

Non Judicial

**Indian-Non Judicial Stamp
Haryana Government**

Date : 18/11/2022

Certificate No. G0R2022K2549



GRN No. 96413994

Stamp Duty Paid : ₹ 101
(Rs. Only)

Penalty : ₹ 0

(Rs. Zero Only)

Seller / First Party Detail

Name: Dr Sheetal Vohra

H.No/Floor : K62

Sector/Ward : Lgf

LandMark : Jangpura extension

City/Village : New delhi

District : New delhi

State : New delhi

Phone: 97*****30

**Buyer / Second Party Detail**

Name : Dr Sheetal Vohra

H.No/Floor : K62

Sector/Ward : Lgf

LandMark : Jangpura extension

City/Village: New delhi

District : New delhi

State : New delhi

Phone : 99*****18

Purpose : NATIONAL INTERNET EXCHANGE OF INDIA INDRP ARBITRATION

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Sheetal Vohra

BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP CASE NO: 1617
ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR DR.
SHEETAL VOHRA, LLB, LLM, PHD (LAW) ADVOCATE,
DELHI HIGH COURT
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION
POLICY (INDRP)

IN THE MATTER OF:

Kubota Corporation
2-47 Shikitsuhigashi 1-chome
Naniwa-ku, Osaka 556-8601
Japan

...Complainant

Versus

Domain Admain
Chongqing Gaici IPR Co.
Chongqing University Xinhua 5-6
Chongqing, Chongqing
China- 400000

...Respondent

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

The Complainant in this administrative proceeding is Kubota Corporation, a Japanese corporation, which has filed the present complaint under rules framed under the INDRP.

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The Complainant's authorized representative / counsel in this administrative proceeding is:

Douglas M. Isenberg, Esq.
THE GIGALAW FIRM, DOUGLAS M. ISENBERG, ATTORNEY AT LAW, LLC,
One Glenlake Parkway
Suite 650
Atlanta, Georgia 30328 USA
Ph.: 1-404-348-0368
Email: Doug@Giga.Law

The Power of Attorney was filed and attached with the Complaint.

2. RESPONDENT

The Respondent/Registrant of the Disputed Domain Name is one Domain Admain of an organization viz. Chongqing Gaici IPR Co. of the address Chongqing University Xinhua 5-6, Chongqing, Chongqing, China- 400000. A copy of documentation provided to Complainant by NIXI was annexed with the amended Complaint and marked as **Annex-1 (Amended)**.

The Respondent's contact details are:

Domain Admain
Chongqing Gaici IPR Co.
Address: Chongqing University Xinhua 5-6
Chongqing, Chongqing,
China
Email: dn@007.in
Phone: (+86).13098788875

The Respondent did not engage any counsel / advocate in the present administrative proceeding and neither did the Respondent file any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

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II. THE DOMAIN NAME AND REGISTRAR:

The Disputed Domain Name is: kubota.in

The Disputed Domain Name is registered with IN Registry.

The accredited Registrar of the Disputed Domain Name is Dotcom Services (India) Pvt. Ltd.

The Registrar's contact information is as under:

Dotcom Services (India) Pvt. Ltd.
101/102/103, Tirupati Udyog Premises,
I. B. Patel Road, Goregaon (East),
Mumbai – 400 063 INDIA
Phone: 91- 22 - 408 11111
Email: sales@worldindia.com

III. PROCEDURAL HISTORY:

September 8, 2022	Date of Complaint
September 29, 2022	Sole Arbitrator appointed to adjudicate the dispute
September 29, 2022	Amended Complaint along with Amended Annexure 1 and Annexure 7 filed
September 29, 2022	Arbitral proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
October 14, 2022	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on September 29, 2022.

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Hence this award is proceeded on basis of the available pleadings and documents only.

IV. TRADEMARK / SERVICE MARK

It was submitted that the Complaint is based on the trademark / service mark KUBOTA, as further described therein below. That the details of the classes under which the Complainant's mark is registered are provided in **Annex 2**.

It was submitted that the details for some of the Complainant's word marks for KUBOTA in the United States of America are as follows:

- U.S. Reg. No. 922,330 for KUBOTA (registered October 19, 1971) in international classes 6, 7, 8, 9, 11, 12, 16, 21 and 28, for use in connection with, inter alia, *"gasoline, kerosene and diesel engines, power tillers, farm tractors, garden tractors, sprayers, dusters, harvesters, threshers, hullers, rice planting machines, seeders, pneumatic and electromagnetically heated grain dryers."*
- U.S. Reg. No. 1,775,620 for KUBOTA (registered June 8, 1993) in international class 7, for use in connection with, inter alia, *"power-operated tillers, cutters, and brush cutters."*

It was submitted that the details for some of the Complainant word marks for KUBOTA in India are:

