



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

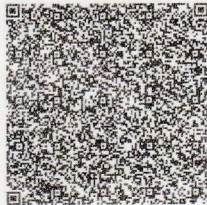
e-Stamp

Reprinted e-Stamp Certificate

Certificate No.	: IN-DL47745002196074W
Certificate Issued Date	: 03-Sep-2024 09:12 AM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SELF48053598579452W
Purchased by	: SANJEEV CHASWAL
Description of Document	: Article 12 Award - Movable
Property Description	: INT THE MATTER OF INDRP CASE NO 1878 DOMAIN NAME ELKEM.IN
Consideration Price (Rs.)	: 100 (One Hundred only)
First Party	: SANJEEV CHASWAL
Second Party	: NA
Stamp Duty Paid By	: SANJEEV CHASWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

₹100 ₹100 ₹100 ₹100

सत्यमेव जयते



₹100

SELF PRINTED CERTIFICATE TO BE VERIFIED BY THE RECIPIENT AT WWW.SHCILESTAMP.COM

IN-DL47745002196074W

Please write or type below this line

INDRP ARBITRATION PROCEEDING SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL
In the matter of <ELKEM.in and in the matter of INDRP Caseno: 1878

M/s. ELKEM ASA Vs Unknown Person

SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI
NEW DELHI DATE 20th of July 2024

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.

**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name < elkem.in >
and in the matter of INDRP Case no: 1878**

**M/s. ELKEM ASA
Drammensveien 169 0277
Oslo Norway**

Complainant

Vs.

**Unknown Person
Client ID: 3QQECFBBHYF7K08P
Bridge Street, Kington
HR53DJ. GB
Email I.D.:- shmike@foxmail.com**

..... Respondent

ORDER

History:

The undersigned has been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant in this administrative proceedings is M/s. ELKEM ASA, Drammensveien 169 0277, Oslo Norway represented through its authorized representative seeking invoking of arbitration proceedings, against the Registrant / Respondent as Unknown Person having Client ID: 3QQECFBBHYF7K08P, Address Bridge Street, Kington, Zip Code HR53DJ. GB Email I.D shmike@foxmail.com in respect of registration of domain name < elkem.in >.



The Complainant has filed the above arbitral complaint for Registrant / Respondent registering domain name < *elkem.in* > and seeking a claim of relief of transferring the said domain name to the Complainant herein, thereby seeking a claim of relief for transferring the domain name to the Complainant herein.

As per the WHOIS record containing the address and the domain details of the Registrant / Respondent, the Complainant has filed the complaint before the office of the undersigned by incorporating the office address Registrant / Respondent in this administrative proceeding in respect of domain name < *elkem.in* >.

That in the above said arbitral reference, the sole arbitrator had issued the directions to the complainant and the Registrant / Respondent to comply notice of 30th July 2024 to file reply, detail statement, if any, **within 15 (fifteen) days from issue the date of this Notice**, the reply detail statement, if any should reach by **14th August of 2024**. The complainant had served the notice to the respondent / registrant to their email address as listed in WHOIS records. As such the issued notice is duly served to the respondent / registrant.

Keeping in view of non filing of reply on the part of present Respondent and Registrant of domain name **14th August of 2024**, the sole arbitrator is of considered view that the present respondent / registrant have been duly served through email address as per mentioned in WHOIS record by the complainant herein and despite of receipt of this email notice, the respondent / registrant had failed to submit its reply or Statement to the sole arbitrator office within prescribed time allocated by the sole arbitrator herein. Therefore, the sole arbitrator issued another order notice on 20th August 2004, reserving this domain dispute complaint <*elkem.in*> for final orders on merits.

1. The Parties:

The Complainant in this arbitration proceeding M/s. ELKEM ASA, Drammensveien 169 0277, Oslo Norway represented through its authorized representative seeking invoking of arbitration proceedings, against the



Respondent M/s. Client ID: 3QQECFBBHYF7K08P, Address Bridge Street, Kington, Zip Code HR53DJ. GB Email I.D.:- shmike@foxmail.com seeking a claim of relief of transferring the said domain name to the Complainant herein.

