



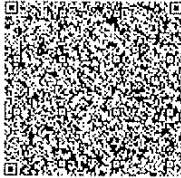
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL18440165348140S  
Certificate Issued Date : 16-Dec-2020 03:44 PM  
Account Reference : IMPACC (IV)/ dl831103/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL83110340995244021917S  
Purchased by : SUDARSHAN KUMAR BANSAL  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SUDARSHAN KUMAR BANSAL  
Second Party : Not Applicable  
Stamp Duty Paid By : SUDARSHAN KUMAR BANSAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



----- Please write or type below this line. -----

**IN Registry**  
**(NATIONAL INTERNET EXCHANGE OF INDIA)**  
**ADMINISTRATIVE PANEL DECISION**  
**SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL**  
**INDRP Case No.1242**

**COMPLAINANT**  
**KENT RO SYSTEMS LIMITED &**  
**Mahesh Gupta**  
**Vs.**  
**RESPONDENT**  
**Subham Sadhukhan**  
**PERFECT AQUA SOLUTION**

#### ARBITRATION AWARD

**Statutory Alert:**

1. The authenticity of this Stamp certificate should be verified at 'www.shohestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
4. In case of any discrepancy please inform the Competent Authority.

*S.K. Bansal*

**.IN Registry**  
(NATIONAL INTERNET EXCHANGE OF INDIA)  
ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR : SUDARSHAN KUMAR BANSAL  
INDRP Case No.1242

1. KENT RO SYSTEMS LIMITED  
E-6, 7 & 8 Sector 59  
Noida – 201309  
Uttar Pradesh, India
  
2. Mahesh Gupta  
H-35 South Extension, Part 1  
New Delhi – 110 049  
... Complainants

Vs

Subham Sadhukhan  
PERFECT AQUA SOLUTION  
4b, Adhar Chandra Das Lane  
Muchibazer, Ultadanga, Kolkata  
West Bengal 700067  
... Respondent

**ARBITRATION AWARD**

1. The Complainants are aggrieved by the Respondent's registration and use of the domain name www.kentroservice.in registered through the sponsoring Registrar GoDaddy.com, LLC under IANA ID 146 and has accordingly made this Complaint seeking the relief that this domain www.kentroservice.in (impugned and/or disputed and/or rival domain) be transferred to it.
  
2. Claiming proprietary rights in the Trade Mark and Trade Name KENT and its variants and being used in relation to various products like water purifiers, air purifiers, vaccum cleaners, cooking appliances, water softeners, car security devices etc., and services being offered in respect thereto, the Complainants (Complainant No.1 being an incorporated company and

*S. K. Bansal*

Complainant No.2 being its Chairman Cum Managing Director) have instituted this Complaint impugning the rival domain name www.kentroservice.in in the name of the Respondent. The Complainant also claims proprietary rights in its various domains like www.kentrosystems.com and www.kent.co.in which bear its proprietary trade mark/trade name KENT.

3. The Complainants/Complainant in the Complaint while setting out their statutory and common law rights in the trade mark/trade name/domain KENT (collectively trade mark/trade name KENT) including in its goodwill and reputation have alleged the rival domain name to be identical with and/or confusingly similar thereto ; the Respondent to have no rights or legitimate interests in the impugned domain ; the impugned domain to be adopted, registered with the sponsoring Registrar and to be used in bad faith. The Complainant has alleged the adoption, use and registration with the sponsoring Registrar of the impugned domain to be without its leave license and permission and to be in violation of its rights and interest in its trade mark/trade name KENT. The Complainants allege that by the impugned domain loss and injury is being caused to the Complainants and to the strength and standing of its well established and well known trade mark/trade name KENT as well as to the market and trade who are being deceived and confused into believing the rival domain and the goods/services being offered thereunder or likely to be offered thereunder to be those of the Complainant or to be connected or affiliated with the Complainant.

4. The Complainant claims itself to be a well established business in its said goods under its said trade mark/trade name/domain KENT. The Complainant claims to be using the trade mark KENT since the year 1988 in relation to its said business. Initially the said trade mark was used through a partnership in which the Complainant No.2 was a partner. Subsequently a company under the name of M/s SS Appliances Pvt. Ltd.

*K. D. B...*

was incorporated on 09.02.1988 which took over the partnership of SS Appliances. Another partnership was formed by Complainant No.2 under the name and style of Kent RO Systems in the year 1999 consisting of the Complainant No.2 himself, one Mrs Sunita Gupta and SS Appliances Pvt. Ltd. The Complainant No.2 caused the incorporation of Complainant No.1 in the year 2007 and which company thereafter took over the said partnership. The Complainant claims to be using the trade mark KENT and its variants in relation to its said business.

