shivnagi Verma and Ms. Manas Vridhi Global IP India, 4th Floor, Plot 37, Sector-11, Dwarka, New Delhi-110075, India (e-mail: kmalhotra@gip-india.in and shivnagi.verma@gip-india.in), vide Power of Attorney dated 17th February, 2025.

2. Applicable Law and Jurisdiction:

2.1 The present Dispute Resolution Process is in accordance with Policy No. 5 of the .IN Domain Name Dispute Resolution Policy (hereinafter referred to as the **IN Policy**) and .IN Domain Name Dispute Resolution Rules of Procedure (hereinafter referred to as the **INDRP Rules of Procedure**), based on the Arbitration and Conciliation Act, 1996 as amended from time to time, adopted by the NIXI and sets forth the legal framework for resolution of disputes between a Domain Name Registrant and a Complainant arising out of the registration and use of an .IN Domain Name.



2.2 By registering the disputed Domain Name with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the Policy and Rules framed thereunder (See Policy No. 15 and 16 of the .IN Policy and Rule 13 (a) INDRP Rules of Procedure).

3. The Domain Name and Registrar:

3.1 The disputed Domain Name is "<ekart.in>", which is registered on 14th April, 2012 with Endurance Digital Domain Technology LLP, by the Respondent registrant.

3.2 The particulars of the registration of Domain Name as found in the .IN Registry database produced as **Annexure-1** are as follows:

DNS Form	ekart.in
User Form	ekart.in
ROID	D6163185-IN
Registrar Name	Endurance Digital Domain Technology Private Limited
IANA ID	801217
Create Date	2012-04-14T11:38:45Z
Expiry Date	2025-04-14T11:38:45Z
Last updated Date	2024-10-24T09:52:33Z
EPP Status	serverUpdateProhibited serverTransferProhibited serverRenewProhibited serverDeleteProhibited clientTransferProhibited
Domain State	Registered
Assigned Nameservers	doma173134.mercury.orderboxdns.com doma173134.earth.orderbox-dns.com doma173134.venus.orderbox-dns.com doma173134.mars.orderbox-dns.com
Registrant Client ID	EDTRP-12493882
Registrant ROID	C1480AE901D1C40AF98A7F08ED8D442AD-IN
Registrant Create Date	2022-05-02T18:24:42Z
Email	anand.raj@hotmail.com
Phone	(+91)9311500049
International Postal Name	Anand Raj
International Postal Organisation	E Kart



International Postal Street Line 1	C132 KENDRIYA VIHAR, SECTOR 51
International Postal City	NOIDA
International Postal State	Uttar Pradesh
International Postal Postcode/ Zip Code	201301
International Postal Country	IN
Local Postal Country	Endurance Digital Domain Technology Private
Registrant Registrar Name	Limited
Registrant Registrar IANA ID	801217

4. Procedural History

4.1 The Sole Arbitrator, Adv. Sunil V. Mohammed was appointed on 22nd January, 2025, in the above INDRP case to resolve the domain dispute raised in the Complaint dated 20th November, 2024, in accordance with Rule 2(a) and 4(a) of the INDRP Rules of Procedure.

4.2 After obtaining the Statement of Acceptance and Declaration of Impartiality of Independence of the Sole Arbitrator, the NIXI has forwarded the amended complaint along with Annexures and also the WHOIS details of the domain through e-mail dated 22nd January, 2025.

4.3 On 24th January, 2025, the Tribunal issued Notice under Rule 5(c) of the INDRP Rules of Procedure to the Respondent through e-mail and the Complainant was directed to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent registrant at the address provided in the WHOIS details of the domain, in compliance of Rule 2 and 3(d) of the INDRP Rules of Procedure and to furnish proof of such service and delivery. In the said Notice, the Respondent was directed to file Reply to the Domain Complaint within 15 days.

4.4 The Complainant forwarded the soft copies of the Complaint and Annexures to the e-mail ID of the Respondent viz., *anand.raj@hotmail.com*. The Complainant as per e-mail dated 28th January, 2025 and 4th February, 2025 has informed the Tribunal about the service of notice and the Compliant and Annexures on the Respondent via e-mail and



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courier with proof of service in compliance of Rule 3(d) of the INDRP Rules of Procedure. Accordingly, the Complainant has effected the service of the Complaint and Annexures on the Respondent under Rule 2(d) (iii) of the INDRP Rules of Procedure.