2. The Domain Name and Registrar:

2.1 The disputed domain name <*elkem.in*> is registered by the IN. registry registrar M/s. Endurance Digital Domain Technology LLP,.

3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to their solution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), the NIXI formally notified the appointment to the Respondent as well as the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under. IN Domain Name Dispute Resolution Policy and the Rules framed there under.

The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.

As per the information received from NIXI, the history of the proceedings is as follows:



- 3.3 The present Arbitral Proceedings have commenced on 30th of July 2024 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as directing the complainant to serve the copies of the domain complaint along with documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the record and the same was served by the complainant to the Respondent / Registrant
- 3.4 Further as per the issued Notice, the Respondent / Registrant was directed to file its reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 14th of August 2024, failing which the Complaint shall be decided on the basis of the merits.
- 3.5 The respondent / registrant have failed to submit its reply / response, or detail statement in the above arbitral reference. .
- 3.6 That the Arbitrator had further directed both the parties to file written arguments in this case, the Complainant had complied the directions of the sole arbitrator by filing written arguments within stipulated time but the Respondent / Registrant did not file written arguments in this complaint matter.

4. Factual Background:

- 4.1 The Complainant in this administrative proceedings is M/s. ELKEM ASA, Drammensveien 169 0277, Oslo Norway by invoking this administrative domain arbitration proceeding through it authorized signatory, in respect of domain name <*elkem.in*> against the Registrant / Respondent M/s. Client ID: 3QQECFBBHYF7K08P, Address Bridge Street, Kington, Zip Code HR53DJ. GB Email I.D.:- shmike@foxmail.com.

5 Parties Contentions:

- 5.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief transfer of the domain name against the Registrant / respondent for registering domain name <*elkem.in*> illegally.



5.2 The Respondent had failed to submit its reply response / statement to the sole arbitrator panel.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <*elkem.in*> is stated as under:

I. To decide the matter there are Grounds for proceedings to be adjudged

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory / common law rights.

B. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. That the disputed domain name has been registered or is/are being used in bad faith.

The Complainant has submitted its complaint that are described as under:

A. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.

The Complainant's Claim of Statutory Rights:

5.4 The complainant submits that the Complainant is an The Complainant is one of the world's leading providers of advanced silicon-based materials that enable its customers to create and improve essential innovations like electric mobility, digital communication, health and personal care.

The Complainant's group consists of several companies worldwide located in Africa, America, Asia, Australia-Oceania, and Europe.



5.5 The complainant further submits that the Complainant’s products have a wide industrial application, its principal products include solar-grade silicon, silicon, ferroalloys, silicones, carbon and micro silica. The Complainant’s business division includes Elkem Silicon materials, Elkem foundry products, and Elkem Carbon.

In India, the Complainant has a functional corporate office in Navi Mumbai and production plants in Pune and Nagpur. The production plants manufacture Silicone Rubber compound which is widely used in Automotive, Energy, Wire and Cable, Transportation, and other industrial applications.

5.6 The Complainant further submits that The complainant has secured statutory protection for the trademark ELKEM in several jurisdictions, including in India.

S.No	Trademark	Country	Status	Trademark Number	Nice classification	Applicant
1	Elkem	Algeria	Registered	1/103062	1	Elkem AS (Norway)
2	ELKEM, E	Australia	Registered	515922	11	Elkem ASA (Norway)
3	ELKEM, E	Australia	Registered	515923	6	Elkem ASA (Norway)
4	E, ELKEM	Australia	Registered	515919	1	Elkem ASA (Norway)
5	ELKEM MICROSILIC A	Australia	Registered	502205	1	Elkem ASA (Norway)
6	ELKEM, E	Australia	Registered	515921	19	Elkem ASA (Norway)
7	ELKEM	Brazil	Registered	914844210	1	ELKEM ASA

5.7 The Complainant further submits that Additionally, the Complainant also holds numerous trade mark registrations for the mark “ELKEM” and its formatives in various international jurisdictions such as Korea (Republic of), Algeria,



