

D.SARAVANAN
ARBITRATOR
NEW No.346 (OLD No.161), 1 FLOOR,
THAMBU CHETTY STREET,
OPP. HIGH COURT, CHENNAI-600 001.

A 191914
P. S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L. No. B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104, (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR D.SARAVANAN
.IN REGISTRY
C/o.NLXI (NATIONAL INTERNET EXCHANGE OF INDIA)
CORP. OFFICE 121-123 ANSAL TOWER
NEHRU PLACE, NEW DELHI-110109, INDIA.
TEL: +91-11-416 74311/12
FAX: +91-11-416 74310
registry@nxi.in

KELLEY BLUE BOOK CO., INC.
195 Technology Drive
Irvine, California 92618
United States of America.

..Complainant.

Vs.

DENIS
ICQ: 105133468, US
+ 105.133468
sipulpa@mail.ru

.. Respondent

-.2.



भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100



ONE
HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

तमिलनाडु TAMILNADU

2025

22.8.2006

D. SARAVANAN
ARBITRATOR
NEW No.346 (OLD No.161), 1 FLOOR,
THAMBU CHETTY STREET,
OPP. HIGH COURT, CHENNAI-600 001.

A 191925

P.S. SHANMUGA SUNDARAM,
STAMP VENDOR.
L. NO. B 4 / 109 / 88
HIGH COURT CAMPUS
CHENNAI-600 104. (TAMIL NADU)

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1. The Parties:

The Complainant is KELLEY BLUE BOOK CO., INC., 195 Technology Drive, Irvine, California 92618, United States of America, represented by Perry J.Viscounty of LATHAM & WATKINS LLP, California, United States of America.

The Respondent is DENIS, ICQ:105133468, US. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name:
<kbb.in>

The domain name registered with .IN REGISTRY

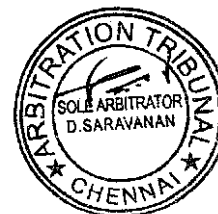
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3. Procedural History:

- July 20, 2006 : The complainant submitted the complaint with .IN REGISTRY via e-mail and also notifying that a hard copy of the documents has been sent by mail on July 18, 2006.
- July 22, 2006 : The complaint dated July 18, 2006 was received by .IN REGISTRY, National Internet Exchange of India (NIXI).
- August 9, 2006 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- August 9, 2006 : The .IN REGISTRY having verified and satisfied with the formal requirements of complaint in accordance with INDRP Rules of Procedure formally notified the Respondent of the complaint as per Paragraph 4(a) of INDRP Rules of Procedure through email at sipulpa@mail.ru (11:01:44+0530) and also forwarded the hard copy of the complaint and also a CD containing the soft copy of the complaint as well as entire annexures through courier.
- August 9, 2006 : The respondent sent a reply e-mail to paralegal.tapan@nixi.in at 7:12 P.M. requesting to send soft copy of the complaint via e-mail as he could not receive mails for some time.
- August 9, 2006 : The Arbitrator has submitted Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.
- August 11, 2006 : The .IN REGISTRY forwarded a soft copy of the complaint including annexures via e-mail to Respondent.

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- August 14, 2006 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorised representative and .IN REGISTRY.
- August 24, 2006 : Due date for filing Response by Respondent.
- September 7, 2006 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- September 8, 2006 : The .IN REGISTRY sent an e-mail to the Respondent stating his failure to send reply to Arbitrator's notice dated August 14, 2006.

The language of the proceedings in English.

4. Factual Background:

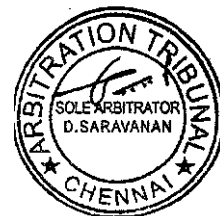
4.1 The Complainant:

The Complainant is Kelley Blue Book Co., Inc. which was incorporated in California, United States of America.

4.2 Complainant's Activities:

Complainant Kelley Blue Book Co., Inc., has published Blue Book Guide to provide used car prices and other services related to the automobile industry, including car reviews, new car prices, automobile insurance, and automobile financing continuously in the United States since 1926.

