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R 752999

BEFORE SHRI SANJAY KUMAR SINGH, ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

G. D. PHARMACEUTICALS PRIVATE LIMITED,
ASHA MAHAL,
94, NALINI RANJAN AVENUE,
KOLKATA-700053, INDIA

E-MAIL: boroline@cal.vsnl.net.in

COMPLAINANT

VERSUS

YANG LING
SEDO.COM LLC,
BAAILIANLU-JHONG TONG2LOU,
ZHUHAI, GUANGDONG
519010, CHINA

RESPONDENT

THE PARTIES:

The complainant is G. D. PHARMACEUTICALS PRIVATE LIMITED, ASHA MAHAL,
94, NALINI RANJAN AVENUE, KOLKATA-700053, INDIA.

E-MAIL: boroline@cal.vsnl.net.in

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The respondent is YANG LING, SEDO.COM LLC, BAAILIANLU-JHONG TONG2LOU, ZHUHAI, GUANGDONG, 519010, CHINA
E-MAIL: thatdomainnameforsale-accr@yahoo.Com.Cn

DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is ""**BOROLINE.IN**""

The trademark of the complainant is "**BOROLINE**".

The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is Electronic- only material

Method: email

The Arbitration pertains to dispute regarding the domain name "**BOROLINE.IN**"

Domain ID: D4506147-AFIN

Domain Name: **BOROLINE.IN**

Registrant Email: thatdomainnameforsale-accor@yahoo.com.cn

Admin ID: TS-12910448

Admin Name: Yang ling

Admin Organization: Sedo.com, LLC

Admin Street 1: Bailianlu-Zhong Tong 2lou

Admin Street 2

Admin Street3:

Admin State/ province: GUANGDONG

Admin postal Code: 519010

Admin Country: CN

Admin phone: +086.07563331656

Admin phone Ext: Admin FAX:

Admin FAX:

Admin FAX Ext:

Admin Email: thatdomainnameforsale-accor@yahoo.com.cn

Tech ID: TS-1291048

Tech Name: yang ling

Tech Organization: Sedo .com, LLO

Tech Street: Bailianlu-Zhong210u

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Tech Street 2:

Tech Street 3:

Tech City: Zhuhai

Tech State/ province: Guangdong

Tech postal Code: 519010

Tech Country: CN

Tech phone: +086.07563331656

Tech phone Ext.:

Tech FAX:

Tech FAX Ext:

Tech Email: thatdomainnameforsale-accr@yahoo.Com.Cn

Name Server: NS1. SEDOPARKING.COM

Name SERVER: NS2. SEDOPARKING Com

The complainant has submitted the copies of printout of the results of the WHOIS' search conducted on August 25, 2011 in Annexure "A".

All information known to the Complainant as how to contact the Respondent is as follows:

Admin ID: TS- 12910448

Admin Name: yang ling

Admin Organization: Sedo. Com, LLC

Admin Street: Bailianlu-Zhong Tong 2lou

Admin Street 2:

AdminStreet 3:

Admin City: Zhuhai

Admin State/PROVINCE: Guangdong

Admin post Code: 519010

Admin Country: CN

Admin phone: +086.07563331656

Admin phone Ext.:

Admin FAX

Sangam (in light)

Admin FAX Ext.:

Admin Email: thatdomainnameforsale-accor@yahoo.Com.Cn

The contact details of the Respondent are available from the records of the Registry consequent on the Who is Search

(4) The Domain Name(s) and Registrar(s)

This dispute concerns the domain name identified below:

Domain Name: BOROLINE.IN

The Registrar which the domain name is registered is:

IN Registry

CONTENTS OF THE WEB PAGES UNDER THE DOMAIN NAME:

The home page under the said URL notifies that the said domain name may be for sale be its owner and contains myriad sponsored listings leading to other webpage. It is apparent that the Respondent has been using the website as a parking page. A link on the right hand corner of the said home page asking the user to click for 'more details' opens another webpage which clearly informs the user that the domain name www.Boroline.In is for sale and makes an invitation to place an offer for purchasing the same in lieu of valuable consideration. Snap shots of the home page and the webpage which invites users to place an offer as on August 29, 2011 is collectively attached by the complainant as Annexure-B.

COMPLAINANT'S MARK AND THE GOODS BEARING THE MARK:

Complainant Trademark: BOROLINE

Complainant's goods: Cosmetics, toiletries, Soaps, talcum powder, shampoo, hair oils, essentials oil, cream and lotion, perfumery and deodorants, and all other personal care products included under class 3 and also medicinal and pharmaceutical preparations included under class 5 of the 9th edition, Nice Classification.

