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**INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: RODNEY D. RYDER**

Novartis AG

V.

**Shri Amarnath Reddy [Respondent No. 1]
&
Spectrum Lifesciences Private Limited [Respondent No. 2]**

**ARBITRATION AWARD
Disputed Domain Name: www.galvus.co.in**



The Parties

The Complainant in this arbitration proceeding is Novartis AG, the parent company of the Novartis Group, which carries on its business in India through its two subsidiaries Novartis India Limited and Novartis Healthcare Private Limited. The Novartis Group was incorporated under the laws of Switzerland on February 29, 1996.

The Respondents in these arbitration proceedings are:

Respondent No. 1: Shri Amarnath Reddy, Spectrum Lifesciences Private Limited, Ground Floor, K- Block, 27/107, CHENNAI-6000102, Tamil Nadu, India.

Respondent No. 2: Spectrum Lifesciences Private Limited, Ground Floor k- Block, 27/107, CHENNAI 6000102, Tamil Nadu, India.

The Domain Name and Registrar

The disputed domain name is www.galvus.co.in. The Registrar with which the disputed domain name is registered is GODADDY.COM, LLC [R101-AFIN] located at 14555 N Hayden Suite 226, Scottsdale, Arizona 85260, United States and is an accredited Registrar who is authorized to register .IN domain names.

Procedural History [Arbitration Proceedings]

This arbitration proceeding is 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] were approved by NIXI on June 28, 2005 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 the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

On May 30, 2013, communication was sent by the Arbitrator to the Respondent about the commencement of the proceedings. A reminder was sent on June 9, 2013 by the arbitrator.

The Respondent acknowledged the communication on June 27, 2013. In the message on June 27, 2013, Mr. A. Venkatesh appearing on behalf of Respondent No. 1 & Respondent 2 stated that he was approached by the client on 26 June, 2013. The Respondent in the message dated June 27, 2013 requested for a one-week extension, to file his reply. The request for the grant of extension was objected to by the Complainant. The extension was granted in the interest of justice. On June 09, 2013, the Respondent[s] submitted their response.



Grounds for the administrative proceedings

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

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

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

Background of the Complainant and its statutory and common law rights Adoption:

The Complainant in this arbitration proceeding is Novartis AG, the parent company of the Novartis Group, which carries on its business in India through its two subsidiaries Novartis India Limited and Novartis Healthcare Private Limited. The Novartis Group was incorporated under the laws of Switzerland on February 29, 1996.

Statutory rights:

The Complainant contends that it is the owner, designer, proprietor of the brand "Galvus" and has been using this brand since the year 2000. The Complainant started using the brand "Galvus" for several years commencing from the year 2000. The word "Galvus" was thereafter continuously used in commerce across the globe in connection with the treatment of patients suffering from Type-2 diabetes. "Galvus" is a reputed brand in many countries across the globe including India. The Complainant have registered "Galvus" as a trademark in over 100 countries including the United States of America, United Kingdom, Switzerland, United Arab Emirates, Bangladesh, Kingdom of Saudi Arabia, Republic of South Africa, Mexico, China and India (two registered trademarks). It has further trademark applications that are pending in several countries including India (four pending applications). The Complainant holds several domain name registrations incorporating the "Galvus" trademark, including www.galvus.com and www.galvus.in

Discussion and Findings

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand "Galvus". Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark. It is a well-established principle that once a Complainant makes a prima facie case showing that the Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has legitimate interest in the domain name to rebut this presumption.

The Respondent in its reply, while not contending the validity of the trademark "Galvus", contends that it bought the disputed domain name in good faith and that the domain name bearing the trademark "Galvus" was available for purchase from the accredited registrar, GoDaddy.com.

The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

"Types 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.
The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

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.

Parties Contentions

Complainant's Contention

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

It has been proved by the Complainant, to the satisfaction of this Panel, that it has 'legitimate interest' and in particular, trademark rights, and other rights in the mark "Galvus" by submitting substantial documents. The Complainant also contends that the Respondent is in the same business as that of the respondent.

The disputed domain name contains the entirety of the Complainant's trademark. This panel comes to the conclusion that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark. [Relevant Decisions: Case No. INDRP/125, February 14, 2010, *Lego Juris A/S v. Robert Martin*; Case No. INDRP/286, February 20, 2009, *G.A. Modefine S.A. v. Naveen Tiwari*]

The Respondent has thereafter made a calculated approach wherein the Respondents have not created any content on his website. Moreover, a perusal of the website shows that the website has been resolved into a domain parking page with further links to other unrelated websites.

The Complainant submits that the corporate name, trademark "Galvus" has both registered marks and marks pending approval in India. They further contend that due to extensive advertising and reputation that the product has gained, the marks have become distinctive on accrued immense goodwill. They also have provided evidence to show that the Galvus products have been cited and discussed in leading medical journals, magazines, including Forbes magazine. Moreover the Complainant has adduced evidence to show that the trademark Galvus has been registered in over 100 countries including United States of America, Switzerland, United Arab Emirates, Bangladesh, Kingdom of Saudi Arabia, Republic of South Africa, Mexico, China and India.