4.5 Since the Respondent has failed to submit reply/response to the Domain Complaint within the time limit as mandated in the Notice dated 24th January, 2025 of the Tribunal and as the said time period had expired on 8th February, 2025, the Tribunal as per e-mail dated 9th February, 2025 granted the Respondent with another opportunity under Rule 13 of the INDRP Rules of Procedure to submit reply to the domain complaint within a further period of 10 days and in default instructed the Complainant to place its Written Submissions for further proceedings in the matter. Pursuant to the said e-mail dated 9th February, 2025, the Respondent submitted Reply/response dated 18th February, 2025 along with Annexures 1 to 7. Thereafter, both parties submitted Written Submissions on 25th February, 2025 and 27th February, 2025, respectively. In the meantime, as per Interim Application No. 1/2025, the Respondent sought for an in-person hearing. The Tribunal allowed the said Application on 4th March, 2025. Accordingly, on 18th March, 2025, the parties were provided with an in-person hearing through virtual mode.

4.6 Accordingly, the Tribunal proceeded to pass the Award under Rule 5 of the INDRP Rules of Procedure.

5. Grounds urged for the Administrative Proceedings:

5.1 The disputed domain name is confusingly similar to the Complainant's.

5.2 The Registrant has no rights or legitimate interests in respect of the domain name.

5.3 The Registrant's domain name has been registered or is being used in bad faith.

6. Complainant's Contentions:

6.1 The Complainant would contend that it is an LLC duly incorporated under the laws of India and an Indian courier delivery services company based



at Bangalore, Karnataka in India and operating under the trade name and style 'Ekart' and 'Ekart Logistics', which started its operation in 2009 as Flipkart's in-house supply chain arms. It is the contention of the Complainant that its experience in consumer services with reliable delivery and managing variability at scale has made it the preferred partner for various businesses. The Complainant would contend further that its services are provided across the e-commerce web network for its prestigious customers and all its goods and services offered under the trademarks 'EKARTS' and 'E-KARTS' have acquired unparalleled goodwill and impeccable reputation across the world, including India.

6.2 The Complainant's specific contention is that its website *ekartlogistics.com* and *ekartlogistics.in* provides information about its business, goods and services and that the website *www.flipkart.com* is popular as evident from the official LinkedIn profile with more than 50,000 followers and the official Instagram profile with more than 2500 followers. In support of the same, the Complainant has produced **Annexure-3**.

6.3 It is the contention of the Complainant that it is the proprietor of over 180 trademarks 'EKART' or 'E-KART' in India, which is being continuously and extensively used since 2009. The Complainant would rely on **Annexure-4** copies of registration certificates and status pages from the online database of TM Registry, India in support of the said contention. According to the Complainant, the following are its trademarks applied/registered in India:

(i) Trademark: E-Kart

Indian Trademark Application Nos: 2425143, 2425144, 2425145, 2425146, 2425147, 2425148, 2425149

Classes: 9, 16, 35, 38, 39, 40, 42

(ii) Trademarks: E-Kart/EKART

Indian Trademark Application Nos: 5961261, 5961262, 5961263, 5961264, 5961265, 5961266, 5961267, 5961268, 5961269, 5961270, 5961271, 5961272, 5961273, 5961274, 5961275, 5961276, 5961277, 5961278, 5961279, 5961280, 5961281, 5961282, 5961283, 5961284, 5961285, 5961286, 5961287, 5961288,



5961289, 5961290, 5961291, 5961292, 5961293, 5961294, 5961295, 5961296, 5961297, 5961298, 5961299, 5962653, 5962654, 5962655, 5962656, 5962657, 5962681, 5962682, 5962683, 5963281, 5964085, 5964086, 5964087, 5964088, 5964089, 5964090, 5964091, 5964092, 5964093, 5964094, 5964095, 5964096, 5964097, 5964098, 5964099, 5964100, 5964101, 5964102, 5964103, 5964104, 5964105, 5964106, 5964107, 5964108, 5964109, 5964110, 5964111, 5964112, 5964113, 5964114, 5964115, 5964116, 5964117, 5965985, 5965986, 5965987