1. BRIEF BACKGROUND:

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

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The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 16-11-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within **10** days from receipt. But the respondent did not send his defence / counter to the complaint.

Failing to send the defence / counter by the respondent, the Arbitrator again sent a notice dated 27-11-2011 by giving another opportunity to the respondent to send his defence / counter to the complaint within **FIVE** days from receipt, with further notice that in default or non-filing of the defence / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the case. It was also stated in the notice that it was last and final opportunity to the respondent.

Failing to send the defence / counter by the respondent, the Arbitrator again sent a notice dated 11-12-2011 by giving another opportunity to the respondent to send his defence / counter to the complaint within **TWO** days from receipt, with further notice that in default or non-filing of the defence / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the case. It was also stated in the notice that it was last and final opportunity to the respondent and further time shall not be granted to the respondent.

In spite of repeated notices, the respondent has again not come forward and has not sent any reply / defence / counter to the either notice of the Arbitrator or complaint of the complainant.

Therefore, this matter is being decided on the merits of the case and as per law of the land.

2. FACTUAL AND LEGAL BACKGROUNDS:

- I. The complainant has submitted that it is one of the most well known renowned and established multidimensional Indian Companies duly incorporated under the provisions of Companies Act, 1956 and has its

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registered office at the afore noted address given in the cause title of the plaint. Additionally the complainant has its various Branch Offices in several Major cities in India.

- II. The complainant has submitted that with its untiring efforts the complainant has carved out a niche for itself to become one of the biggest employment provides for India and indeed one of the biggest revenue generators for India. The complainant has large number of marketing sectors and units operating throughout the length and breadth of India. The complainant has claimed to be at its booming stage because of its ever expanding business. The complainant also exports several of its items / products to many countries of the world as its manufacturers deals, offers for sale, sells products relating to medicine and cosmetics.
- III. The complainant has submitted that it has a world -wide presence in diverse fields including products like Cosmetics, toiletries, Soaps, talcum powder, shampoo, hair oils, essentials oil, cream and lotion, perfumery and deodorants, and all other personal care products under class 3 and also goods like medicinal and pharmaceutical preparations included under class 5. Each of the aforesaid products under the trademark(s) like Boroline, Eleen, Penorub, Suthol, etc which tinues to rare now household names in India are easily and widely available in the market(s). The complainant has its various sister concerns, through which it carries on its business operations.
- IV. The complainant is using various different trademarks for its products and none of them are common dictionary word(s) as each of them have been coined and adopted by the Complainant itself. One of such word/ mark chosen and since used by the Complainant uninterruptedly, Continuously, Without any break is BOROLINE. The said BOROLINE was adopted by the Complainant way back in the year 1929 and has since then been used continuously and extensively all across the country for its Without doubt the Complainant's said trademark BOROLINE is today world renowned and is synonymous with the Complainant and none else. Additionally the trademark BOROLINE continues to remain the Complainant's principal

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trademark which has earned immense enviable goodwill and reputation in India, the Complainant has obtained several registrations for the trademark BOROLINE. Details of such trademarks are listed below:

<u>Registration Class</u>	<u>Date of Registration</u>	<u>Trademark</u>	
No./Date	Registration		
19860	27-10-1960	BOROLINE	3
848581	30-03-1999	BOROLINE NOPRIX	3
848585	30-03-1999	BOROLINE'S NOPRIX	3
917595	12-04-2000	BOROLINE'S DEA	3
1096833	19-04-2002	BOROLINE'S KHAS	3
1051128	10-10-2001	BOROLINE'S BO	3
1053353	19-10-2001	BOROLINE'S	3
14610	19-04-1943	BOROLINE'S (Label)	5
14611	19-04-1943	BOROLINE'S (Carton)	5
371269	20-01-1981	BOROLINE	5
1491772	27-09-2006	BOROLINE (Carton)	5
1491773	27-09-2006	BOROLINE (Label)	5
1053356	19-10-2001	BOROLINE'S	3

The Complainant has submitted that the foregoing registrations are valid and subsisting in the complainant's favour. By virtue thereof and by virtue of provisions of the trademark act, 1999, the complainant has exclusive right to use the said trade mark inter-alia in respect of the goods for which the said trademark(s) are used and registered and to obtain relief for infringement of its registered trademark by any third party such as the respondent herein. The complainant has submitted copies of the status pages of the aforesaid registration as available on the website of the Trade Marks Registry as ANNEXURE C.