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. Therefore mere availability for sale of the domain name, does not absolve the duty of the Respondent to carry out a search to determine whether the domain name violates any 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 Respondent 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."

Respondents Contention

The Respondent contends that the use of the word "Galvus" in the disputed domain name www.galvus.co.in is honest and concurrent. The Respondent contends that it never intended to damage the goodwill of any third party. The Respondent further contends that the term "Galvus" in the domain name was completely honest and only for communication purposes.

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

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.

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 or interests in the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name.

The Respondent is not authorized by the Complainant to use the domain name. In the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated *bonafide* or legitimate use of the domain name could be claimed by the Respondent [Relevant Decisions: *Guerlain S.A. v. Peikang*, D2000-0055 (WIPO March 21, 2000)].

Moreover, the disputed domain name was registered by the Respondent on February 8, 2013, which is more than a decade after the registration of the domain name - www.galvus.com by the Complainant on September 22, 2000. By this time, the Complainant had built considerable reputation in the mark "Galvus". Complainant's rights in the trademark "Galvus" predates Respondent's registration of the disputed domain name



incorporating that trademark, therefore the Respondent does not have rights or legitimate interests in the disputed domain name [Relevant Decisions: Case No: INDRP/096, June 27, 2009, *Compagnie Gervais Danone v. Digitech Software Solutions*]

The Respondent is in no way affiliated with the Complainant. The Complainant has not authorized or licensed Respondent to use and register the "Galvus" trademark, nor requested their assistance in the registration of any domain name incorporating this trademark.

Further, the Respondent has registered and used the domain name to infringe Complainant's rights in the trademark and to trade off Complainant's goodwill. This can be inferred from the Respondents own submission that "*it provides product consultancy services for major Indian pharmaceutical companies*" in paragraph 2 of the reply. On its own submission, if the Complainant was a product consultancy provider for major pharmaceutical drug companies in India, it could not have failed to realise that the trademark "Galvus" belonged to Novartis as there are registered trademarks in India for the same.

The disputed domain name has been used as a parking page which includes reference to the Complainant. The Respondent's contention that the domain was only used for the purposes for communication and for public benefit has no merit, as a perusal of the disputed domain name shows that it is currently a parking page. Based on this record, it can be safely assumed that 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 bonafide offering of goods or services or 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. [Relevant Decision: Case No. INDRP/094 [INDRP April 20, 2009] *AXA SA v. DRAGON DOMAINS LIMITED*; Case No. INDRP/179 [INDRP April 7, 2011] *Rhodia v. Andrew Yan*]

The Respondent is not and has not in the past commonly used the disputed domain Name. Respondent does not use the Trademarks to identify itself on its website or for any other legitimate purpose. Even if the Respondent has used the trade name, such an unauthorised use does not establish legitimate interest in the disputed domain name. [Relevant Decision: Case No. INDRP/082, INDRP February 20, 2009 *G.A. Modefine S.A. v. Naveen Tiwari*].

Respondent's Contention

The Respondent contends that the domain name is not meant to be used by the Respondent for any commercial purpose whatsoever, including promotion of any pharmaceutical products, whether of the Respondent or any other.

The Respondent also contends that, Clause 7(iii) of the .IN Domain name Dispute Resolution Policy (INDRP) allows for a legitimate and non-commercial use of the domain name without an intention of commercial gain. Therefore it is the Respondent's contention that they can register the disputed domain name.



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

It has been contended by the Complainant that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent 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

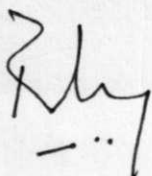
the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

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."

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the Panel is of the opinion that the Respondent had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent.

The Respondent's registration and use of the domain name meets the bad faith elements set forth in the INDRP. Since the trademarks of the Complainant are so distinctive and famous that the Respondent must have had actual knowledge of the trademarks prior to registering the disputed domain name. According to the evidence put forth by the Complainant and the submission of the Respondent that it is dealing in product consulting services to major Indian pharmaceutical companies, it is evident that the Respondent was aware of the Complainant and its trademark.

Further, on perusal of the disputed domain name the panel found that the Respondent has allowed the domain name to resolve into a domain parking page with further links to other websites. It is a well-known fact that the owners of such websites generally profit commercially from landing pages such as the disputed domain name in the present case that has resolved into a domain parking page, by generating "click through" revenues for traffic channelled to the owners of the linked websites through the link provided on the landing page. Therefore the assumption would be that the Respondent is deriving a financial benefit from web traffic diverted from the disputed domain name to link websites on the domain name parking page. [Relevant Cases: *Compart AG v. Compart.com/Vertical Axis, Inc.*, WIPO Case No. D2009-0462; *V&S Vine&Sprit v. Corinne Doucos*, WIPO Case No. D2003-0301; *The Coco-Cola Company v. Ma Ying Jo*, WIPO Case No. D2012-1823]



Respondent's Contention

The Respondent contends that it did not register the domain name in bad faith. The Respondent contends respondent is not engaged in the same business as that of the complainant.

