



தமிழ்நாடு தமிழ்நாடு TAMILNADU

*D. Saravanan*

D 906265

**J. NELSON**  
STAMP VENDOR  
L. No. 12857/B4/91  
MANNADI, CHENNAI-8

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
C/o.NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)  
registry@nixi.in

**IKINGSTON TECHNOLOGY CO.,**  
17600 Newhope Street  
Fountain Valley  
CA 92798  
United States of America  
[Peter\\_rios@kingston.com](mailto:Peter_rios@kingston.com)

.Complainant.

Vs.

**WEB MASTER**  
**SKYPE NETWORK LIMITED**  
204, Woodwich Road,  
London, England I SE7 7QY  
[skype@iemail.com](mailto:skype@iemail.com)

Respondent



भारतीय गैर न्यायिक

पचास  
रुपये

रु.50

भारत

FIFTY  
RUPEES

Rs.50

INDIA

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

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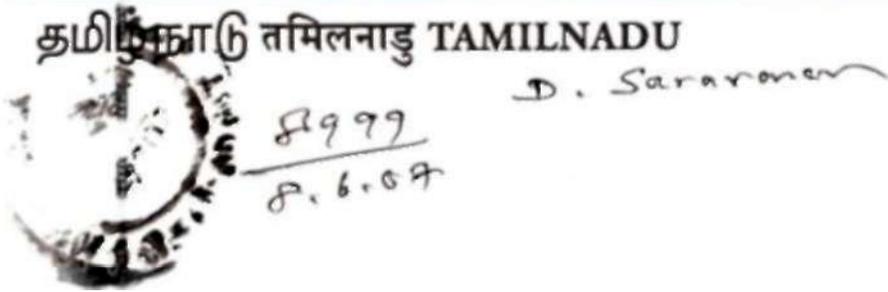
J. NELSON  
STAMP VENDOR  
L. No. 12867/B4/91  
MANNADI, CHENNAI-8

1. **The Parties:**

The Complainant is KINGSTON TECHNOLOGY CO., 17600, Newhope Street, Fountain Valley, CA 92708, United States of America, represented by Mr. Rajesh Panicker, Kingston Technology, # 502, Madhava, C-4, Bandra - Kurla Complex, Bandra (East), Mumbai. (Annexure-1, letter of authorization).

The Respondent is WEB MASTER, SKYPE NETWORK LIMITED, 204, Woodwich Road, London, England, SE7 7QY. The respondent neither represented himself nor represented by any one.





**2. The Domain Name and Registrar:**

The disputed domain name:

[www.kingston.co.in](http://www.kingston.co.in)

The domain name registered with .IN REGISTRY

**3. Procedural History:**

The complaint was filed with .IN REGISTRY, National Internet Exchange of India (NIXI). 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 its Rules of Procedure. Thereafter, .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel on 30.03.2007 as per paragraph 5(b) of its Rules of Procedure. The Arbitrator finds that the



Arbitral Tribunal was properly constituted. The Arbitrator has submitted the statement of Acceptance and Declaration of Impartiality and Independence on 03.04.2007 and the Arbitral proceedings were commenced on 05.05.2007 by sending notice to respondent as per paragraph 4(c) of its Rules of Procedure. The due date for filing Response by Respondent was on 15.05.2007. However, the Respondent did not submit any response. Accordingly, the Arbitrator has notified the Respondent's default on 16.05.2007. The language of the proceedings is English.

#### **4. Factual Background:**

##### **4.1 The Complainant:**

The Complainant is Kingston Technology Company, Inc., ("Kingston"), a Company incorporated under the laws of United States of America, having its registered office at 17600 Newhope Street, Fountain Valley, CA\_92708, United States of America.

##### **4.2 Complainant's Activities:**

The Complainant is engaged in the design and manufacture of memory processor and digital media products for personal computers, work stations, printers and computer electronics, etc., since 1987. Annexure - 2, Company's info).

##### **4.3 Complainant's Trading Name:**

The Complainant owns a registered Trademark "KINGSTON" since 1987 and has been continuously using the said mark with goodwill and reputation. The mark is known all over the world. The complainant has website at [www.kingston.com](http://www.kingston.com) which attracts more than 1,085,856 unique customers per month. The complainant has geographic specific website in more than 48 countries and has Indian specific website at [www.kingston.com/India](http://www.kingston.com/India).