- V. The Complainant has submitted that the goods manufactured and sold by the complainant under the trademark **BOROLINE** are available in every part of the country and also exported to several countries of the world.

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Complainant has further submitted that because of its long enduring efforts, dint and time spent, the complainant have been able to have large turnovers which exceeds several hundred Lakhs of rupees. The complainant has submitted the sale figures of its products sold under its trademark **BORILINE** 2001 till 2010 as under:

<u>YEAR</u>	<u>Turnover in Crores (Rs)</u>
2001-02	282,173,444.02
2002-03	285,721,618.39
2003-04	314,588,932.07
2004-05	324, 173,444.02
2005-06	48, 09, 81,151
2006-07	50, 50, 90, 605
2007-08	55, 78, 25, 356
2008-09	56, 29, 05, 990
2009-10	74, 26, 12, 462

VI. The complainant has submitted that it has additionally expended huge sum in extensively publicizing its products under its trademark **BOROLINE** by advertising them through various mediums, including print and media. Complainant has annexed copies of some of the promotional material and invoices evincing expenditure incurred by complainant as ANNEXURE D.

VII. The complainant has submitted that by virtue of extensive and continuous use of such products under the trademark **BOROLINE** by the complainant along with its wide publicity and promotion, the said trademark has acquired valuable goodwill and reputation throughout India and abroad. The complainant has submitted that it is the sole rightful owner of the said trademark and no other person / entity / company other than complainant's own sister concerns, if at all, can use and / or is entitled to use the same as its trademark, trade name or otherwise and wherever there is any reference to **BOROLINE**, it indicates and refers to the complainant.

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- VIII. The complainant has submitted that it is the owner of the domain name www.boroline.com and has been using the same to advertise disseminate information about its product. The complainant has submitted a copy of the homepage of the said website as ANNEXURE E.
- IX. The complainant has submitted that in view of the prior established use, immense reputation and enormous goodwill enjoyed by the complainant's trademark and the subsisting registrations, no one else has a legitimate right or interest to adopt the trademark/word BOROLINE as any use of the same / almost identical/deceptively similar mark/word by any other person in respect of any classification of goods whatsoever, other than by the complainant, is inevitably bound to create confusion among the trade and the purchasing public.
- X. The complainant has submitted that on June 11, 2011 one Mr. Duan claiming to be the contact person of China Domain Law Offices sent an e-mail to the complainant informing the complainant that the domain names www.boroline.com (hereinafter referred to as the "impugned domain name") being the subject matter of the present complaint and the domain name www.boroline.co.in was available for sale and he can be contacted if the complainant is interested. The complainant has submitted a copy of the said e-mail as ANNEXURE F. The complainant has also submitted that a WHOIS search which revealed that the said Mr. Duan was the registrant of the impugned domain name.
- XI. The complainant has submitted that being surprised by the said e-mail it immediately contacted its intellectual property attorneys, S. Majumdar & Co. of 5 Harish Mukherjee Road, Kolkata-7000025 being the representative of the complainant in the present complaint/proceedings. The complainant has also submitted that it was apparent to the said representative that Mr. Duan had registered the domain names, solely with the ulterior motive of making illegal profits from the sale thereof. Mr. Duan had contacted the complainant with the knowledge that the complainant was the true and rightful owner of trademark BOROLINE.

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- XII. The complainant has submitted that in order to veil their true identity and to ascertain the true intention of the said Mr. Duan, the representative of the complainant wrote to Mr. Duan, through a personal e-mail id quoting a price of USD 200 for the transfer of domain names www.boroline.co.in and www.boroline.in. The representative of the complainant received a counter offer of USD 3000 for the transfer of both the domain names which clearly establish the fact the sole intent behind registering both the domain names comprising the trademark BOROLINE was to illegally encash up on the goodwill attached to the registered and well known trademark BOROLINE of the complainant and make illegal profits by selling the same to the complainant or to a third party. The complainant has submitted a copy of communication between the veiled identity of the representative of the complainant and the said Mr. Duan as ANEXURE G.
- XIII. The complainant has submitted that being informed about the above said communication, the complainant instructed its representative to approach the .IN Registry in form of the present complaint. The complainant has submitted that on conducting a WHOIS search on July 09, 2011 it was revealed that Mr. Duan was no longer the registrant of the impugned domain name. The complainant has also submitted that Mr. Duan had in the meantime transferred the same to the respondent in the present proceeding being the registrant of the impugned domain name as on the date of filing of the present complaint. The complainant has also submitted that a WHOIS search conducted on July 09, 2011 reveals that the said Mr. Duan is the registrant of the other domain name www.boroline.co.in against which the complainant has filed a separate complaint. The complainant has also submitted a copy of the WHOIS search report of the domain name www.boroline.co.in as ANNEXURE H.
- XIV. The complainant has also submitted that the impugned domain name comprising the trademark/word **BOROLINE** is identical to the well known trademark **BOROLINE** of the complainant in which the complainant has exclusive and statutory rights.