Classes: 1-45

(iii) Trademarks:

ekart ekart
© 2023 ekart © 2023 ekart

Indian Trademark Application Nos: 5962126, 5962127, 5962128, 5962129, 5962130, 5962131, 5962132, 5962133, 5962134, 5962135, 5962136, 5962137, 5962138, 5962139, 5962140, 5962141, 5962142, 5962143, 5962330, 5962331, 5962332, 5962333, 5962334, 5962335, 5962336, 5962337, 5962338, 5962339, 5962363, 5962364, 5962365, 5962366, 5962367, 5962368, 5962369, 5962370, 5962371, 5962372, 2434984, 2434985, 2434986, 2434987, 2434988, 2434989, 2434990, 2434991, 2434992, 2434993, 2434994, 2434995, 2434996.

Classes: 1-45

(iv) Trademarks:



Indian Trademark Application Nos: 5600916, 5600624, 5600915, 5600600

Classes: 9, 16, 18, 25, 35, 38, 39, 41, 42

6.4 According to the Complainant, its representative has communicated through **Annexure-2** to the Legal Officer of NIXI during 8th December, 2023 and 8th January, 2024 seeking for the details of the Respondent and it was found from the WHOIS details provided by NIXI that the disputed domain name '**<ekart.in>**' was registered on 14th April, 2012 with the NIXI through the Registrar '*Endurance Digital Domain Technology LLP*'. The Complainant



would content further that it's domain name '*ekartlogistics.com*' was registered on 7th November, 2012.

6.5 It is the case of the Complainant that the Disputed Domain Name is identical and confusingly and deceptively similar to its famed and reputed trademarks EKART and E-KART and name, as it contains its prior trademark EKART in its entirety and that this would create an overall impression that the terms comprised in the Disputed Domain Name, is one of being connected to the trademarks and business of the Complainant, thereby the intention of the Respondent is to commercially exploit the Complainant's prior, famed, and reputed trademarks.

6.6 The Complainant through **Annexure-5** snapshot dated 4th October, 2019 captured on the Wayback Machine Internet Archive would content that the website that had been hosted on the Disputed Domain Name is an Indian fashion and lifestyle e-commerce platform for apparel, fashion accessories, consumer electronics, etc. which appears to have been active on 4th October, 2019. According to the Complainant, presently the said website is not active and appears to have been disabled and remains '**parked**' by the Respondent for illicit gains and the purpose of registering the Disputed Domain Name is without any bonafide intention or for use in relation to website hosting or a business. To show the same, the Complainant has produced the **Annexure-6** screenshot of the Disputed Domain Name being parked by the Respondent.

6.7 The Complainant has placed reliance on various decisions in support of its contentions as listed in **Annexure-7**.

6.8 Accordingly, the Complainant sought to transfer the Respondent's domain name under the .IN Policy to protect its rights and legitimate business and further to impose heavy costs on the Respondent as a deterrent to future bad faith registration.

7. Respondent's Contentions:

7.1 The counter contentions of the Respondent are based on his documents placed as Annexures 1 to 6, which for the sake of brevity and convenience are marked as Annexure R-1 to R-6.



7.2 The Respondent would contend that he is a highly experienced and reputed business leader of the country having more than 3 decades of experience in variety of sectors and he enjoys tremendous repute and goodwill in the market and further that he is an acclaimed Consultant and businessman having grabbed endless achievements, attained super-management skills and mustered up outstanding ability and he has been actively involved in the domain of Indian Fashion and Lifestyle ecommerce and has been working towards operating online platforms in the past. The Respondent would highlight that in the past he ran a venture, Adyamani, and launched Ekart on the disputed domain name, which focused on retail of Apparel, Fashion Accessories, Consumer Electronics, Small Appliances, Watches and Fashion goods at a pre-determined price. It is the categoric case of the Respondent that he is only in fashion industry and not in logistics, which is the core of the Complainant's business.

7.3 The Respondent has narrated certain key dates, which according him are highly relevant. The Respondent would contend that even as per the compliant, the disputed domain name was registered on 14th April, 2012, whereas the first set of the Complainant's trademark applications (Annexure 4) was submitted only on 7th November, 2012 indicating that the mark is 'Proposed to be used'.