5. The Complainant claims to be a well established business having more than twenty five lakh customers to have sold more than 2,25,000 reverse osmosis purifiers every year and to hold around 40% market share in India. The Complainant claims to be an active business both in the physical and cyber markets under its said trade mark/trade name/domain name KENT in India and in numerous countries around the world, to have a wide network with over 4000 distributors, 16000 dealers and over 600 direct market franchises. The Complainant claims to have received numerous awards and accolades in its business, to have been well written upon and to be reported on, to have spent handsome amounts of money in the promotion and advertisement in the trade mark/trade name and to have built up a valuable trade goodwill and reputation in its trade mark/trade name KENT. The Complainant claims to have had a turn over of about Rs.90,000/- lakhs in the year 2018-2019 and advertisement expense of Rs.14,405/- lakhs in this year. The Complainant claims to hold various trade mark registrations for its KENT and KENT variant trade mark across various classes in India and in numerous overseas countries. The Complainant claims its rights in the trade mark/trade name KENT to be judicially recognized in India and of its trade mark KENT to be held as a well known trade mark by the Hon'ble High Court of Delhi at New Delhi in C.S. (OS) No.1626/2014 in its Order dated 28.05.2014.

*J.K. Bann*

6. The Complainants claims its Trade Mark/Trade Name KENT to enjoy distinctiveness, and of the said trade mark/trade name to be a source and quality identifier of its said goods and business and to be so taken by the market and trade.

7. In support of the rights and use the Complainant has placed on record numerous pleading and documents which in so far as they are relevant would be dealt with in the course of this award.

8. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 27<sup>th</sup> July, 2020 and vide which E-mail the .IN Registry also served upon me the complete set of the Complaint with the Annexures.

9. Thereafter I (Arbitral Tribunal) issued Notice to the Respondent vide E-mail of 29.07.2020 with the copy of the Complaint and documents wherein the Respondent was notified about my appointment as the Arbitrator and was given an opportunity to submit its written response to the Complaint stating its defence together with documents supporting its position within ten (10) days. The copy of the said Notice was also sent to the Authorized representative of the Complainant. The Respondent did not respond to this Notice nor filed its response/defence. Thereafter I (Arbitral Tribunal) issued Notices dated 14.08.2020, 11.09.2020, 08.10.2020, 03.11.2020 and 23.11.2020 on the Respondent calling upon it to file its reply/defence with documents if any to the Complaint. Under the said Notices the time period to furnish such a reply/defence was repeatedly extended on the understanding of the Orders dated 23.03.2020 and 10.07.2020 passed by the Hon'ble Supreme Court of India in Suo Moto Writ

*J. K. Bann*

Petition (C) No.3/2020. The Respondent never responded to these Notices and nor filed any reply/defence or documents.

10. The Respondent sent two e-mails on 08.12.2020 in quick succession to this Tribunal and the contents whereof are as under :-

E-mail dated 08.12.2020 - 5.20 PM

I want to delete this domain.

E-mail dated 08.12.2020 - 5.23 PM

Call my number and discuss

11. Accordingly and in light of the material on record and the facts and circumstances of the case this Tribunal is now proceeding to adjudicate this Complaint.

12. As noticed above the Respondent despite numerous notices and opportunities given to him did not file any reply or defence. The Respondent never even appeared before this Tribunal in response to the Notice dated 25.11.2020 served upon him seeking clarifications. Vide Notice dated 23.11.2020 an opportunity till 15.12.2020 was given to the Respondent to submit its reply/defence. Even till this date no such reply/defence has been submitted by the Respondent. From the terms and tenor of the Respondent's E-mails dated 08.12.2020 as reproduced above, and from the Respondents repeated failures to submit its reply/defence leaves no manner of doubt that the Respondent not only did not file its reply/defence but did not even intend to submit such a reply/defence and nor intends to submit such a reply/defence. Hence no useful purpose would be served by further extending the opportunity to the Respondent to submit its reply and defence.

*J.K. Bamra*

13. The Respondent in fact desired to delete this impugned domain. The intention of the Respondent is clearly to delete the domain and not contest these proceedings. Even though these facts and circumstances by themselves coupled with the fact that a non traverse of the Complaint facts has to be taken against the Respondent **[Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740]** were sufficient to pass this Award in allowance of the Complaint nevertheless even independently thereof the Complaint merits allowance for the reasons set out in the onward course of this Award.

14. In the considered opinion of this Tribunal the Complainant has been able to establish its rights titles and interests in the trade mark KENT and its variants.