- India Reg. No. 1864390 for KUBOTA (registered September 18, 2009) in international class 7, for use in connection with *"nursery boxes for rice planting machines; nursery machines and implements for agricultural use."*
- India Reg. No. 1742935 for KUBOTA (registered October 13, 2008) in international class 12, for use in connection with *"tractors and parts and fittings therefor."*

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V. **FACTUAL AND LEGAL BACKGROUND:**

About the Complainant:

1. It was submitted that the Complainant, Kubota Corporation, a global manufacturing company specializing in agriculture, water, and living environment products, with a worldwide network of over 120 areas.
2. It was submitted that the Complainant was established as a foundry in 1890 and changed its corporate name to Kubota Tekko-jo (Kubota Iron Works) in 1897. It was submitted that in 1960, Complainant developed and commercialized the first Japanese farm tractor, and, in 1972, Complainant established Kubota Tractor Corporation in the United States to fully enter the U.S. tractor market.
3. It was further submitted that a copy of the Complainant's 2021 annual report is available at <https://www.kubota.com/ir/financial/integrated/data/report2021.pdf>.
4. It was submitted that the Complainant has the capital of ¥84.1 billion; revenue (consolidated) of ¥2,196.8 billion; and 43,293 employees (consolidated).
5. It was submitted that Complainant is the registrant of, and uses, the domain name <kubota.com>, which was registered on February 22, 1997. A copy of the Whois record for this domain name was filed with the complaint and marked as **Annex-3**, and a copy of the printout of the home page of the website using this domain name was filed with the complaint and marked as **Annex-4**.

About the Respondent

6. It was submitted that the Respondent registered the Disputed Domain Name on February 14, 2015 (filed with the complaint and marked as **Annex-1**) – 51 years after Complainant obtained its first registration for the KUBOTA Trademark (as defined below) which was and 18 years after Complainant registered the domain name <kubota.com> (filed with the complaint and marked as **Annex-3**).

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7. It was submitted that the Respondent is using the Disputed Domain Name in connection with a pay-per-click ("PPC") website that includes links for goods and services that compete with Complainant, including links labeled "Kubota Tractors," "Kubota Engines," and "Kubota Generators." A copy of the home page of the Respondent's website using the Disputed Domain Name was filed with the complaint and marked as **Annex-5**.

The Complainant relied upon the following grounds in support of the Complaint and its claim that the disputed domain name has been adopted in

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights:

- i. It was submitted that the Complainant owns at least 757 trademark registrations worldwide that consist of or contain the trademark KUBOTA (the "KUBOTA Trademark"). A schedule of these registrations was filed with the complaint and marked as **Annex-2**.
- ii. It was submitted that the oldest of the KUBOTA Trademarks was registered on January 16, 1964 (Japanese Reg. No. 634,179 for KUBOTA). It was submitted that the registrations for the KUBOTA Trademark include U.S. Reg. No. 922,330 for KUBOTA for use in connection with, *inter alia*, farm tractors and garden tractors (registered October 19, 1971). Copies of registration certificates and relevant details are filed with the complaint and marked as **Annex-6**.
- iii. It was submitted that registrations for the KUBOTA Trademark in India include India Reg. Nos. 1864390 and 1742935. Copies of the registration certificates and printouts of these registration from the website of the Government of India's Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, Controller General of Patents Design & Trade Marks were filed with the amended complaint and marked as **Annex-7 amended**.

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- iv. It was submitted that the Disputed Domain Name contains the KUBOTA Trademark (and only the KUBOTA Trademark) in its entirety.
- v. It was submitted that the Disputed Domain Name “wholly incorporates the prior registered trade mark of the Complainant,” the disputed domain name is identical or confusingly similar to the trademark for purposes of the INDRP. It was submitted that in the case of *Kenneth Cole Productions Inc v. Viswas Infomedia*, NIXI, Case No. INDRP/093, Numerous panels under the INDRP have similarly found that a disputed domain name consisting solely of a complainant’s trademark is identical to the trademark e.g., *Amazon Technologies Inc. v. Mr. Zhou Xiangsheng*, Case No. NIXI Case No. INDRP/347 (“incorporating a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark”); *Puma SE v. Christian Schmidt*, NIXI Case No. INDRP/956 (“the disputed domain name incorporates the mark PUMA in its entirety” and therefore “is identical to the Complainant’s PUMA mark ”); *Raytheon Company v. Randa Newsome*, NIXI Case No. INDRP/997 (finding <raytheon.org.in> identical to RAYTHEON); *Equifax Inc. v. Nikhlesh Kunwar*, NIXI Case No. INDRP/1038 (“the disputed domain name is identical to the Complainant’s impugned trademark as it is solely made of the Complainant’s mark with no additions/deletions/substitutions with any other component”); and *HSBC Group Management Services Limited v. Chinmay*, NIXI Case No. INDRP/992 (finding <hsbc.in> identical to HSBC).
- vi. It was submitted that accordingly, the Disputed Domain Name is identical or confusingly similar to the KUBOTA Trademark.

