



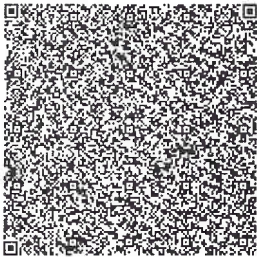
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL10601168312616Q
Certificate Issued Date	: 01-Dec-2018 10:41 AM
Account Reference	: IMPACC (IV)/ dl838903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83890326079958492929Q
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL-INTERNET EXCHANGE OF INDIA

6C, 6D, 6E, Hansalaya Building,
15, Barakhamba Road,
New Delhi – 110 001

Kirloskar Proprietary Limited v. Siva Nageswara Rao Doradla

AWARD

V K Agarwal

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant is M/s Kirloskar Proprietary Limited, 13/A, Karve Road, Kothrud, Pune – 411 038, Maharashtra, India.

The Respondent is Mr. Siva Nageswara Rao Doradla, Flat No. 602, 6th Floor, Babu Khan Estate, Basheerbagh Flyover, Basheerbagh, Hyderabad – 500 001, Telangana, India.

2. The Domain Name and Registrar

The disputed domain name is <www.kirloskarcapital.in>. The said domain name is registered with Godaddy.com LLC. The details of registration of the disputed domain name are as follows:

- | | |
|-----------------------|-----------------------------|
| (a) Domain ID: | D4144000000006487159 – AFIN |
| (b) Registrar: | Godaddy.com LLC |
| (c) Date of creation: | August 11, 2018 |
| (d) Expiry date: | August 11, 2020 |

3. Procedural History

- (a) A Complaint dated November 05, 2018 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 1. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

V. K. Agarwal

- (b) In accordance with the Policy and the Rules, an attempt was made to notify the Respondent about the Complaint on the given address. However, the Complaint could not be served on the Respondent. Thus, no response has been received from the Respondents. Hence, the present proceedings have to be ex parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company incorporated and existing according to the laws of India. According to the Complaint, the Complainant is engaged in the business of sale of a variety of goods in India including centrifugal pumps, agricultural implements, electric motors, machine tools, ploughs, internal combustion engines, oil engines, marine gears, electric generators, welding machines, etc, since 1920 and exporting the said goods overseas.

According to the Complaint, the Kirloskar group consists of about 14 companies in India and abroad. Only to illustrate, some such companies are (1) Kirloskar Brothers limited; (2) Kirloskar Oil Engines Limited; (3) Kirloskar Pneumatic Co. Limited; (4) Kirloskar Systems Limited; (5) Kirloskar Ebara Pumps Limited; (6) Kirloskar Ferrous Industries Limited; (7) Kirloskar Chillers Pvt. Limited; (8) Kirloskar Capital Limited, etc. The group companies located in other countries include (a) Kirloskar Kenya Limited, Kenya; (b) Kirloskar Brothers (Thailand) Limited, Bangkok; (c) Kirloskar Brothers International BV, Netherlands, etc.

The trademark KIRLOSKAR has acquired a high degree of public recognition and distinctiveness and symbolizes valuable goodwill for the Complainant. The Complainant is well known to its customers as well as in business circles as "KIRLOSKAR".

Respondent's Identity and Activities

Respondent has not provided the response. Hence, the Respondent's activities are not known.

5. Parties Contentions

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A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the Complainant is the proprietor of the trademark "Kirloskar", "KIRLOSKAR" and its variants. They are registered trademarks in India and in foreign countries. So far as foreign countries are concerned, the word "KIRLOSKAR" and its variants are registered as trademark in the following countries, namely, Australia, Benelux, Chile, China, Dominican Republic, Ecuador, Nepal, Turkey, United Arab Emirates, the United Kingdom and the United States of America. They are registered in classes 7, 11, 12 and 35.

In India, the trademark "**KIRLOSKAR**" was registered as early as the year 1951. Now, the trademark **KIRLOSKAR** and its variants including the word "**Kirloskar**" (in English and Hindi) are registered as a trademark in class 7. Copies of the said Registration Certificates are available at Annexure 6 and Annexure 7 to the Complaint.

The Complainant contends that the Complainant is the registrant and proprietor of various domain name registrations at international and domestic levels incorporating the designation "kirloskar". Some such illustrations are as follows:

<www.kirloskar.com>;	
<www.kirloskarsolutions.in>;	<www.kirloskargreen.com>;
<www.kirloskargreen.in>;	<www.kirloskarsolar.com>;
<www.kirloskarengines.com>;	<www.kirloskar-online.org>;
<www.kirloskar.co.za>; etc.	

The Complainant contends that the disputed domain name contains the trademark of the Complainant, that is, KIRLOSKAR. The addition of the generic words "capital" or "in" in a domain name is insignificant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the goods and services offered under the disputed domain name from the Complainant. Further that, they do not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the Complainant's products.

Therefore, the disputed domain name is confusingly similar or identical to the registered trademark of the Complainant.

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In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "KIRLOSKAR" and "Kirloskar". The Respondent does not own any trademark registration as KIRLOSKAR or a mark that incorporates the expression KIRLOSKAR. The Respondent has no license or authorization or permission from the Complainant to either use the designation "KIRLOSKAR" or to register the disputed domain name.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed domain name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.kirloskarcapital.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has not demonstrated any preparations to use the disputed domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated with the mark KIRLOSKAR.

According to precedents, the domain names are fast emerging corporate assets and have evolved as a fulcrum of a company's visibility and marketing operations. Business transactions are primarily being carried out only through internet addresses rather than street addresses or post boxes or even faxes. Hence, unscrupulous individuals should not be allowed to usurp well known trademarks and domain names.

The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

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B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.kirloskarcapital.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

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

A. *Identical or Confusingly Similar*

The disputed domain name <kirloskarcapital.in> was registered by the Respondent on August 11, 2018. The registration of the said disputed domain name is due to expire on August 11, 2020.

The Complainant is an owner of the registered trademark "KIRLOSKAR" and "Kirloskar" both in English and Hindi. The Complainant is also the owner of a large number of domains with the trademark "kirloskar" as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is

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<kirloskarcapital.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for KIRLOSKAR products in India or elsewhere would mistake the disputed domain name as of the Complainant.

Therefore, I hold that the domain name <www.kirloskarcapital.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable 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; or
- (ii) the Registrant (as an individual, business or other organization) has 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 non-commercial 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Siva Nageswara Rao Doradla. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

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Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "KIRLOSKAR" and "Kirloskar" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Respondent. Further that, the Respondent has even nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

C. *Registered and Used in Bad Faith*

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant's 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 the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of

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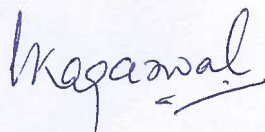
confusion with the Complainant's trademark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.kirloskarcapital.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.kirloskarcapital.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 24th December 2018