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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA

.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

Kangaroo Kids Education Ltd.
301, Mamta House, 231 S. V. Road,
Above Indusind Bank, Bandra (West)
Mumbai 400 050.

.....COMPLAINANT

VERSUS

Anupama Devi
TG CHS Ltd.
Andheri West,
Mumbai.

.....RESPONDENT

1 **The Parties:**

The Complainant is Kangaroo Kids Education Ltd. 301, Mamta House, 231 S. V. Road, Above Indusind Bank, Bandra (West), Mumbai 400 050. Represented through Legasis partners registered office No. 38, A/B, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021.

The Respondent is Anupama Devi T G CHS Ltd. Andheri West, Mumbai.

2. **The Domain Name and Registrar**

The disputed domain name **KANGAROOKIDS.IN** is registered with Directi Internet Solutions Pvt. Ltd. dba Public Domain Registry.com

3. **Procedural History**

The Complaint was filed with the .In Registry, National Exchange of India (NIXI), against Anupama Devi T G CHS Ltd. Andheri West, Mumbai. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

- 3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **June 18, 2010**. The parties were notified about the appointment of Arbitrator on June 23, 2010.



3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on June 23, 2010. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

3.3 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within 10 days as was granted to him by the notice dated June 23, 2010. The Respondent was again granted last and final opportunity to file its response within 3 days time by the notice dated July 12, 2010. However, the Respondent did not file any reply to the Complaint filed on behalf of the Complainant.

3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.5 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

4. **FACTUAL BACKGROUND**

4.1 The Complainant in these administrative proceedings is Kangaroo Kids Education Ltd. 301, Mamta House, 231 S. V. Road, Above Indusind Bank, Bandra (West), Mumbai 400 050.



The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act, 1996, .In Dispute Resolution Policy and rules framed there under and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be fit and applicable to the proceedings.

- 4.2 The Complainant, Kangaroo Kids Education Ltd., is engaged in providing services relating to dynamic and/or integrated education system which is based on round rewarding learning experience as diverse to the conventional educational system prevalent in India.

The complainant, Kangaroo Kids Education Limited was established in 1993 in Mumbai. The Complainant established their first pre-school in Bandra with a preliminary capacity of 25 students. By 1994, the said school was running in two shifts and had grown to the capacity of 125 students. The education imparted and/or evolved by Mrs. Lina and ably supported by her core team consisting of team of curriculum developers and research and development out of their extensive expertise and experience was an instant success. The complainant acquired the benefits, rights and goodwill under the Kangaroo Kids trademark.

In the last 16 years, as on date, the complainants have established 50 operational branches in 17 cities across India and International centers in Dubai and Maldives.

The Complainant is the owner of the KANGAROO KIDS mark and related marks that incorporate and/or are used alongside with the KANGAROO KIDS mark. These marks are not only famous

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marks in the world of children's education but have been developed and used exclusively by the Complainant for almost two decades now and continue to be used in the aforementioned manner. Kangaroo Kids also forms an essential part of the Complainant's corporate name Kangaroo Kids Education Ltd.

4.3 The respondent has registered the disputed domain name "kangarookids.in" on 4th November 2009 through the Registrar, Directi Internet Solutions. The respondent has not submitted any response to the complaint as has been filed by the complainant in the above proceedings despite being given two opportunities by the panel.

5. **Parties Contentions**

A **Complainant**

5A(1) The Complainant offers educational products and services on the worldwide web. Complainant is the owner of the top level domain name KKEL.com as well as numerous variations thereof in the .com and other gTLDs. The domain name KKEL.COM leads to an active website.

5A(2) The Complainant is also the owner of various domain names which incorporate the KANGAROO KIDS trademark and tradename. Some of these being KANGAROOKIDS.CO.IN, KANGAROOKIDS.NET.IN, KANGAROOKIDSINDIA.COM, KANGAROOKIDSLIMITED.COM, KANGAROOKIDS.ORG.IN AND KANGAROOKIDSMAIL.COM.