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

- i. It was submitted that the Respondent has no rights or legitimate interests in the Disputed Domain Name. It was submitted that the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the KUBOTA Trademark in any manner. It was

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submitted that, as here, “the Respondent is neither a licensee of the Complainant, nor has it otherwise obtained the authorization of any kind whatsoever, to use the Complainant’s mark,” the panel should find a lack of rights or legitimate interests under the INDRP. The Complainant relied on *Sony Ericsson Mobile Communications AB v. Salvatore Morelli*, NIXI Case No. INDRP/027. The Complainant also relied on *Six Continents Hotels, Inc. v. Patrick Ory*, WIPO Case No. D2003-0098 (“There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Domain Name.”); and *Marriott International, Inc. v. Thomas, Burstein and Miller*, WIPO Case No. D2000-0610 (transferring domain name <marriottreward.com> where “no evidence was presented that at any time had the Complainant ever assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the marks MARRIOTT REWARDS or MARRIOTT in any manner”).

- ii. It was submitted that in the case of just as in *Accenture Global Services Limited v. Vishal Singh*, NIXI Case No. INDRP/999:

Given the long and widespread reputation of the Complainant’s trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name that is not only confusingly similar to the Complainant’s widely known and distinctive trademark but identical, intended to ride on the goodwill of the Complainant’s trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. It was submitted that the potential partners and end users are led to believe that the website is either the Complainant’s site or the site of official authorized partners of the Complainant, while in fact, it is neither of these.

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It was submitted that the panel said that the respondent lacks rights or legitimate interests in respect of the disputed domain name.

- iii. It was submitted that upon information and belief, Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services and, therefore, Respondent cannot establish rights or legitimate interests under Paragraph 7(i) of the INDRP. It was submitted that as stated above and as shown in **Annex-5** filed with the complaint, Respondent is using the Disputed Domain Name in connection with a pay-per-click, or PPC, the website that includes links for goods and services that compete with Complainant, including links labeled "Kubota Tractors," "Kubota Engines," and "Kubota Generators." It was submitted that the use is clearly not bona fide under the Policy and, therefore, does not confer upon the Respondent any rights or legitimate interests in the Disputed Domain Name. The Complainant relied on *Areva v. Domain Investment Inc.*, NIXI Case No. INDRP/442 ("the domain name is being monetized by diverting traffic through pay per click links which leads to the conclusion that Respondent has no right or legitimate interests in the respect of the disputed domain name"); *Lululemon Athletica Canada, Inc v. Liheng Just Traffic Supervision Consulting*, NIXI Case No. INDRP/725 ("monetized domain parking without the domain being associated with any e-mail or website service, cannot be said to be bona fide and active use of the domain"); *MBI, Inc. v. Moniker Privacy Services/Nevis Domains LLC*, WIPO Case No. D2006-0550, ("the operation of commercial link services of this type, designed to lure Internet users and divert them to other commercial sites by the use of domain names identical or similar to a complainant's trademark, do not confer a legitimate right to or interest in a domain name"); *Western Union Holdings, Inc. v. Anna Valdieri*, WIPO Case No. D2006-0884 ("the disputed domain name reverts to a rudimentary directory site, which is little more than a list of links. It was submitted that the respondent has and is confident of its rights or legitimate interests in a website, might be expected to invest more in it than this Respondent. It was submitted that the nature of the site itself is suggestive of a lack of rights or legitimate interests"); and *Emmis Television Broadcasting, L.P., d/b/a KHON-TV v. Henry Chan*, WIPO Case No. D2004-0366: ("a skeletal

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website, which serves only to redirect users to a search engine and unrelated third-party vendors" is not a bona fide offering of goods or services).