7.4 The Respondent has produced **Annexure R-5.1** Legal Notice dated 23rd May, 2016 send to him alleging cyber squatting and fraud. The Respondent has also produced **Annexure R-5.2** Reply dated 1st July, 2016 to the said Notice from his side issued by refusing to comply with demands stating that the claims made therein were an afterthought meant to harass and defame the Respondent.

7.5 According to the Respondent, the second and third sets of the Complainant's trademark applications are dated September, 2022 and June, 2023, respectively, and the present compliant is lodged only on 27th November, 2024, which is an abuse of process designed to unlawfully deprive him of his legally owned domain name registered in good faith. The Respondent would add further that the present Complaint is a clear case of Reverse Domain Name Hijacking (RDNH), wherein the Complainant, being a large, deep pocket, corporate entity is attempting to misuse the INDRP process to deprive a legitimate domain name owner of his rights after obtaining trademark



registrations, which is only an afterthought after the registration of the disputed domain name by the Respondent.

7.6 It is the contention of the Respondent that the term 'EKART' is neither a coined nor a unique term, but is generic, similar to terms, such as e-commerce, e-shops etc., and cannot be monopolized as it does not solely identify the Complainant and that the said term is commonly used in various industries, including logistics, e-commerce, and technology and therefore the Complainant cannot claim exclusive rights over it. In support of the same, the Respondent has placed **Annexure R-1** decision in *Natures Essence Pvt. Ltd. v Protogreen Solutions Pvt. Ltd. & Ors (2021 SCC OnLine Del 1538)*, wherein it was held that any claim of monopoly over a generic word component is irrelevant to the test of deceptive similarity of marks. It is also contended by the Respondent that such a use of trademark, even if registered, is not considered infringement as per Section 30 of the Trade Marks Act, 1999.

7.7 The Respondent would point out that no evidence has been laid out which shows use of the marks by the Complainant since 2009 or before the date of registration of the disputed domain name. The Respondent would content further that he has not engaged in misleading activities or attempted to misappropriate the goodwill of the Complainant and that the date of the earliest of its trademark application would clearly show that at the time of making the application for registration for the domain name, the Complainant was not using the mark. According to the Respondent, at time of registration of the disputed domain name, he had no prior knowledge of the trademarks of the Complainant for the said reason. Moreover, it is the contention of the Respondent that the Complainant hasn't proved that the Respondent knowingly targeted it or had specific knowledge of its trademark to obtain the domain name. Therefore, the Respondent would conclude by relying on the decision in '*Religare Health Insurance Company Limited vs. Name Administration Inc. (UDRP Case RefNo. D2019-2073)*' that the disputed domain name was registered not in bad faith as alleged by the Complainant.

7.8 It is the contention of the Respondent that at the time of registration of the domain name, there was no existence of the trademark 'E-kart' and so there was no exclusive ownership or notoriety associated with 'EKART' belonging to the



Complainant and further that the Complainant has failed to demonstrate how the Respondent's actions have harmed its business. The Respondent vehemently denied the fact that the Complainant has been using the 'E-kart' trademark continuously and extensively since the year 2009 and that its domain is 'parked' or inactive. The respondent placed reliance on **Annexure R-3** details of activity on the disputed domain name from Internet Archive Tool (Way Back Machine) and **Annexure R-4.1** communication from the website developer during the development of the website previously in support of his said contentions. Moreover, the Respondent would also contend that the website which will be hosted on the domain name is under development as evident from AnnexureR-4.1 bill of quotation of the developer and therefore in accordance with Policy No. 6 of the .IN Policy, the said fact legitimizes rights of a Registrant by using or demonstrating preparation of use. Accordingly, the Respondent would conclude that he has legitimate rights and interests in the domain name.

7.9 The Respondent would further content that he has neither attempted to sell the domain at an inflated price, nor misrepresented himself as the Complainant's business and that he simply wants to retain the domain name for his own business for himself and his future heirs. It also contended that the Complainant operates under the brand name 'Ekart Logistics' and not just 'Ekart' and the addition of 'logistics' is a significant distinguishing factor and therefore, the Respondent's domain name does not create confusion with the Complainant's business, as it is used for legitimate independent purposes.