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4.3 Complainant's Trading Name:

The Complainant owns United States registered Trademark KBB.COM since 2003 with an indicated first use dating back to May 1, 1998. The Complainant also owns other registered marks, including KELLEY BLUE BOOK which was first registered in United States with an indicated first use dating back to 1954.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <kbb.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Denis, ICQ:105133468, US.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

i) The Complainant submits that they acquired all Intellectual Property rights relating to KBB.COM, KELLEY BLUE BOOK, KELLEY BLUE BOOK OFFICIAL GUIDE and BLUE BOOK registered with United States Trademark office. The trademark, date of its registration, indicated first use date of such trademarks and classes and goods under which the trademarks registered were extracted in pages 4 and 5 of the complaint. Further, according to the Complainant they have also registered the trademarks, above referred, outside the United States namely Canada & European Union. Such trademarks, date of its registration, indicated first use date, classes and goods under which the said trademarks registered were also extracted in pages 5 and 6 of the complaint. That apart, according to the Complainant, they have applied for registration of their trademarks in India (Trademarks Registry, Government of India, Chennai-600 090)

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namely, KBB.COM, KELLEY BLUE BOOK, KELLEY BLUE BOOK OFFICIAL GUIDE and logo and BLUE BOOK. According to the Complainant, they have established common law rights to KBB, KBB.COM and its KELLEY BLUE BOOK marks through extensive use and promotions. Among other marks, KBB.COM are famous throughout the United States and worldwide and enjoy substantial recognition, goodwill, and association with Complainant. Further, the public distinguishes the Complainant's goods and services from those of other organizations on the basis of the KELLEY BLUE BOOK marks which are inherently distinctive and have acquired secondary meaning throughout the world.

ii) According to the Complainant, they have registered various domain names to offer its activities on the Internet and they own and operate the Internet sites viz., www.kbb.com and www.kelleybluebook.com. The first Internet site was registered on August 5, 1995 and the second one was registered on February 21, 1998 and to support such contention, the Complainant has filed the **.COM WHOIS** database under Annexure 14 and 15 concerning the respective domain names. Further, according to the Complainant, by way of abundant caution, as the word "Kelley" is commonly misspelled as "Kelly", they have registered the phonetically identical Internet site <www.kellybluebook.com> on July 23, 1998 so as to help and assist its customers in finding its website.

iii) According to the Complainant, their Internet sites are the most visited automotive information sites, which allured over 13 million visitors in March 2006, have an average of 7 million unique visitors each month, and generate over 30 million pricing reports on new and used vehicles every month.

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iv) According to the Complainant, Respondent's domain name <kbb.in> consists entirely of their trademark, except for .IN i.e., ccTLD, thereby the cyber piracy is in apparent form.

(b) Respondent has no rights or legitimate interests in the domain name:

According to the Complainant, neither Respondent's name nor its administrative and technical contact information suggests any right or legitimate interests in any variation of Complainant's KBB.COM trademark. Further, the disputed site does have one hyperlink which is titled "**Kellyfsic] Blue Book links**", however, which does not even link to the Complainant's official web site. Instead, it offers 20 links to web sites that compete with the Complainant. Therefore, it is obvious that the Respondent is purposefully attempting to create a false impression of association with the Complainant. The Complainant further asserts that they have never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain names, including its trademarks. There is also no relationship whatsoever between the Complainant and the Respondent, however, the Respondent has engaged in wholesale and unauthorized copying of content from the Complainant's web site in an apparent attempt to confuse its potential customers. Further, the Respondent's use of the <kbb.in> domain name to promote new and used car values and other automotive information - the very products and services with which consumers have long associated Complainant's famous marks - provides additional evidence that the Respondent has no right or legitimate interest in the domain name.