- iv. It was submitted that to Complainant's knowledge, Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph 7(ii) of the INDRP. It was submitted that the Whois record (attached as **Annex-1 (amended)**), does not identify the registrant of the Disputed Domain Name as "Kubota" or any variation thereof. "This fact, combined with the lack of evidence in the record to suggest otherwise, allows the Panel to rule that Respondent is not commonly known by any of the disputed domain names or any variation thereof *"Alpha One Foundation, Inc. v Alexander Morozov*, Forum Claim No. 0766380. In addition, given Complainant's registration of the KUBOTA Trademark for 58 years (including 54 years in India), it is exceedingly unlikely that the Respondent is commonly known by this trademark. The Complainant relied upon *Six Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel*, WIPO Case No. D2004-0246 ("given the Complainant's established use of its marks, it is unlikely that the Respondents are commonly known by any of these marks").
- v. It was submitted that by using the Disputed Domain Name in connection with a monetized parking page (filed with the complaint and marked as **Annex-5**), Respondent's actions are clearly commercial and, therefore, Respondent cannot establish rights or legitimate interests pursuant to paragraph 7(iii) of the INDRP. The complainant relied upon few case laws to establish its case viz., *Dassault Systemes Solid Works Corporation v. Wangyuan*, NIXI Case No. INDRP/258 (finding no rights or legitimate interests were "[t]he said website contains numerous weblinks comprising the Complainant's trade mark... as well as links to competitors and other third party websites," which the complainant alleged the respondent used "to profit financially from consumer confusion inasmuch as, the Registrant directs the domain to a website that is a parked pay-per-click or sponsored search portal"); *Accor v. Tang Wei*, NIXI Case No. INDRP/127 (where "Respondent's Domain Name currently resolves to a parked page which

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has been monetized with click-through links... the Respondent has adopted the Domain Name with intent for commercial gain, and to divert internet users to their website”); *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. D2012-2066 (use of a domain name in connection with a web page that “only contains advertisements as sponsored links” is “for presumed commercial gain”); *Zions Bancorporation v. Domain Administrator*, Fundacion Private Whois, WIPO Case No. D2014-0465 (“a parking website containing sponsored links... cannot be considered either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant’s goodwill by misleading Internet users to its website”); *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. D2014-0206 (a disputed domain name “pointing to a website featuring PPC [pay-per-click] links... could not be construed as a bona fide or legitimate noncommercial or fair use”); and *Lululemon Athletica Canada, Inc v. Liheng Just Traffic Supervision Consulting*, NIXI Case No. INDRP/725 (where a disputed domain name is used in connection with a website stating that the domain name “is listed for sale,” “[i]t is obvious that the Respondent never intended to use the disputed domain name... in connection with a bona fide offering of goods or services and has simply parked it for sale”).

- vi. It was submitted that accordingly, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

C. The domain name was registered or is being used in bad faith.

- i. It was submitted that the Disputed Domain name should be considered as having been registered or being used in bad faith by Respondent.
- ii. It was submitted that as set forth in WIPO Overview 3.0, section 3.1.4, “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” It was submitted that the Panels under the INDRP have agreed; The Complainant relied on *Williams- Sonoma, Inc. v. Jiaai (EAC International)*, NIXI Case No.

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INDRP/773 (“registration of a domain name that is identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use”); and *L’Oreal v. Yerec International Limited*, NIXI Case No. INDRP/481 (“Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use”). It was submitted the KUBOTA Trademark is famous or widely known, given that the Complainant oldest registration for the KUBOTA Trademark is 58 years old (including 54 years old in India); the KUBOTA Trademark is protected by at least 757 trademark registrations worldwide (Annexes 1(amended), 6, and 7); and (as set forth above) the KUBOTA Trademark is used by a company that has the capital of ¥84.1 billion, revenue (consolidated) of ¥2,196.8 billion, and 43,293 employees (consolidated).

- iii. It was submitted that given the longtime use and global protection for the KUBOTA Trademark, “it is inconceivable that the Respondent was not aware about the popularity of the mark [KUBOTA] at the time of registration of the impugned domain name, given the popularity of the mark. Registration of a Domain Name that is identical to a trademark, with actual knowledge of the trademark holder’s rights, is strong evidence that the domain name was registered in bad faith. The Complainant relied on *Accenture Global Services Limited v. Vishal Singh*, NIXI Case No. INDRP/999. The Complainant further relied on *ITC Limited v. Travel India*, NIXI Case No. INDRP/065 (“Respondent is probably aware of the commercial value of the name, and has registered the domain name for possibly deriving revenue from it”); *Kenneth Cole Productions Inc v. Viswas Infomedia*, NIXI Case No. INDRP/093 (where complainant’s trademark was “well known in many countries across the globe, that the Respondent’s adoption of the disputed domain name is nothing but an unjust exploitation of the well-known reputation of the Complainant’s prior registered trade mark”); and *Google Inc. v. Vinit Keshav*, NIXI Case No. INDRP/940 (“at the time of registration of the Disputed Domain Name, the Respondent should have been aware of the famous trademark [owned by Complainant]” which “supports the inference that the purpose of the Respondent’s diversion of traffic from the Complainant to the Respondent is for his own commercial gain” and

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therefore “has been registered and is being used in bad faith”).