5A(3) The Complainant is the registered proprietor of the trademark KANGAROO KIDS as well as other



trademarks that incorporate the KANGAROO KIDS mark in various international jurisdictions.

5A(4) The Complainant is also the registered proprietors of the trademarks "Kangaroo Kids" in Class 41 bearing trademark registration number 1270051, "Kangaroo Kids Education Ltd." & stylized logo drawing of a Kangaroo inside a Circle (hereinafter known as "Kangaroo" Device) in class 41 bearing trademark registration no. 1270053. Copies of the aforementioned trademark registration certificates are annexed by the complainant to the complaint.

B Respondent

5B(1) The Respondent has been given two opportunities to file its response to the Complainant by the panel by its notice(s) dated June 23, 2010, & July 12, 2010.

5B(2) The Respondent has failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant.

6 Discussions and Findings

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional



circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 Under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the reliefs claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

The Complainant has filed evidence by way of Annexure A to L with the Complaint.



The Respondent has not filed its reply or any documentary evidence.

- 6.5 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name KANGAROOKIDS.IN and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the annexures filed by the Complainant along with the Complaint
- 6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad -AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof, (see Section 58 of the Indian Evidence Act, 1872).
- 6.8 The Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.9 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant
- 6.10 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the



domain name of the Respondent to be transferred to the Complainant or cancelled:

- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
- (iii) the domain names have been registered and are being used in bad faith.

That being so, the Panel will now proceed to examine if the Complainant has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A. Identical or Confusingly Similar

6A.1 The Complainant submits that the respondent's domain name incorporates in its entirety the well-known and famous mark KANGAROO KIDS of the Complainant in which the Complainant has statutory rights as well as rights under common law.

6A.2 The Complainant further submits that the respondent's domain name is also deceptively similar to the Complainant's domain names which incorporate its well known trademark KANGAROO KIDS as mentioned above.

6A.3 The Complainant further submits that The addition of the country code ".in" (INDIA) to the Complainant's trademark KANGAROO KIDS makes the resulting domain name KANGAROOKIDS.IN confusingly similar to the Complainant's trademark.



6A.4 The Complainant further submits that as per paragraph 3 of the .In Policy clearly puts the burden on the Respondent to check whether the registration of any domain names by it will violate or infringe on the legitimate trademark rights of any third party. It is apparent that the respondent's domain name wholly contains the complainant's trademark KANGAROO KIDS and is confusingly similar as a whole to the trademark in which the complaint has statutory rights as well as common law rights.

6A.5 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also find and hold that the disputed Domain Name KANGAROOKIDS.IN is identical and/or deceptively similar to the earlier registered trade marks/ trade name and Domain names of the Complainant. The whole of Complainants trade mark / trade name / domain name has been incorporated in the disputed domain name and there is bound to be confusion to deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name KANGAROOKIDS.IN is identical and/or confusingly similar to the trademark KANGAROO KIDS of the Complainant.

B. Rights or Legitimate Interests

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant use of, or demonstrate



preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

- (ii) the Registrant (as an individual, business, or other organization) have been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) the Registrant is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

6B.3 The Complainant submits that since the disputed domain name comprises of the well-known and famous trademark KANGAROO KIDS in which the Complainant has sole and exclusive interests, it is evident that the respondent cannot have any rights or legitimate interest in the domain name.

6B.4 The Complainant further submits that upon information and belief, KANGAROO KIDS is not Respondent's personal name, neither is the Respondent commonly known by the domain name and the Respondent does not actually engage in any business or commerce under the name KANGAROO KIDS and respondent is not known to the public under the name KANGAROO KIDS.