New Zealand, Morocco, EUIPO, Indonesia, Mexico, New Zealand, Japan, Australia, Brazil, Kenya, Canada, Brazil, Israel, Oman, India, Japan, Korea (Republic of), Philippines, Viet Nam, UK, Mexico, Colombia, Türkiye, Denmark, Egypt, France, Germany, Iceland, Singapore, Republic of North Macedonia,

- 5.8 The Complainant further submits that the Complainant is a lawful proprietor of the mark 'ELKEM' by virtue of honest adoption, long and continuous usage, worldwide registrations and voluminous sales of goods/services under the aforesaid mark and extensive promotional activities towards popularizing the said mark worldwide.
- 5.9 The Complainant further submits that the Complainant's popularity, goodwill and quality of goods and services has made it the recipient of several awards and recognitions.. Such is the worldwide popularity, international fame and repute of the mark that it is invariably and exclusively identified and associated with the Complainant and its business, and none else, by the consumers and members of the public.
- 5.10 The Complainant further submits that the Complainant has devoted an enormous amount of time, effort, and energy in promoting and advertising the mark ELKEM, and the said mark is consequently identified solely with the Complainant.
- 5.11 The Complainant further submits that the Complainant has obtained registrations of domain name and secured by the Complainant:

S.No.	Domain Name	TLD	Country	Date of Registration	Expiry Date
1	Elkem.com		Global	25th Sept 1995	24th Sept 2024
2	Elkem.net		Global	5th Nov 2014	5th Nov 2024.

The disputed domain is identical or confusingly similar to a trademark of the Complainant



- 5.12 The disputed domain name subsumes the Complainant's registered trademark "ELKEM". The disputed domain name comprises of the Complainant's well-known trademark "ELKEM" in its entirety. In light of the glaring identity between the disputed domain name and the Complainant's trademark,:
- 5.13 Respondent's registration and use of the domain www.elkem.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship, or approval of the Complainant when it is not so.
- 5.14 The distinctive and dominant element in the Respondent's domain name is the word ELKEM hence, the impugned domain name www.elkem.in is identical to the trademark ELKEM in which the Complainant has statutory and common law rights
- 5.15 The disputed domain name incorporates the famous trademark ELKEM of the Complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard the Complainant relies on the decisions of this Hon'ble Arbitration and Mediation Centre, NIXI passed in the case of INDRP/642 MOZILLA FOUNDATION Vs Mr. CHANDAN www.mozilla.in

B. The respondent has no right or legitimate interest in respect of the domain name:

- 5.16 The Complainant is the sole legitimate owner of the trademark ELKEM. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark ELKEM or to apply for any domain name incorporating the said trademark.
- 5.17 The Respondent has not made any legitimate use of the domain name www.elkem.in since the date of its registration and is prejudicially blocking the domain register. It is pertinent to note that the impugned domain name is a mere copy of the Complainant's trademark ELKEM.

The Respondent has no plausible reason to adopt the domain www.elkem.in other than to exploit the commercial goodwill and reputation of the Complainant's trademark ELKEM.



- 5.18 The malafide intent of the Respondent to infringe the Complainant's trademark rights is apparent. Further, because of the popularity and the well-known status of the Complainant's trademark ELKEM, the disputed domain name www.elkem.in is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship, or approval of the Complainant.
- 5.19 In view of the above, the lack of rights or legitimacy of the Respondent in the impugned domain name <ELKEM.in>, when compared with the Complainant's prior adopted, used and registered well-known trade name/trademark, ELKEM, both in India as well as abroad, is conclusively established. The provisions of Paragraph 4(b) of the INDRP read with Rule 4(b)(vi) of the INDRP Rules of Procedure accordingly stand satisfied.
- 5.20 The Respondent / Registrant had failed to submit its reply/ statement to the complainant :

C. The Disputed domain name has been registered in bad faith:

- 5.21 The Respondent is fraudulently registered the domain name by misrepresenting an association with the Complainant..
- 5.22 The complainant has submitted that the Respondent's lack of any legitimate, good faith use suggests the Respondent's strong bad faith. The disputed domain name is used by the Respondent after complete knowledge of the Complainant's extremely popular trademark "ELKEM" with an ill-motive.
- 5.23 It is furthermore stated in various precedents that the domain names are fast-emerging corporate assets, 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, post boxes, or even faxes. Hence, it becomes critical that unscrupulous individuals are not allowed to usurp renowned trademarks and domain names to unfairly benefit from such acts.