- iv. It was submitted that as noted above and as shown in **Annexure-5** filed with the complaint, Respondent is using the Disputed Domain Name in connection with a pay-per-click (“PPC”) website that includes links for goods and services that compete with Complainant, including links labeled “Kubota Tractors,” “Kubota Engines,” and “Kubota Generators.” It was submitted that the Domain name dispute panels have repeatedly held that using a disputed domain name in connection with such a pay-per-click, or PPC, page under the facts present here constitutes bad faith. The Complainant relied on “*L’Oreal v. Yerect International Limited*, NIXI Case No. INDRP/481 (finding bad faith where disputed domain name “resolves to a parking page which displays commercial links”); and *Accor v. Tang Wei*, NIXI Case No. INDRP/127 (“Respondent’s Domain Name currently resolves to a parked webpage which is monetized by click-through revenue” which “appears that the Respondent has deliberately tried to attract internet users to his website, thus, the Arbitrator finds that there is a likelihood that Internet users will be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website and the services advertised on it”).
- v. It was submitted that the panel in *Columbia Pictures Industries, Inc. v. North West Enterprise, Inc.*, WIPO Case No. D2006-0951 stated that,

“Web pages of the type used by the Respondent in connection with the Domain Names – sometimes known as an “online domain monetization system”, a “monetized parking page” or a “paid link farm service” – have become an “increasingly popular way for domain name registrants to profit from their activity with little effort”. *Wal-Mart Stores, Inc. v. Whois Privacy, Inc.*, WIPO Case No. D2005-0851, given the commercial use of other trademarks associated with Complainant on the websites used in connection with the Domain Names and the lack of any indication that the websites are not associated with Complainant, it is likely that a website visitor would be led to such website, or make decisions once he or she has arrived

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at such website, based on a mistaken belief that Complainant is the source of the website or that Complainant has sponsored, is affiliated with or has endorsed the website – a result that constitutes bad faith under paragraph 4(b)(iv) of the Policy.”

It was submitted that in the case of *Western Union Holdings, Inc. v. Domain Drop S.A.*, Forum Claim No. 0971146: “On the facts before us, we may infer that Respondent’s use of the disputed domain name to resolve to a website linking Internet users to third-party products and services is intended to capitalize on the likelihood of confusion with Complainant’s WESTERN UNION mark in an attempt to generate click-through fees, conferring commercial gain on Respondent. Such use by Respondent constitutes bad faith pursuant to Policy ¶ 4(b)(iv).”

- vi. It was submitted that Bad faith exists even if Respondent incredibly argued that it was unaware of the monetized parking page associated with the Disputed Domain Name. It was submitted that as described by WIPO Overview 3.0, section 3.5,

“Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for the content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.”

- vii. It was further submitted that a further indication of bad faith is the fact that the Complainant’s registration of the KUBOTA Trademark for 58 years (including 54 years in India) pre-dates the Respondent’s registration of the Disputed Domain Name. It was submitted that “Complainant is very well-known and has been using

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his mark for a very long period, in his commercial/business activities. It was submitted that the respondent must have known about the complainant's mark at the time of registration of his domain name" *Morgan Stanley v. M/s Keep Guessing*, NIXI Case No. INDRP/024.

- viii. It was submitted that accordingly, the Disputed Domain Name was registered and is being used in bad faith.

The Complainant finally submitted that the domain name registration shall be transferred to the Complainant and the costs imposed on the Respondent as a deterrent to future bad faith registration by the said party.

V. PARTIES CONTENTIONS:

A. COMPLAINANT

- i. The Disputed Domain Name kubota.in is identical and/or confusingly similar to the well-known KUBOTA trademarks of the Complainant as well as the Complainant's websites at its prior registered domain names viz. kubota.com.
- ii. Respondent is using the Disputed Domain Name kubota.in for identical goods/services which will lead to confusion amongst consumers.
- iii. The Disputed Domain Name kubota.in will give to the consumers the impression that the Respondent is associated with the Complainant in some form or the other.
- iv. Respondent has no legitimate interest in the Disputed Domain Name kubota.in;
- v. The adoption / use of the Complainant's well-known registered mark KUBOTA as part of the Disputed Domain Name or in any manner whatsoever results in the infringement and passing off of the rights of the Complainant in its KUBOTA trademarks.

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- vi. The Respondent has incorporated the well-known mark KUBOTA of the Complainant in the Disputed Domain Name kubota.in only with the aim of making illegal gains from the goodwill and reputation of the Complainant.
- vii. Respondent had registered the domain name with dishonest intention and in bad faith especially as Respondent is using the Disputed Domain name in connection with a pay-per-click ("PPC") website that includes links for goods and services that compete with the Complainant, including links labeled "Kubota Tractors", "Kubota Engines", and "Kubota Generators".
- viii. The KUBOTA trademark is a well-known mark and is associated with the Complainant alone and none else.
- ix. The use of KUBOTA trademark in the Disputed Domain Name is without due cause and has been done to gain benefit from the goodwill of the same.
- x. The Disputed Domain Name kubota.in has been registered in bad faith with dishonest intention only to mislead the innocent public.
- xi. The adoption of the Disputed Domain Name is not for non-commercial purposes and does not fall within the ambit of 'fair use'.