14.1 The trade mark KENT and its variants is duly registered in India under the Trade Marks Act, 1999 under various numbers and across many classes like class 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 31, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44 and 45. The particulars of trade mark registrations have been mentioned in para s of the Complaint and the copies of registration certificates, renewal certificates, status reports of some such registrations are forming part of the record as **Annexure-21**. The earliest mentioned registration is under No.883409 in class 7 dated 26.10.1999. Examples of some such other trade mark registrations are under trade mark numbers 1442714 in class 1 dated 05.04.2006 and under No.1553138 in class 11 dated 26.04.2007.

14.2 The Hon'ble High Court of Delhi at New Delhi in its Order dated 19.09.2017 in C.S. (OS) 3011/2014 in case titled Kent RO Systems Ltd., & Anr versus Kenttech RO Systems & Anr has upheld the Complainant (being plaintiff in the suit) rights in the Trade Mark KENT and issued interalia a decree of permanent injunction against the rival domain name

*K. D. B. V. V.*

www.kentechro.com alongwith punitive damages ; and in its Order dated 28.05.2014 in C.S. (OS) 1626/2014 in case titled Kent RO Systems Ltd., & Anr versus Kenttech Technology & Ors while dealing with an application for interim injunction therein held the Complainants (the plaintiffs in the suit) trade mark KENT to be a well known trade mark in relation to water purifiers. The copies of the said Orders have been placed on record forming part of **Annexure-25**.

15. The Indian Trade Mark registrations confer valuable rights in the registered Trade Marks upon the Registrants viz Complainant in this case. These registrations have a presumptive validity attached to them as also they are a presumptive evidence of title in favor of the Registrant **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. & Anr. reported in AIR 1986 SC 137; National Bell Co. Vs. Metal Goods Mfg. Co (P) Ltd. & Anr. reported in AIR 1971 SC 898]**.

16. The rival domain name is registered with the sponsoring Registrar, with the creation date of 12.04.2019 as per the extract of the WhoIS search report placed on record as **Annexure-I**. The factum registrations and usage of the Complainants trade mark KENT is prior and senior to this date. As noticed above the earliest registration for the trade mark KENT placed on record is dated 26.10.1999 while the afore noticed Orders of the Hon'ble High Court of Delhi at New Delhi are dated 19.09.2017, and 28.05.2014 which are all prior to the Respondent's impugned Registration of the impugned domain with the sponsoring Registrar.

17. The impugned domain bears the word/mark KENT as its essential and distinguishing feature. Not only that the impugned domain subsumes in itself the entire material features of the Complainants trade name. It is with reference to the word/mark KENT that the rival domain would be remembered by an ordinary consumer exercising ordinary caution and would be so used by such a consumer to access the website parked

J.K.B. [Signature]



thereon. The impugned domain as such, is identical with and deceptively similar to the Complainants said Trade Mark and Trade Name in each and every manner including phonetically, visually, structurally, conceptually whether taken in its entirety or in its essential features. **[K.R. Chinna Krishna Chettiar Vs. Sri Ambal and Co and Anr. AIR 1970 SC 146 ; Ruston & Hornby Ltd., Vs. Zamindara Engineering Co., 1970 (2) SCR 222 ; B.K. Engineering Company v/s U.B.H.I. Enterprises (Regd). AIR 1985 Delhi 210 (DB) ; Kirorimal Kashiram Marketing & Agencies Pvt. Ltd., Vs. Shree Sita Chawal Udyog Mill 2010 (44) PTC 293 (Del.) (DB)].**

18. The impugned website of the Respondent accessed to by the rival impugned domain and as per the screenshots or downloads obtained therefrom filed as **Annexure-26 and 27** of the Complaint, clearly reveal that thereon the Respondent is representing itself to be a service center of the products bearing the word/mark KENT and offering repair replacement installation and other services in relation thereto. Thereon the Respondent has put images of the various products bearing the word/mark KENT and has also mentioned clearly "KENT IS A INDIA MOST POPULAR BRAND ....." On this website the Respondent has also furnished his service center telephone numbers through which it can be contacted. All this clearly reveal that the Respondent on its impugned website accessible from the impugned domain is representing himself as an arm of the Complainant in relation to the Complainants business under the Trade Mark/Trade Name KENT and on this impugned website it is the Complainants products and business under the trade mark/trade name KENT are being dealt with and to be so represented by the Respondent itself to be so dealt with. The market and trade which includes unwary consumers would be deceived into believing the Respondent to be an associate affiliate or licensee of the Complainant and might/would/can reach the Respondent while attempting to reach the Complainant and would do business with the Respondent in relation to the Complainants products. This would invariably cause loss and injury to the Complainant as well as to the market and trade. This is more