7.10 The other contention of the Respondent is that the Complainant was aware of the Respondent's domain for over a decade and yet it failed to take timely action. So the Respondent would contend that the Complaint is hit by 'laches', preventing the Complainant from enforcing alleged rights after such an extended delay, despite **Annexure R-5.1** Legal Notice issued in the year 2016 by its affiliate Flipkart. It is further contended that after **Annexure R-5.2** Reply and considerable lapse of time, the Complainant is now using the very same tactics in order to gain leverage over the Respondent's domain name. Accordingly, the Respondent sought interalia to dismiss the complaint.



8. Discussions and Findings:

8.1 Accordingly, the Tribunal framed the following issues for consideration:

(i) *Whether the Respondent's Domain name is identical and/or deceptively similar to domain name and trademarks of the Complainant?*

(ii) *Whether the Respondent has any rights or legitimate interests in respect of the domain name?*

(iii) *Whether the Respondent's domain name was registered or is being used in absolute bad faith?*

(iv) *Reliefs and cost.*

8.2 Rule 13(b) of the INDRP Rules of Procedure provides that the Arbitrator shall ensure that at all time treat the parties with equality and provide each one of them a fair opportunity to present their case. As per Rule 18(a) of the INDRP Rules of Procedure, the Arbitrator shall decide the Complaint based on the pleadings submitted in accordance with the with the Arbitration and Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2019, the .IN Policy, INDRP Rules of Procedure and any law that the Arbitrator deems to be applicable. Further, going by Rule 13(d) of the INDRP Rules of Procedure, the Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence placed for consideration in the proceedings while deciding the Compliant. Keeping in mind the above provisions, the Tribunal has proceeded to analyze the rival contentions of the parties.

8.3 The Complainant on its side has produced Annexure 1 to 7 and the Respondent has placed Annexure R-1 to R-6 in support of his case.

8.4 **The crux of the case Complainant's case is that as per Policy No. 4 of the .IN Policy, the registered domain name of the Respondent conflicts with its legitimate right and interest being the same identical/confusingly similar to the Complainant's trade mark, that the registrant has no rights or legitimate interests in respect of the domain name and that the registrant's domain name has been registered/being used in bad faith.**



8.5 Before proceeding to answer the Issues framed as above, the Tribunal would **primarily consider the question whether the complaint is hit by latches and delay**. It is the specific contention of the Respondent that the Complainant is prevented from enforcing alleged right after an extended delay from the date of registration of the disputed domain name. Per contra, the Respondent by relying on the *decisions rendered in INDRP Case No. 1479 (M/s. All Star C.V. and Converse, Inc., USA Vs. Hangzhou Gougou Internet Co., China), INDRP Case No. 1151 (Subway IP INC Vs. Ramaswamy Nathan), INDRP Case No. 563 (3M Company Vs. Mr. Gopinath Goswamy), INDRP Case No. 382 (Wockhardt Limited Vs. Bharat DNS Pvt. Ltd.) and INDRP Case No. 685 (Euronews SA., France Vs. Wapital, France)* would contend that delay or latches do not apply to domain name disputes and the INDRP does not provide for any limitation period for filing a valid complaint and that mere passage of time does not give the Respondent a right over any trademark and mere delay in filing a complaint in a domain name dispute does not lead to forfeiture of rights by the Complainant. In all the above decisions, the Panel has considered the finding in *National Association for Stock Car Auto Racing, Inc. Vs. Racing Connection/The Racin' Connection, Inc. (WIPO Case No. D2007-1524)* wherein it was held that, *"...the equitable defence of latches does not properly apply in this Policy proceeding. The remedies under the Policy are injunctive rather than compensatory in nature, and the concern is to avoid ongoing or future confusion as to the source of communications, goods, or services"*. Moreover, the .IN Policy does not provide for any limitation in submitting a complaint. In view of the above discussion, it is clear that the Complainant cannot be prevented from enforcing its alleged rights for the sole reason of delay. Therefore, it is concluded that the present **complaint is perfectly maintainable and liable to be decided based on merits**.