(c) Respondent has registered and is using the domain name in bad faith:

i) According to the Complainant, Respondent has registered the <kbb.in> domain name in bad faith infringing their domain name thereby preventing them from registering the domain name for its own purpose. The



Respondent is well aware of the Complainant's trademark and legitimate business interest, therefore the choice of <kbb.in> domain name could not have been mere coincidence. But for the different ccTLD, the Respondent's domain name is identical to Complainant's domain name, which amount to cyber piracy or "typo squatting". The Respondent is clearly acting in bad faith in its attempt to divert Internet users from the Complainant's official web site to Respondent's web site which offers competing products and services. The traffic to the Respondent's web site generated by the Respondent's use of the Complainant's famous trademarks is plainly motivated by a desire for commercial gain and is only successful because it creates a likelihood of confusion with Complainant's KBB.COM mark and other KELLEY BLUE BOOK marks as to the source, sponsorship, affiliation and endorsement of Respondent's website. Indeed, Respondent's web site even acknowledges the Complainant's pre-eminence in the automotive field. Respondent was clearly aware of the potential risk of deception and of the confusion that would inevitably follow when it registered its domain name. Indeed, that is precisely what Respondent was banking on when it registered the domain name. Respondent is clearly seeking to give the false impression that its site is somehow endorsed by or otherwise affiliated with the Complainant.

ii) The Complainant further contends that their reputation as the automotive market leader has made it the victim of numerous other cyber pirates who have attempted to hijack its famous marks for their own commercial gain and that they have been successful in retrieving domain names registered in bad faith by individuals who have sought to take unfair advantage of its world famous brand.

iii) The Respondent's registration of <kbb.in> on May 14, 2005, was long after the Complainant's first use of the KBB.COM mark in 1998 and decades after the Complainant first began providing automobile



information more than 70 years ago. Respondent has simply imitated the marks owned by the Complainant which are famous in the relevant field. Therefore, the Respondent has plainly registered its domain name for the bad faith purpose of disrupting the Complainant's business by diverting Internet traffic to Respondent's web site and thus improperly benefiting from the complainant's world famous marks.

iv) Further, the Respondent's bad faith evidences from the fact that it has registered and maintains an additional domain name located at <**Kelly-blue-book.to.pl**>. The contact email therein is also one and the same <**denis(fl)kbb.in**> and the contents therein also virtually identical to the content of the web site. Further, the domain name located at <**Kelly-blue-book.e33.de**> automatically redirects to the web site which exhibits the fact that the Respondent is engaging in a pattern of conduct that constitutes bad faith registration and use. In addition to that the registration of <**kbb.in**> mark has prevented the Complainant from reflecting its KBB.COM mark in the .IN REGISTRY. According to the Complainant, they became aware of Respondent's bad faith registration of disputed domain name only after filing their trademark applications in India. Because of Respondent's infringement, the Complainant now being prevented from reaching its potential customers in India directly. This egregious effort to plagiarize material from Complainant's web site is nothing but a calculated disruption to the legitimate flow of Internet traffic to Complainant's web site. Once the Respondent has diverted those potential customers, the copying of information and the use of the infringing domain name to provide information about automobiles creates a further likelihood of confusion and is clearly intended to imply sponsorship, affiliation, or endorsement of its web site by the Complainant. In addition, the visitors of the Complainant's official web site may actually receive valuable information and services related to the automotive industry. On the contrary, the visitors to



disputed domain name receive only plagiarize material and links to other automotive websites. The Respondent is operating the web site in bad faith because it is making unauthorized use of the Complainant's world-renowned trademarks for the sole purpose of making money for itself rather than providing a legitimate service to the public. It also prevents the Complainant from making a legitimate use of the domain name and that the Respondent is using <kbb.in> domain name in bad faith and in a blatant attempt to improperly benefit from the Complainant's reputation and world famous trademarks.

B. Respondent:

The Respondent did not submit any response.

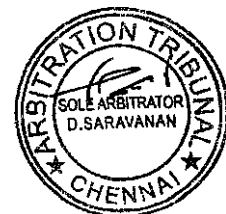
6. Discussion and Findings:

It has to be asserted as to Whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on September 7, 2006.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

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

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark and logo being KBB.COM. The Respondent's domain name, <**kbb.in**>, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <**kbb.in**> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The



Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs V(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain,

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internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. 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.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

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7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <**kbb.in**> be transferred to the Complainant.

Dated at Chennai (India) on this 25th day of September, 2006.



**(D.SARAVANAN)
Sole Arbitrator**