*J. V. B. Banerjee*

so as the Complainant would have no hold on the nature of the services being offered by the Respondent and would invariably suffer by any inferior services that the Respondent may offer which the market and trade would invariably link to the Complainant. The Complainants goodwill and reputation would be left in the hands of the Respondent over whom the Complainant would have no control. **[See Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 (16) PTC 142 Del (DB) ; Ravenhead Brick Company Ltd., Vs. Ruaborn Brick & Tera Cotta Co. Ltd., (1937) 54 RPC 341 (Ch.D) ; Semigres TM (1979) RPC 330 ; Baker Hughes Limited Versus Hiroo Khushalani 1998 (18) PTC 580 (Del)].**

19. All these violative acts of the Respondent through the disputed domain would perpetually and irreparably not only tarnish the business of the Complainant but also dilute, diminish, erode and eclipse the goodwill, reputation and distinctiveness attached to the Complainant's registered and prior adopted and prior in use trademark/trade name KENT and its domain. Not only that even the consumers would suffer as they would not get what they expected and instead would be deceived.

20. From the afore noticed screenshots or downloads as per **Annexure-26 and 27** it can clearly be inferred that the Respondent was well aware of the Complainant, the Complainants said business, the Complainants said trade mark/trade name KENT and the goodwill associated therewith. The Respondent has sought to do business in respect of the Complainants goods itself under the Trade Mark/Trade Name KENT to obviously make profits and gains to which it is not entitled to. The Respondents adoption and use of the impugned domain as such is tainted, malafide and in bad faith and the Respondent can have no rights or legitimate interests in the impugned domain. There is no element of good faith, good intention or honesty involved with the Respondent. The Respondent is using the impugned domain viz. website thereby in the course of trade and to make business and profits for himself or why else would the Respondent so adopt

J.K. Bann

and use the impugned domain and invest time, money, efforts and skills thereon. The Respondent's impugned conduct speaks for itself (*res ipsa loquitur*) and falls short of the standards of acceptable commercial behavior.

21. This Tribunal is of the considered view that the Respondent's impugned domain and the impugned website thereon is without the leave license or approval of the Complainant. It is highly unlikely for the Complainant to consonance to a rival domain which would cause loss to the Complainant itself. Besides the Respondent's own stand to delete the impugned domain itself reveals that its adoption and use is unauthorized.

22. The right conferred on a trade mark by virtue of its registration or by virtue of its prior user acquired goodwill reputation and distinctiveness encompasses within its fold the right to so use and exploit it as a domain name or part thereof. A domain name use "of a trade mark" in relation to goods or services amounts to the use thereof "as a trade mark" [**Section 2 (2), 27, 28 of the Trade Marks Act**]. This is more so as under the impugned Domain Name and the website triggered thereby there is an offer of services. The Complainant is using the respective domain name in the context of a commercial activity with the view to derive economic advantage and hence in the course of trade.

23. A Registered trade mark can be infringed by its rival unauthorized use as a part of a domain name; as also the goodwill, reputation and distinctiveness attached to a trade mark (whether registered or unregistered) can be violated by way of passing off by a rival unauthorized use as a part of domain name. In either case the Trade Mark registration or the goodwill and reputation attached to a trade mark has to be protected against such unauthorized domain name use. **[See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & Anr.-2011 (47) PTC 65 (Del.); Dr. Reddy's Laboratories**

*J. K. Sharma*

**Limited Vs. Manu Kosuri & Anr.-2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee & Ors.-2003 (26) PTC 60 (Del)]].**

24. Such rights and specially the rights conferred by Trade Mark registrations under the Trade Marks Act or by priority in adoption and use, goodwill, reputation and distinctiveness have to be protected and upheld even if it is against a rival domain bearing the said trade mark/trade name KENT as inter-alia there is a close relationship between trademarks and domain names and as the basic principles of trade mark and passing off laws apply to domain name dispute as well. **[See Satyam Infoway Ltd., Vs. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC) ; LT Foods Limited Vs. Sulson Overseas Pvt. Ltd., 2012 (51) PTC 283 (Del)]].**

25. As such in the considered view of this Tribunal the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its trade mark/domains/trade name KENT and which have been violated by the impugned domain.

26. This Tribunal has no reservation in holding that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name [www.kentroservice.in](http://www.kentroservice.in) be transferred to the Complainant.

Signed at New Delhi, India on this 16<sup>th</sup> day of December, 2020.

  
Sudarshan Kumar Bansal  
Sole Arbitrator