8.6 The next contention to be decided is whether the **disputed domain name is identical and deceptively similar to its registered Trademarks on which it has prior rights, since 2009**. To prove the same, the Complainant focused on Annexure 3 screenshot of its websites and Social Media pages and Annexure 4 Certificate of Trademark Registrations. In Annexure 4, some of the Certificates of TM Registration relate to FLIPKART, an affiliate of the Complainant, which



has nothing to do with the domain name in question or the Complainant's trademark EKART and E-KART. In this context, it is relevant to note that Policy No. 3(b) of the .IN Policy mandates that the Respondent Registrant is to ensure that to its knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. In other words, if the Respondent had prior knowledge of the registered name or marks of the Complainant, then the registration of the domain name with such prior knowledge would violate the rights of the Complainant.

8.7 Admittedly, in this case, the Respondent has registered the disputed domain name on 14th April, 2012. A perusal of the disputed domain name would reveal that it comprises of the Complainant's mark EKART in its entirety. **Going by Rule 4(a) of the .IN Policy, a dispute will arise when a domain name is identical or confusingly similar to a name, trademark etc., on which the Complainant has rights.** In order to decide **whether the Complainant has rights on the identical term used in the disputed domain name**, the question to be considered is whether the Complainant in this case has registered its trademarks prior to the registration of the disputed domain name and the Respondent had prior knowledge of the registered marks of the Complainant. It is the admitted case that the earliest of the trademark applications for registration of 'EKART' mark of the Complainant (Annexure 4) was made on 7th November, 2012, which is much after the registration of the disputed domain name on 4th April, 2012. Moreover, it is seen that in the trademark applications, in the entry regarding user is stated as '**Proposed to be used**', which would indicate that the trademarks of the Complainant were not in use, as no prior user date is specified. The Respondent made specific reference to the entry in the Trademark Application No. 2425147 dated 7th November, 2012 and the other Trademark Applications in Annexure 4, by producing **Annexure R-2** to show that the entry is 'Proposed to be used'. The tabular data attached to the Written Submission of the Complainant would also clearly indicate that in Trademark Application No. 2425147 dated 7th November, 2012 and 596411 dated 3rd June, 2023, the entry as to user is 'Proposed to be used'. That apart, the said tabular data would further reveal that all other Trademark Applications of the Complainant have been submitted only after 4th April, 2012, i.e., after the registration of the disputed domain name. Again, Annexure R-2



would indicate that the user date mentioned in some of the Trademark Applications is after the registration of the disputed domain name (See the entry in Trademark Application Nos. 5600600, 5600624, 5600915 and 5600916). Eventhough the Complainant would contend that by 2012, it was reputed and well known for its goods and services under the prior, reputed, and registered trademarks 'Ekart' and 'E-kart' and therefore the Respondent is deemed to be aware of its reputation and goodwill, interestingly, the Complainant has not produced any concrete proof to show that its name and marks were registered or in use prior to the registration of the disputed domain name. On the contrary, the available documents would prove otherwise. Yet another fact is that the Trademark Applications of the Complainant is for 'Device Mark' (Figurative Mark) and not for 'Word Mark'. Therefore, it cannot be said that the Complainant has obtained exclusivity on the terms 'EKART' and 'E-KART'. As such, it is to be concluded that the **Complainant's name and marks in Annexure 3 and 4 were registered only after the registration of the disputed domain name and that in such circumstances; the Respondent is not expected to have prior knowledge of the Complainant's marks.**

8.9 In order to prove similarity and also that the domain name is identical even if there is addition of a generic term to a trademark, the Complainant would rely on the decisions in *Accenture Global Services Private Limited Vs. Sachin Pandey(INDRP/828 28th November, 2016)*, *Dell Inc. Vs. George Dell and Dell Net Solutions(Case No. D2004-0512)* and *Space Imaging LLC Vs. Brownell, AF-0298 (eResolution Sept. 22, 2000)* attached with Annexure 7.

8.10 Per contra, the contention of the Respondent is that he is the prior registrant of the disputed domain name, since 14th April, 2012 and he had no knowledge of the Complainant's trademarks, as they were not in existence. In order to analyze the rival contentions as above, it is important to refer to the relevant provisions in the .IN Policy. **Going by Rule 4(a) of the .IN Policy, a dispute will arise when a domain name is identical or confusingly similar to name, trademark etc., in which the Complainant has rights.** Eventhough the disputed domain name has similarity to the marks of the Complainant; the said similarity cannot be said to be with knowledge, confusing or deceptive, in view of the aforesaid finding that the Complainant's name and marks in Annexure 3 and 4 were registered only after the registration of the disputed domain name.