6B.5 The Complainant further submits that the respondent is not making a legitimate non-commercial or fair use of the domain name. Further the Respondent is not a licensee of the complainant, nor has respondent ever been authorized by the Complainant to use the KANGAROO KIDS mark or any mark in the KANGAROO KIDS family of marks or to register the



domain name KANGAROOKIDS.IN. Indeed, the Complainant has no relationship whatsoever to Complainant.

6B.6 The Complainant further submits that given the prior use and registrations of the distinctive KANGAROO KIDS mark by complainant, the respondent should be held to have actual or at a minimum constructive knowledge of such uses. Respondent thus could not have established legitimate rights in the domain name, which was undoubtedly registered in order to capitalize on the fame and reputation of the complainant's KANGAROO KIDS family of marks.

The Respondent has no rights or legitimate interest in the domain name. Further it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks.

6B.7 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also find, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.8 The Panel, therefore holds that the circumstances listed above demonstrates rights or legitimate interests of the Complainant in the domain name KANGAROOKIDS.IN and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name and has no legitimate right or interest therein.



c **Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of our documented out-of-pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Complainant submits that the disputed domain name KANGAROOKIDS.IN incorporates the Complainant's well-known and famous mark



KANGAROO KIDS it is but evident that the Respondent can have no rights or legitimate interest in the domain name. Rather the sole purpose of the adoption of the complainant's trademark in its entirety by the respondent is to misappropriate the complainant's well-known trademark KANGAROO KIDS.

6C.4 The Complainant submits that the Complainant's KANGAROO KIDS mark is well known respondent is presumed to have had knowledge of the complainant's mark at the time it registered the confusingly similar domain name. This knowledge indicates Respondent's bad faith use and registration.

6C.5 The Complainant submits that the complainant was the original registrant of the domain name KANGAROOKIDS.IN till April 2010. It is submitted that due to inadvertence, the said domain registration was not renewed and the respondent took advantage of this vacuum to register the domain name in question.

In doing so, the respondent has demonstrated prima facie that he has knowledge of the complainant's business and his own bad faith thereof.

6C.6 The Complainant further submits that the respondents domain name resolves to the website www.iplayilearn.com which is the website of a competitor of the complainant. Hence it is evident that the respondent has neither intention nor reason to legitimately use the impugned domain name and is merely misrepresenting itself as the complainant in order to catch the initial attention of consumers and thereafter direct said consumers towards the website of the complainant's competitor. This attempt by the respondent to misappropriate the goodwill and reputation of the complainant without the specific authorization of the complainant is likely to lead to



and will lead to unjust enrichment of the respondent as the expense of the complainant.

6C.7 The Complainant further submits that the respondent has given false contact details for the purposes of registering the disputed domain name. It is submitted false contact details on the Whois.com web site is considered prima facie evidence of bad faith.

6C.8 The Complainant further submits that it is evident that the respondent has registered and used the domain names to capitalize on the likelihood of confusion between its domain name and complainant's KANGAROO KIDS mark.

Further, the Complainant submits that there is a great likelihood that an actual or potential visitor to the Respondent's present web page or any future web page that the subject domain name resolves to, will be induced to:

- > Believe that the Complainant has licensed the trademark KANGAROO KIDS to the Respondent or IPLAYLEARN.com or has authorized the respondent or IPLAYLEARN.com to register the disputed domain name.

- > Believe that the Respondent or IPLAYLEARN.com has some connection with the Complainant in terms of a direct nexus or affiliation with the complainant or has been authorized by the complainant.

6C.9 The Respondent does not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name KANGAROOKIDS.IN was registered by the respondent in bad faith and to attract the



internet users, through disputed domain, to the website of the competitor.

6C.10 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. Decision

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

Transfer of the domain name KANGAROOKIDS.IN to the Complainant.

Since it is the duty of the complainant to keep the registration of the domain name maintained and active at all times, the panel find no reason to award cost to the complainant and against the respondent. The parties should bear their own costs.



AMARJIT SINGH
Sole Arbitrator

Dated: 10 August 2010