The Respondent also states that it agrees to the admitted case of the Complainant that the domain name "galvus.co.in" which is in dispute in the present case did not resolve to an active website during the search on the internet through an internet search engine. The Respondent further contends that it had no commercial intention in purchasing this domain name and the purpose of purchasing the domain name was limited to the purpose of communication.

Decision

The following circumstances are material to the issue in the present case:

- (i) the Complainants' trademark has a strong reputation and is widely known on a global basis;
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name;
- (iii) taking into account the nature of the disputed domain name and in particular the .in extension alongside the Complainant's mark, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of the disputed Domain Name by the Respondent is and would be illegitimate. Use by the Respondent as such would amount to passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

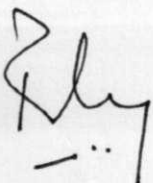
At the outset, the panel would like to focus one of the submissions filed by the Respondent whereby it contended that GODADDY LLC. being a seller of the disputed domain being in question herein, it must be impleaded in the present matter as it is the seller of the domain name in question, hence it is a necessary party to the suit. This panel rejects this contention of the Respondent and draws attention of the Respondent to the .IN Dispute Resolution Policy para. 3, which states that

And that it is Registrant's/Respondent's duty under para. 3 of the .IN Dispute Resolution Policy to warrant and prove to the contrary that:

- "(a) the Registrant/Respondent has accurately and completely made the Application Form for registration of the domain name;
- (b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful purpose; and
- (d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

And that under para. 43 of the Domain Registration Agreement between GODADDY and any Registrant, which states:



"Provisions Specific to .IN Registrations: You agree to be bound by current and future .IN policies as indicated on the .IN registry website, and which are incorporated herein"

Therefore it's the responsibility of the Respondent to ensure that the domain name it is registering does not violate any third party rights. Furthermore, the legal agreement that the registrant has entered into with the registrar "GoDaddy" further binds him to follow the .IN policies and excludes the registrar from any liability for any violation of third party rights by the registrant(who is the Respondent in the present case). Hence the panel finds that there is no merit in the contention requiring the registrar to be impleaded in the present matter.

The Panel comes to conclusion that the Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. [Relevant Decisions: *Salmi Oy v. PACWEBS* WIPO Case No. D2009-0040; *Graco Children's Products Inc. v. Oakwood Services Inc.* WIPO Case No. D2009-0813; *Artemides Holdings Pty Ltd v. Gregory Ricks*, WIPO Case No. D2008-1254; *Ville de Paris v. Jeff Walter*, WIPO Case No. D2009-1278]. The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. Further, in the present dispute, the Respondent in its reply has failed to provide any material evidence and/or any decision of any panel that would favour his case.

The panel also finds that the Respondent ought to have known about the brand "Galvus" of the Complainant as the Complainant has been using this brand for more than a decade. This constitutes Bad faith in the eyes of this panel [Relevant Decisions: *SembCorp Industries Limited v. Hu Huan Xin*, D2001-1092; *The Nasdaq Stock Market, Inc. v. H. Pouran*, D2002-0770; *Caesars World, Inc. v. Forum LLC.*, D2005-0517; *Maori Television Service v. Damien Sampat*, D2005-0524]. Moreover, the respondent even if it was not a pharmaceutical company, it was providing product consulting services to major Indian pharmaceutical companies by its own admission; and the Complainant had two Indian subsidiaries, thereby making it even harder to prove that the Respondent had no idea as to the Complainant's trademark.

The Panel finds that Respondent has, used the disputed domain Name in a manner that constitutes bad faith. In particular, by letting the disputed domain name to resolve into a parking site for links to other websites. [*The Coca-Cola Company v. Ma Ying Jo*, WIPO Case No. D2012-1823]


While the overall burden of proof rests with the Complainant, 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 clear that the Respondent is using 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 decisions: *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu* WIPO D2003-0849; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119; D2012-0466 WIPO *Luigi Lavazza S.p.A. v. Noori net*; D2008-1474 WIPO *Serta Inc. v. Charles Dawson*; *Netflix, Inc. v. Sharma*, INDRP/216 (INDRP July 1, 2011); *Guerlain S.A. v. Peikang*, D2000-0055 (WIPO March 21, 2000); *Univ of Houston Sys, v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum March 21, 2006); *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006; *Lockheed Martin Corporation v. Steely Black*, INDRP/183 (January 5, 2011); *Equifax Inc. v. The Admin*, INDRP/163 (November 23, 2010);, *Revlon Consumer Products Corporation of New York v. Ye Genrong, et al*, D2010-1586 WIPO November 22, 2010]

The Respondent's registration and use of the domain name [www.galvus.co.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Panel directs that the disputed domain name [www.galvus.co.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

A handwritten signature in black ink, appearing to read 'R. Ryder', is written over a horizontal line.

Rodney D. Ryder
Sole Arbitrator

Date: July 15, 2013