Moreover, it is the contention of the Respondent that being a common term, use of 'EKART' cannot be treated as an infringement as per Section 30 of the Trademarks Act, 1999, which is quite appealing. Therefore, **the contention of the Complainant that the domain name is identical and deceptively similar and that the Respondent had infringed its prior marks is hereby overruled.**

8.11 Admittedly, the Respondent received Annexure R-5.1 Legal Notice on 23rd May, 2016 from the affiliate of the Complainant, to which he replied vide Annexure R-5.2 with identical contentions raised in this case. It is pertinent to note that the Complainant is silent about the above legal notice and the reply. In that regard, the Respondent would contend that further action was dropped after Annexure R-5.1 upon realizing that the disputed domain name was registered prior to the registration of its name and marks and that the Complainant wanted create a fresh cause of action after completing its trademark registrations. This is more so because, the Complainant's subsequent Trademark Applications in Annexure 4 are much after Annexure R-5.1 Legal Notice. Therefore, it is to be presumed that the present complaint lodged only on 27th November, 2024, is an abuse of process designed to unlawfully deprive the Respondent of his legally owned domain name.

8.12 It is relevant in this context to note that the Complainant has slept on its rights, if any, till 15th October, 2024, which amounts to acquiescence in law. The Respondent has placed reliance on the decision in (*Religare Health Insurance Company Limited vs. Name Administration Inc. (UDRP Case Ref No. D2019-2073)*). In this case, the Complainant has failed to prove that its marks were registered or in use prior to the registration of the disputed domain name. Eventhough the disputed domain name carries the term 'EKART', the said similarity cannot be deceptive for the aforesaid reason. Moreover, even if the Complainant would specifically point out that it is engaged in logistics and courier delivery services since the year 2009 using the mark 'EKART' and 'E-KART' and further that it has registered over 180 Trademarks in India since 2009, none of the documents produced by it would show that the mark is being exclusively and continuously used from 2009 or that the mark is registered prior to the registration of the domain name of the Respondent i.e., before 14th April 2012. It is pertinent to note that eventhough the Trademark Application No. 2425147 is dated 7th November, 2012; the said mark was registered only on 20th



July, 2018 as seen from the data in the Trademark Registry. As such, even if the term used in the disputed domain name is identical, it is not deceptively similar in nature or cause confusion, since on the date of registration of the disputed domain name, the Complainant's mark was not in use and existence. Accordingly, **Issue No. 1 is answered against the Complainant.**

8.13 For the sake of convenience, Issue No. 2 and 3 are considered together. In order to substantiate the contention of the Complainant that **the Respondent has no rights or legitimate interest in respect of the disputed domain name**, it would rely on Annexure 5, which is an extract of the Way Back Machine Internet Archive. According to the Complainant, the Respondent has last hosted an active website on the disputed domain name on 4th October, 2019, which is a clear indication that the Respondent hosted the disputed domain name briefly between 2017-2019 and further that it appears to have been disabled at present and remains 'parked' as evident from Annexure 6. So the Complainant would conclude that since the domain name is not active, it is to be presumed that the same is registered without any bonafide intention for use in relation to website hosting or a business. Eventhough the Complainant would content that its Trademarks are its exclusive property and the intention of the Respondent is to capitalize its enormous reputation and goodwill based on the reputed Trademarks, in view of the finding in Issue No.1 above, the said contention is unacceptable. **The Complainant has failed to prove that the disputed domain name was registered prior to the registration of its trademarks and therefore it cannot be said that the registrant has no rights or legitimate interests in respect of the domain name in accordance with Policy No. 4(b) of .IN Policy.**

8.14 With respect to the contention **that the registrant's domain name has been registered/being used in bad faith**, it is case of the Complainant that it has never agreed or consented the use of its trademark and name by the Respondent and that there is no bonafides on the part of the Respondent as it had never used or made preparations to use the disputed domain name. Per contra, the Respondent's contention is that it is the prior registrant of the disputed domain name and that the Complainant has failed to prove bad faith in registration or use of the domain name and further that it is for the Complainant to prove that the Respondent **"knowingly targeted the Complainant or had**



specific knowledge of the Trademark to obtain the domain name” (See *Religare Health Insurance Company Limited vs. Name Administration Inc. (UDRP Case Ref No. D2019-2073)*). It is the counter contention of the Respondent that the Complainant has failed to prove any circumstances to show bad faith in accordance with Policy No. 7 of .IN Policy. The specific contentions of the Respondent apart from the above are that he had used the domain name in the past as evident from the details of activity from the Internet Archive Tool (Way Back Machine) by producing Annexure R-3.