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- XV. The complainant has submitted that the respondent has no legitimate right or interest in the impugned domain name. The complainant has stated that the home page under the said URL notifies that the said domain name may be for sale by its owner and contains myriad sponsored listings leading to the other webpages. The complainant has also stated that the respondent has been using the impugned domain name as a parking page. The respondent is not in any way associated with the complainant and has thus neither sought nor received authorization to use trademark **BOROLINE**. The complainant has also stated that the respondent has not made any legitimate offering of goods or services under the complainant's BOROLINE mark and instead it diverts internet users to third party webpage. The complainant has also stated that neither does the respondent use the impugned domain name to offer bonafide goods or services nor is he known / associated with the name BOROLINE.
- XVI. The complainant has submitted that the respondent has registered the domain name in bad faith i.e. primarily for the purpose of selling, renting or otherwise transferring the ownership of such domain name to complainant who is the owner of the trademark or service mark or to the competitor of the complainant, for a valuable consideration. As per the complainant this is corroborated by the fact that a link on the right hand corner of the home page of the impugned domain name asks users to click 'more details' and the said hyperlink opens another webpage which clearly informs the users that the domain name www.boroline.in is for sale and makes an invitation to place an offer for purchasing the same in lieu of valuable consideration. The said hyperlink leads a user to a domain name auction website www.sedo.co.uk. (ANNEXURE B). The complainant has submitted that the fact that the information regarding the sale of the impugned domain name was made available publicly and that respondent invited offers indicates that respondent's intention was to receive the highest possible price for the impugned domain name. The complainant has relied on the *WIPO Case No. D2000-0180 (Bell Phillip Television and*

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Productions v Make A. Aford (Tim Wenk) and WIPO Case No. D2006-0569 (AT & T Corp v rnetwork) in its support.

XVII. The complainant has submitted that the respondent has wrongfully acquired the domain name BOROLINE.IN and has registered the same in its favour.

XVIII. The complainant has submitted that the respondent cannot have acted in good faith while registering a domain name identical to the well known trademark BOROLINE of the complainant and acquiring the same from Mr. Duan being the previous owner of the impugned domain name. The complainant has submitted that by using the impugned domain name the respondent has intentionally intended to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with complainant's trademark as to the source, sponsorship, affiliation or endorsement of his website or location or of a product or service on his website or location and the same is apparent from the homepage of the impugned website as annexed in ANNEXURE- B as the impugned domain name contains links to several third party websites not associated with the complainant. The complainant has submitted that the homepage of the impugned domain name contains sponsored links from which the respondent undoubtedly generates income and this act of the respondent satisfies Para 6(iii) of the INDRP which imputes bad faith on a respondent who by using the domain name, intentionally attempts to attract internet users of the registrant's website or other online location, by creating a likelihood of confusion with complainant's name or mark as to the source, sponsorship, affiliation or endorsement of registrant's website or location or of a product or service on the registrant's website or location. The complainant has also submitted that in matter at hand the respondent is using the well known trademark BOROLINE of the complainant, having knowledge of the same to attract unwary users to the impugned webpage and thereby earn through the sponsored listings from click through advertising. The complainant has relied on WIPO Case No. D2002-1064 (The Vanguard Group Inc v Lorna Kang) in its support.