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:

The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

- i. The Registrant's domain name is identical or confusingly similar to a name, trademark

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- or service mark in which the Complainant has rights;
- ii. The Registrant has no rights or legitimate interests in respect of the domain name; and
- iii. The Registrant's domain name has been registered or is being used in bad faith.

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also gone through the documents filed by the Complainant with the Complaint. Further, I have gone through case laws relied upon by the Complainant. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually identical to the trademark / service mark of the Complainant and the Disputed Domain name contains the KUBOTA trademark of the Complainant in its entirety. The domain name of the Complainant is <kubota.com> over which the Complainant has rights. Further, the Complainant is prior adopter, prior user and registered proprietor of the well-known KUBOTA trademarks and the domain names with the word KUBOTA, and has absolute and sole rights. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name <kubota.in> and hence the same needs to be transferred to the Complainant. I hold that the company name / trade name / trade mark / domain name KUBOTA has exclusively and solely become associated and recognized with the Complainant. I hold that due to such exclusive association of the KUBOTA word and the variations thereof with the Complainant, and also considering the prior registered domain name of the Complainant containing the KUBOTA marks, the Complainant alone has the right to utilize the KUBOTA trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the KUBOTA mark and the same is associated only with the Complainant.

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights;

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name kubota.in is identical and / or confusingly similar to the KUBOTA marks in which the Complainant has unquestionable rights for the following reasons:

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- i. I find that the Complainant owns at least 757 trademark registrations worldwide that consist of or contain the trademark KUBOTA (the "KUBOTA Trademark").
- ii. I find that the oldest of the KUBOTA Trademarks was registered on January 16, 1964 (Japanese Reg. No. 634,179 for KUBOTA). I find that the registrations for the KUBOTA Trademark include U.S. Reg. No. 922,330 for KUBOTA for use in connection with, *inter alia*, farm tractors and garden tractors (registered October 19, 1971).
- iii. I find that registrations for the KUBOTA Trademark in India include India Reg. Nos. 1864390 (filed in India on 18/09/2009 with user claim since 26/12/2008) and 1742935 filed in India on 13/10/2008 on proposed to be used basis).
- iv. I find that the Disputed Domain Name contains the KUBOTA Trademark (and only the KUBOTA Trademark) in its entirety.
- v. I find that the Disputed Domain Name "wholly incorporates the prior registered trade mark of the Complainant," the disputed domain name is identical or confusingly similar to the trademark for purposes of the INDRP. I find that the Complainant has rightly relied on case laws being *Kenneth Cole Productions Inc v. Viswas Infomedia*, NIXI, Case No. INDRP/093, *Amazon Technologies Inc. v. Mr. Zhou Xiangsheng*, Case No. NIXI Case No. INDRP/347, *Puma SE v. Christian Schmidt*, NIXI Case No. INDRP/956, *Raytheon Company v. Randa Newsome*, NIXI Case No. INDRP/997, *Equifax Inc. v. Nikhlesh Kunwar*, NIXI Case No. INDRP/1038 and *HSBC Group Management Services Limited v. Chinmay*, NIXI Case No. INDRP/992.
- vi. I find that the Disputed Domain Name is identical or confusingly similar to the KUBOTA Trademark.

B. The Respondent has no rights or legitimate interests in the domain name:

I hold that the Complainant has successfully demonstrated by way of its Complaint that

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the Respondent has no right or legitimate interest in the disputed domain name <<kubota.in > for the following reasons:

- i. I find that the Complainant has no rights or legitimate interests in the Disputed Domain Name. I find that the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the KUBOTA Trademark in any manner. I find that, as here, "the Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark, and therefore, this panel finds a lack of rights or legitimate interests under the INDRP. I agree with findings in *Sony Ericsson Mobile Communications AB v. Salvatore Morelli*, NIXI Case No. INDRP/027, *Six Continents Hotels, Inc. v. Patrick Ory*, WIPO Case No. D2003 and *Marriott International, Inc. v. Thomas, Burstein and Miller*, WIPO Case No. D2000-0610.
- ii. I find that the facts of the present case are the same as the case of *Accenture Global Services Limited v. Vishal Singh*, NIXI Case No. INDRP/999 wherein it was held:

Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. It was submitted that the potential partners and end users are led to believe that the website is either the Complainant's site, or the site of official authorized partners of the Complainant, while in fact it is neither of these.

I find that hence, the Respondent lacks rights or legitimate interests in respect of the disputed domain name.