8.15 Based on the findings already rendered, the contention of the Respondent that the Complainant hasn't proved that the Respondent knowingly targeted it or had specific knowledge of its trademark to obtain the domain name is hereby upheld. Further, the Complainant has failed to establish that the Respondent has no rights or legitimate interest on the disputed domain name in accordance with the Policy No. 4(b) or that the domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose in accordance with Policy No. 4(c) of the .IN Policy. It is well settled that the elements in the .IN Policy must be proved and not simply alleged. Hence, following the decision in '*Religare Health Insurance Company Limited vs. Name Administration Inc. (UDRP Case RefNo. D2019-2073)*' it is concluded that the disputed domain name was registered not in bad faith as alleged by the Complainant. It is made clear that the fact the Complainant has not been able to prove the registration of the disputed domain name in bad faith, doesn't necessarily mean that the Respondent has registered the domain name in good faith. Accordingly, **Issue Nos. 2 and 3 are answered against the Complainant.**

8.16 In view of the aforesaid discussions and findings, the Tribunal finds that the Complainant has failed to make out a prima facie case and the complaint lacks merit and accordingly it is to be dismissed.

8.17 The Respondent has also projected a counter contention that the Complainant's case is of Reverse Domain Name Hijacking (RDNM) by obtaining subsequent trademark registration as an afterthought. The Tribunal finds force in the said contentions of the Respondent, especially in view of the findings rendered on Issues No. 1 to 3.



8.18 Therefore, the Tribunal is pleased to order as follows:

Decision


- i) *The complaint is dismissed.*
- ii) *No order as to cost.*

9. Dispositions:

9.1 The Complainant has failed to give sufficient material evidence to prove extensive trademark rights over the dispute domain name and the Respondent's adoption and registration of the impugned domain name is dishonest and malafide. Accordingly, the complaint is dismissed.

Dated this the 23rd April, 2025




Adv. SUNIL V. MOHAMMED
Sole Arbitrator

List of Annexures of the Complainant

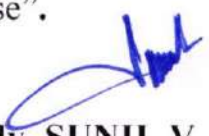
- Annexure 1:** WHOIS extra annexed to the e-mail dated 14th November, 2024 of the Legal Officer of NIXI.
- Annexure 2:** Correspondences dated 8th December, 2023 and 8th January, 2024 between the Complainants's authorized representative and the Legal Officer of NIXI.
- Annexure 3:** The screenshot of Complainant's Website and its popularity in Social Media platforms.
- Annexure 4:** Copies of Registration Certificates and Status pages from the online data basis of the Indian TM Office of the Complainant's trademarks.



- Annexure 5:** Extract of the snapshot dated 4th October, 2019 captured on the Wayback Machine Internet Archive.
- Annexure 6:** Screenshot of the disputed domain name parked by the Respondent.
- Annexure 7:** List of cases and decisions relied by the Complainant.

List of Annexures of the Complainant

- Annexure R-1:** Copies of Case laws relied upon.
- Annexure R-2:** Details of earliest trademark applications of the Complainant.
- Annexure R-3:** Screenshot showing active website being hosted on the disputed domain name in the past.
- Annexure R-4.1:** Copy of order issued to the Website Developer for developing new website to be hosted on the domain name.
- Annexure R-4.2:** Bill of Quotation
- Annexure R-5.1:** Copy of previous Legal Notice from the Complainant's affiliate to the Respondent.
- Annexure R-5.2:** Copy of reply against previous legal notice from the Respondent.
- Annexure R-6:** Ekart documents of "date of use".


Adv. SUNIL V. MOHAMMED
Sole Arbitrator