5.25 The very use of a domain name by someone with no connection with the Complainant suggests opportunistic bad faith as stated in the case of MOZILLA FOUNDATION Vs. LINA DOUBLE FIST LIMITED INDRP case No. 934 <Mozilla.co.in>

Contention of the Complainant:

5.26 Firstly, the Complainant submits that the Respondent's lack of any legitimate, good faith use suggests the Respondent's strong bad faith. The disputed domain name is used by the Respondent after complete knowledge of the Complainant's extremely popular trademark "ELKEM" with an ill-motive to gain unfair advantage, Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's trade mark "ELKEM" which insures and continue to insure its legitimate right to Complainant only.

5.27 The Complainant has a long and well-established reputation in the Complainant's mark. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant.

5.28 The registration of the disputed domain name bearing the registered as a trade/service mark of the complainant is nothing but an opportunistic bad faith registration on the part of the Respondent.

A. Contention of the Respondent:

5.32 The Respondent / Registrant had failed to file its detailed reply /statement rebutting the claim of the Complaint. Rather the respondent has submitted wrong details to the registrar of domain, thereby concealed the status of the respondent and the address from the Registrar.

6. Discussion and Findings:



6.1 It is evident from the pleadings stated above that the Registrant/Respondent chose to register and but did not use the disputed domain name <*elkem.in*>, as the Respondent must have got report that the domain name and mark 'ELKEM has potentiality of exploitation, while registering the domain name <*elkem.in*>, despite of registering the domain name the Registrant / Respondent did not initiate positive steps to strengthen or acquire IP rights of the domain name rather the Registrant / Respondent sat on the domain registration and did not use.

6.3 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

[b] The issues involved in the dispute:

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the Respondent's domain name has been registered or is being used in bad faith.



6.9 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules there under."

6.10 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

6.11 The Complainant mark "ELKEM" has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations: By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that : the statements that the espondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

6.12 The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <elkem.in>, is identity theft, identical with or deceptively similar to the Complainants' "ELKEM" mark.



Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

- 6.13 The second element that the Complainant needs to prove and as is required by paragraph 4 (ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 6.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.
- 6.15 The Respondent has submitted its detailed reply and admitted the respondent has registered many domains but has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name.

But the Respondent / Registrant have admitted in its reply that the Respondent is a domain name investor, who invests in various premium domain names and pay money to park it. Buying of premium domains is a regular part of their business;

the Respondent had invested in the many Disputed Domain Names, which is considered as a premium domain name for reason mentioned in aforesaid paragraphs.

Further, the Respondent commercial business is not commonly known by the disputed domain name of the complainant and till date has not made any legitimate non-commercial or fair use of the disputed domain name so far .



The Registrant / Respondent did not initiate positive steps to strengthen or acquire IP rights of the domain name rather the Registrant / Respondent sat on the domain registration and did not use it except establishing a parked page with pay-per-click advertisements.

The Registrant / Respondent has failed to submit its legitimate interests in domain name submitted its detailed reply and admitted the respondent has registered many domains and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name.

Thus, it is very much clear from the submissions made by the Registrant / Respondent that the Respondent has no legitimate interest in respect of the disputed domain name <elkem.in> from submissions, the Registrant / Respondent non submission of reply clearly indicates that they register the domain without legitimate cause, it clearly proves that the respondent has just parked the domain name with no legitimate interest to use it. For these reasons, the Arbitrator opines that the Respondent / Registrant have legitimate no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered or is being used in bad faith.