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- iii. I find that the Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services and, therefore, Respondent cannot establish rights or legitimate interests under Paragraph 7(i) of the INDRP. I find that as stated above and as shown in **Annex-5** filed with the complaint, Respondent is using the Disputed Domain Name in connection with a pay-per-click, or PPC, a website that includes links for goods and services that compete with Complainant, including links labeled "Kubota Tractors," "Kubota Engines," and "Kubota Generators." I find that the use is clearly not *bona fide* under the Policy and, therefore, does not confer upon Respondent any rights or legitimate interests in the Disputed Domain Name. I find that the Complainant has rightly relied on *Areva v. Domain Investment Inc.*, NIXI Case No. INDRP/442, *Lululemon Athletica Canada, Inc v. Liheng Just Traffic Supervision Consulting*, NIXI Case No. INDRP/725, *MBI, Inc. v. Moniker Privacy Services/Nevis Domains LLC*, WIPO Case No. D2006-0550, *Western Union Holdings, Inc. v. Anna Valdieri*, WIPO Case No. D2006-0884 and *Emmis Television Broadcasting, L.P., d/b/a KHON-TV v. Henry Chan*, WIPO Case No. D2004-0366.
- iv. I find that the Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph 7(ii) of the INDRP. I find that the Whois record (attached as **Annex-1 (amended)**), does not identify the registrant of the Disputed Domain Name as "Kubota" or any variation thereof. This fact, combined with the lack of evidence in the record to suggest otherwise, allows this Panel to rule that Respondent is not commonly known by any of the disputed domain names or any variation thereof as held in the case of *Alpha One Foundation, Inc. v Alexander Morozov*, Forum Claim No. 0766380. In addition, given Complainant's registration of the KUBOTA Trademark for 58 years (including 54 years in India), it is exceedingly unlikely that the Respondent is commonly known by this trademark as held in the case of *Six Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel*, WIPO Case No. D2004-0246 wherein it was held "given the Complainant's established use

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of its marks, it is unlikely that the Respondents are commonly known by any of these marks”.

- v. I find that by using the Disputed Domain Name in connection with a monetized parking page (filed with the complaint and marked as **Annex-5**), Respondent's actions are clearly commercial and, therefore, Respondent cannot establish rights or legitimate interests pursuant to paragraph 7(iii) of the INDRP. I have gone through case laws submitted in the form of examples by the Complainant, e.g., *Dassault Systemes Solid Works Corporation v. Wangyuan*, NIXI Case No. INDRP/258, *Accor v. Tang Wei*, NIXI Case No. INDRP/127, *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. D2012-2066, *Zions Bancorporation v. Domain Administrator*, Fundacion Private Whois, WIPO Case No. D2014-0465, *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. D2014-0206, and *Lululemon Athletica Canada, Inc v. Liheng Just Traffic Supervision Consulting*, NIXI Case No. INDRP/725.
- vi. After going through facts of this particular Complaint and aforesaid case laws, I find that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

C. The domain name is registered and being used in bad faith.

I hold that the Respondent has registered the impugned domain name in bad faith as per Paragraph 7(c) of the INDRP for the following reasons:

- i. I find that the Disputed Domain name should be considered as having been registered or being used in bad faith by Respondent.
- ii. I find that as set forth in WIPO Overview 3.0, section 3.1.4, “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” I find that the Panels have agreed to this settled legal principal as in the cases of *Williams- Sonoma, Inc. v.*

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Jiaai (EAC International), NIXI Case No. INDRP/773, *L'Oreal v. Yerec International Limited*, NIXI Case No. INDRP/481. It was submitted the KUBOTA trademark is famous or widely known, given that Complainant oldest registration for the KUBOTA trademark is 58 years old (including 54 years old in India); the KUBOTA trademark is protected by at least 757 trademark registrations worldwide (Annexes 1(amended), 6, and 7); and (as set forth above) the KUBOTA trademark is used by a company i.e. the Complainant that has capital of ¥84.1 billion, revenue (consolidated) of ¥2,196.8 billion, and 43,293 employees (consolidated).