#### 4.4 Respondent's Identity and activities:

The Respondent is the registrant of the impugned Domain Name **www.kingston.co.in** which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Web Master, Skype Network Limited, 204, Woodwich Road, London, England, SE7 7QY. (Annexure - 3, WHOIS Record).

#### 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:**

The Complaint submits that by reason of extensive use, promotion and advertising of the KINGSTON business by reference to the KINGSTON mark, they are the proprietor of substantial goodwill and reputation in the mark in the field of memory devices; the mark KINGSTON is well known all over the world as the only independent memory leader offering more than 2000 memory products that support nearly every device that uses memory; the impugned Domain Name of the Respondent is visually, conceptually and phonetically identical to the Complainant's well known and highly distinctive trade mark KINGSTON; the impugned Domain Name is likely falsely to lead the public to believe that the Registrant and the website to which the Domain Name directs is sponsored by or affiliated to or associated with Complainant and will lead to confusion in the minds of the public; their internet site **www.kingston.com** is the most visited memory products information site, which allured over 1,085,856 visitors per month and generates millions of hits per day on average; Respondent's domain name **www.kingston.co.in** consists entirely of their trademark, except for .co and .in, i.e., ccTLD, thereby the cyber piracy is in apparent form; the Respondent's registration and use of Domain Name is a clear case of cyber squatting whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to confuse the public to the detriment of the Complainant.



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

According to the Complainant, neither the respondents Respondent's name nor its administrative and technical contact information suggests any right or legitimate interests in any variation of Complainant's KINGSTON trademark; the impugned Domain Name was registered by the Respondent on 16.02.2005 and even much earlier, the complainant had common law trade mark rights in the name which it had been accruing since 1987; the impugned Domain Name initially resolved to a web site which appears to be of no legitimate purpose and has malafide intention showing the Respondent's to be a habitual cyber squatter, the Respondent is not or has never been known by the name KINGSTON or by any confusingly similar name and even if the Respondent had accrued right in the mark KINGSTON since the registration of the Domain Name any such right would be significantly pre-dated by the Complainant's rights.

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

According to the Complainant, the impugned Domain Name was registered, has been used and continues to be used in bad faith; at the time of registration of impugned domain name, the mark KINGSTON was existing world wide; Complainant has not authorized, licensed or otherwise consented to the Respondent's use of the trade KINGSTON; the Respondent will have no doubt been aware that prior to its registration of the Domain Name, that there was substantial reputation and goodwill associated with the mark KINGSTON, which inures and continues to inure to the Complainant; the Complainant's marketing campaigns in India and other countries of the world highlight that the Complainant enjoys brand recognition all over the world; the registration of the impugned domain name and its subsequent use by the Respondent is for the purpose of defrauding the public; the impugned domain name resolved to a website which does not



suffer the services of the Complainant; the registration of the impugned domain name and its subsequent use by the Respondent is a deliberate attempt by the Respondent to attract, for commercial gain, internet users to another online location by creating a likelihood of confusion with the Complainant's KINGSTON mark such as the public is likely to falsely believe that the site of which the domain name resolved is sponsored, endorsed or authorized by or in association with the Complainant; and the Complainant believes that the registration has been done for fraudulent purpose.

**B. Respondent:**

The respondent did not submit any response.

**6. Discussion and Findings:**

It has to be asserted that whether the Respondent has received the notice of this Arbitral Tribunal. Having gone through the procedural history, this Tribunal comes to an irresistible conclusion that the 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 duly notified to the Respondent.

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:

- (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 is being used in bad faith.

**(a) Identical or confusing similarity:**

i) The Arbitral Tribunal finds that the Complainant has specifically asserted that it possesses registered trademark KINGSTON. The Respondent's domain name, www.kingston.co.in, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to an irresistible conclusion that the disputed domain name www.kingston.co.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 set 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 as contemplated in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceeding 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 7(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, 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, the 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 impugned 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.

The Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

**7. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the policy, the Arbitral Tribunal orders that the domain name <[www.kingston.co.in](http://www.kingston.co.in)> be transferred to the Complainant.

**Dated at Chennai, on this 11<sup>th</sup> June, 2007.**

  
**D. SARAVANAN**  
**Sole Arbitrator**