6.16 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent 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 Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

- 6.18 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Registrant / Respondent had no previous connection nor known business entity with the disputed domain name ELKEM and It has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.
- 6.19 Moreover, the respondent has admitted in its reply that the respondent is not using presently impugned domain name but has kept registration alive for lohly one year from the year 2023 to 2024, as impugned domain name <*elkem.in*> is associated exclusively with the complainant public in India as well as all over the world. As such there will be no business or financial loss to the Registrant / Respondent, as the disputed domain name <*elkem.in*> as per WHOIS record Dated, the domain name is going to expire on 2024-12-09 as the disputed domain name was created on 2023-12-09 and its registration was valid up to 2024-12-09T in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*elkem.in*> is transferred back to the complainant.
- 6.20 Further the due to prior obtaining domain in the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "ELKEM" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "ELKEM".



Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith and intent .

7. **DECISION**

- 7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein
- 7.2 The Complainant has given sufficient evidence to prove its trademark rights on the disputed domain name thereby having prior registration of trademark in Indi and in other countries. Further, the Respondent's registration of the domain name is dishonest and malafide Simply to park it.

The Respondent / Registrant have clearly registered the disputed domain name <*elkem.in*> in order to prevent the Complainant, who is the prior registration owner and honest concurrent user of the said trademark thereby reflecting the said continuous use of the trademark in a corresponding domain name.

- 7.3 The Respondent / Registrant have not given any reasons other than claiming it 'ELKEM' as a common dictionary word to register the domain name <*elkem.in*> that is rightfully owned by the Complainant much prior to the respondent and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

[Relevant WIPO decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503**; **Thaigem Global Marketing Limited v. SanchaiAreeD2002-0358**; **Consorzio del FormaggioParmigianoReggiano v. La casa del Latte di Bibulic Adriano D2003-06611



- 7.4 It is a settled proposition that the registration of a domain name incorporating trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision.

Some notable cases reaffirming this proposition are INDRP decision in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve ClicquotPonsardin, MaisonFortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163* and *Adidas-Solomon AG v. Domain Locations Case No D 2003 04*

- 7.5 While the overall burden of proof rests solely with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is very much clear that the Respondent / Registrant has registered the disputed domain name in bad faith and 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.

[Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupod.d. v. WACHEM d.o.o. D2004-01101

- 7.6 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 7.7 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element.



FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304

- 7.8 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier. A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood of confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."

- 7.9 It was observed that *"it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights"* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

In the present dispute as well, The Complainant is registered owner and user of the trademark 'ELKEM' the Respondent, in registering the disputed domain name, has done so in clear violation of the exclusive rights of the Complainant in the name and mark 'ELKEM'. *In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)*



The WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co., WIPO Case No.D2000-0163* has been held that registration of a domain name, so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

- 7.10 As per pleadings submitted by the Registrant / Respondent's in this case it has clearly admitted in its reply that their business is to register disputed domain names, thus it is very much clear that the registration and use of the Domain Name <*elkem.in*> is for parking only, hence it is abusive and is not in good faith. The Registrant / Respondent have no legitimate right or interest in respect of the domain name in any manner.

Moreover, the respondent has admitted in its reply that the respondent is not using presently impugned domain name <*elkem.in*> and has kept registration alive for only one year from the year 2023 to 2024 with random use, as impugned trademark ELKEM is associated and well known in India as well as all over the world.

In my considered view, the respondent has simply kept and parks its domain name <*elkem.in*>. If this domain name <*elkem.in*> is transferred back to the complainant as such there will be no business or financial loss to the Registrant / Respondent, as the disputed domain name <*elkem.in*> as per WHOIS record Dated, the domain name is going to expire on 2024-12-09 as the disputed domain name was created on 2023-12-09 and its registration was valid up to 2024-12-09 in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*elkem.in*> is transferred back to the complainant.

- 6.20 Further the due to prior obtaining domain in the Respondent / Registrant in view of WHOIS record no financial loss will occur to Registrant / Respondent, if the domain name <*elkem.in*> is transferred back to the complainant.



Further to my considered view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy thus able to prove his complaint.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <*elkem.in*> be transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



**SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI**

NEW DELHI DATE 1st of September 2024