- iii. I find that given the longtime use and global protection for the KUBOTA trademark, "it is inconceivable that the Respondent was not aware of the popularity of the mark [KUBOTA] at the time of registration of the impugned domain name, given the popularity of the mark. Registration of Domain Name that is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith." I find that the Complainant has rightly relied on *Accenture Global Services Limited v. Vishal Singh*, NIXI Case No. INDRP/999 and *ITC Limited v. Travel India*, NIXI Case No. INDRP/065, *Kenneth Cole Productions Inc v. Viswas Infomedia*, NIXI Case No. INDRP/093, (and *Google Inc. v. Vinit Keshav*, NIXI Case No. INDRP/940).
- iv. I find that as noted above and as shown in **Annexure-5** filed with the Complaint, Respondent is using the Disputed Domain Name in connection with a pay-per-click ("PPC") website that includes links for goods and services that compete with Complainant, including links labeled "Kubota Tractors," "Kubota Engines," and "Kubota Generators." I find that the Domain name dispute panels have repeatedly held that using a disputed domain name in connection with such a pay-per-click, or PPC, page under the facts present here constitutes bad faith. It has been held in the cases of *L'Oreal v. Yerec International Limited*, NIXI Case No. INDRP/481 (finding bad faith where disputed domain name "resolves to a parking page which displays commercial links"); and *Accor v. Tang Wei*, NIXI Case No. INDRP/127 ("Respondent's Domain Name currently resolves to a parked webpage which is monetized by click-through revenue" which "appears that the Respondent has deliberately tried to attract internet users to his website, thus, the Arbitrator finds that there is a likelihood that Internet users will be confused as to the source,

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sponsorship, affiliation, or endorsement of the Respondent's website and the services advertised on it").

- v. I find that the panel in *Columbia Pictures Industries, Inc. v. North West Enterprise, Inc.*, WIPO Case No. D2006-0951 stated that,

"Web pages of the type used by the Respondent in connection with the Domain Names – sometimes known as an "online domain monetization system", a "monetized parking page" or a "paid link farm service" – have become an "increasingly popular way for domain name registrants to profit from their activity with little effort". *Wal-Mart Stores, Inc. v. Whois Privacy, Inc.*, WIPO Case No. D2005-0851, given the commercial use of other trademarks associated with Complainant on the websites used in connection with the Domain Names and the lack of any indication that the websites are not associated with Complainant, it is likely that a website visitor would be led to such website, or make decisions once he or she has arrived at such website, based on a mistaken belief that Complainant is the source of the website or that Complainant has sponsored, is affiliated with or has endorsed the website – a result that constitutes bad faith under paragraph 4(b)(iv) of the Policy."

I find that in the case of *Western Union Holdings, Inc. v. Domain Drop S.A.*, Forum Claim No. 0971146: "On the facts before us, we may infer that Respondent's use of the disputed domain name to resolve to a website linking Internet users to third-party products and services is intended to capitalize on the likelihood of confusion with Complainant's WESTERN UNION mark in an attempt to generate click-through fees, conferring commercial gain on Respondent. Such use by Respondent constitutes bad faith pursuant to Policy ¶ 4(b)(iv)."

- vi. I find that bad faith exists even if Respondent incredibly argued that it was unaware of the monetized parking page associated with the Disputed Domain Name. I find that as described by WIPO Overview 3.0, section 3.5,

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“Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.”

- vii. I find that a further indication of bad faith is the fact that Complainant’s registration of the KUBOTA Trademark for 58 years (including 54 years in India) pre-dates Respondent’s registration of the Disputed Domain Name. I find that Complainant is very well-known and has been using its mark and domain name for a very long period, in its commercial/business activities. I find that the respondent must have known about complainant’s mark at the time of registration of his domain name as held in the case of *Morgan Stanley v. M/s Keep Guessing*, NIXI Case No. INDRP/024.
- viii. I find that the Disputed Domain Name was registered and is being used in bad faith.

In view of all the above facts and well-known legal precedents, I find and hold as under:

- That the disputed domain name of the Respondent is identical and confusingly similar to the Complainant’s KUBOTA trademarks and domain name of the Complainant <kubota.com>.
- That the use of the disputed domain name <kubota.in> is likely to lead to enormous confusion *qua* its origin due to the use of the Complainant’s trade mark KUBOTA as a whole in the disputed domain name being phonetically, visually and structurally identical to the Complainant’s trade mark KUBOTA.
- That the disputed domain name was registered in bad faith by the Respondent.
- That the disputed domain name is strictly identical to the Complainant’s distinctive

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mark, consumers would certainly mistakenly assume that a website / disputed domain name <kubota.in> is operated or endorsed by the Complainant, when such would not be the case.

- That the Respondent has deliberately attempted to create a false impression in the minds of the consumers that the Respondent is somehow associated with or endorsed by the Complainant to ride on the goodwill and reputation associated with the Complainant and to unjustly enrich from the same.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- That there is also an imminent likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name.
- That the Respondent does not have any affiliation or connection with the Complainant and/or its goods / services under the name/mark DELL and consequently it is inconceivable that the Respondent's adoption of the name <Kubota.in> which is identical to the Complainant's 'KUBOTA' trademarks and domain names with KUBOTA can be seen as merely coincidental.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the registration of Domain name/URL of the Respondent <kubota.in> to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 18th day of November 2022.



Dr. Sheetal Vohra

Sole Arbitrator

Date: 18/11/2022