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- XIX. The complainant has submitted that the WHOIS record the impugned domain name includes as a part of the registrants' e-mail id thatdomainnameforsale-accor@yahoo.com.cn. The complainant has contended that adoption of such an e-mail id, which clearly uses the words "that domain name for sale" that is a part of public records on the impugned domain name clearly indicates that the respondent registered the impugned domain name primarily for the purpose of selling the domain name for a valuable consideration. The complainant has also contended that the statement incorporated in to the said e-mail id indicates a continuing intention on the part of the respondent to sell the domain name and, by inviting bids, to do so at a profit in excess of the out of pocket expenses and this continuing intention to sell the domain name confirms that the respondent's impugned website, purporting to be a parking page, is not a bonafide business but merely a device to attempt to defeat the complainant's legitimate claim. Such an act by a registrant has been held to be a registration in bad faith. The complainant has relied on WIPO Case No. D2000-0023 (Parfums ChristianDior v OTR Corporation), WIPO Case No. D2001-0300 (Systima Limited v Willie Byrne Kang) and WIPO Case No. D2001-1059(Singapore Telecommunucations Limited v Domain for SALE-http://offers.nameRegister.com) in its support.
- XX. The complainant has contended that it has not licensed or otherwise permitted the respondent to use its trademark BOROLINE, nor has it permitted the respondent to apply for or use any domain name incorporating well known trademark of the complainant. The complainant has also contended that the impugned domain name BOROLINE.IN is identical to the complainant's registered trademark BOROLINE which enjoys reputation, goodwill and recognition of very high order and is a well known trademark in India.
- XXI. The complainant has contended that the respondent has no right to and legitimate interest in the domain name BOROLINE.IN and that the respondent has illegally and wrongfully adopted the word BOROLINE of the complainant with the sole intention to create an impression of an association with the complainant. The complainant has also contended

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that the popularity of the word BOROLINE which is trademark of the complainant and the legitimacy of the exclusive claims thereto by the complainant have already become a subject matter of a domain name dispute before the WIPO Arbitration & Mediation Center in Case No. D2001-1277. In the said case the panel was pleased to decide the case in favour of the complainant and found that the trademark BOROLINE is well known in India and that the complainant has exclusive rights in the same, the copy of the same has been annexed by the complainant.

XXII. The complainant has contended that the word BOROLINE was adopted by the respondent despite being well aware of the prior existence complainant's well known trademark BOROLINE and goodwill attached to it. The complainant has also contended that the concerned trade and public are acquainted with the complainant's trademark BOROLINE and wherever they will find any goods/services under the said mark BOROLINE and/or BOROLINE in conjunction with other words/label, they presume that the same has originated from the complainant only and no one else and as such the conduct of the respondent clearly reflects the dishonest intention involved in their course of action.

XXIII. The complainant has contended that by virtue of widespread use and reputation of the complainant's trademark "BOROLINE" it becomes apparent that both members of the trade and public would associate the impugned domain name with the complainant and would believe that the respondent is in some way associated with the complainant. Under such circumstances a likelihood of confusion/ or deception is bound to occur in the minds of public and trade about the accused mark as to its source, sponsorship, affiliation or endorsement. The complainant has also contended that undoubtedly an unwary person while searching for the details of the complainant's business and products in the .IN based domain name is likely to land up in the webpages under the impugned domain name and is likely to presume a connection between the business and products of the complainant and the respondent.

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The complainant has prayed to deactivate the domain name pending disposal of the present complaint and further transfer of the domain name "BOROLINE.IN" in the name of the complainant. The complainant has also prayed for the cost of the present proceedings.

3. OPINION/FINDING:

The Para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

- "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 has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

The Para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

4. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a 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

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Registrant's 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 the Registrant has engaged in a pattern of such conduct; or
- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online 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 Para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

5. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (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

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- 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 other fact, which is to be dealt with before going into merit, is that, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover cases decided by WIPO- Administrative Panel cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

6. OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Thus the domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention

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here that as per the claim of the complainant that the respondent has no trademark right on the said domain name.

This principle is settled in many above Indian cases and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287**. The complainant has made submission that he has legitimate trademark.

Thus the conclusion is that the domain name '**BOROLINE.IN**' is identical and confusingly similar to the trademark of complainant '**BOROLINE**' and the complainant has established that he has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras are prima facie on complainant. The onus prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence in his support.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

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C. Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated; the onus is primarily upon complainant.

Keeping in view above facts and circumstances it is thus clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has neither filed any reply and nor provided any substantial evidence in his support.

Thus the conclusion is that the respondent has got registered his domain name "BOROLINE.IN" in bad faith.

7. CONCLUSION:

The respondent has no right to and legitimate interest in the domain name **BOROLINE.IN** and that the respondent has illegally and wrongfully adopted the word BOROLINE of the complainant with the sole intention to create an impression of an association with the complainant. The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**BOROLINE.IN**" to him, as he has established his bonafide rights in trademark in view of facts of the case and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

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Date: 02-02-2012.

Sanjay Kumar Singh
(Sanjay Kumar Singh)

Arbitrator