



उत्तर प्रदेश UTTAR PRADESH

AG 965634

INDRP ARBITRATION  
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: RODNEY D. RYDER

WOCKHARDT LIMITED.

V.

KISHORE TARACHANDANI

ARBITRATION AWARD

Disputed Domain Name: [www.wockhardt.in](http://www.wockhardt.in)





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#### The Parties

The Complainant in this arbitration proceeding is Wockhardt Limited. Its principal place of business is at Wockhardt Towers, Bandra Kurla Complex, Bandra [East], Mumbai, 400051

The Respondent in this arbitration proceeding is Shri Kishore Tarachandani, located at 201, Senate Square, Tower B, Near Yash Complex, Gotri, Vadodara, Gujarat - 390005 as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

#### The Domain Name and Registrar

The disputed domain name is [www.wockhardt.in](http://www.wockhardt.in). The Registrar with which the disputed domain name is registered is Directi Internet Solutions Pvt. Ltd., Directiplex, Next to Andheri Subway, Old Nagardas Road, Andheri [East], Mumbai, Maharashtra 400069 India.

#### 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 28<sup>th</sup> June 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 there under.

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 there under, .IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

The request for submission with a complete set of documents was dispatched to the Respondent by the National Internet Exchange of India [NIXI]. The Respondent filed his response on August 10, 2012; which was taken on record by the single-member panel.

#### **Grounds for the administrative proceedings**

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

#### **Parties Contentions**

##### **The Respondent's Preliminary objections:**

The Respondent in his reply has contended that there has been a delay [laches] in filing the complaint therefore the panel should not entertain the present dispute. This panel has come to a conclusion that the mere passage of time does not give the Respondent rights or legitimate interests it would not otherwise have. It has to earn its right to the domain name by using it legitimately. A mere delay in filing of complaint before the INDRP or any other dispute resolution body does not lead to a forfeiture of its rights that it would otherwise have which has been upheld by a plethora of case law before this panel and various other cases. If the three requirements under the policy have been met for declaring that the Respondent has no right in the Disputed Domain Name, it has been previously held that it would be unnecessary to go into the question of laches for deciding whether the domain name registration is valid or not, **[Relevant Decision: ADOS GmbH v. Therefore Corporation GmbH Case No. WIPO D2010-1535]**

Laches is established when two conditions are fulfilled. *First*, there must first be unreasonable delay in the commencement of proceedings; *second*, in all the circumstances the consequences of delay must render the grant of relief unjust. When there is no finding that Complainant did delay unreasonably after first becoming aware in of Respondent's registration of the disputed domain name and further, if there is no evidence Respondent has been prejudiced by delay, the Complainant is not barred from relief **[Relevant Decisions: The Hebrew University of Jerusalem v. Alberta Hot Rods Case No. D2002-0616; Tom Cruise v. Network Operations Center / Alberta Hot Rods Case No. D2006-0560; Avaya Inc. v. Holdcom Claim Number: FA080600121054; American Broadcasting Companies, Inc. v. Rosa Edwards Claim Number: FA0501000399593]**. It should also be noted that the Policy is part of the domain name registration agreement. An Administrative Proceeding is brought pursuant to that agreement, the issue for determination being whether the grounds set out





in the Policy for transfer or cancellation have been established. There is no limitation period in the Policy. The remedy available in an Administrative Proceeding under the Policy is not equitable. Accordingly, the defence of laches has no application [**Relevant Decisions:** *The Hebrew University of Jerusalem v. Alberta Hot Rods Case No. D2002-0616*; *Tom Cruise v. Network Operations Center / Alberta Hot Rods Case No. D2006-0560*]. Decisions under the UDRP Policy have uniformly and categorically rejected applying the equitable doctrine of laches in administrative proceedings [Relevant Decisions: *Car Advisory Network, Inc. v. Journal Community Publishing Group, Inc. Case No. D2008-0717*; *HRB Royalty, Inc. v. Asif Vadaria Case No. D2007-1658*; *Disney Enterprises, Inc. v. Dayanand Kamble Claim Number: FA0702000918556* *Drown Corp. v. Premier Wine & Spirits Claim Number: FA0512000616805*].

It must also be noted that the panel is not affected by the Complainant's long delay in pursuing a complaint in relation to the Disputed Domain Name. If the requirements of a valid complaint under the Policy are established, the Policy does not provide any defence of laches. This goes with the basic objective of the Policy of providing an expeditious and relatively inexpensive procedure for the determination of disputes relating to egregious misuse of domain names. The availability of defences such as laches could result in significant delay and expense [**Relevant Decisions:** *The E.W. Scripps Company v. Sinologic Industries Case No. D2003-0447*]. The remedies under the Policy are injunctive rather than compensatory in nature, and the focus is on avoiding confusion in the future as to the source of communications, goods, or services [*Tax Analysts v. eCorp Case No. D2007-0040*; *MASAI S.A. v. Peter Colman Case No. D2007-0509*]. Also it is most humbly submitted that the delay in bringing a claim does not generally act as a waiver of the right to do so [*Tom Cruise v. Network Operations Center / Alberta Hot Rods Case No. D2006-0560*; *Avaya Inc. v. Holdcom Claim Number: FA0806001210545*].

#### **Indian Trademark Law on Laches**

*Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia* [2004 (28) PTC 121(SC)] – the Hon'ble Supreme Court of India held that in the case of infringement either of trademark or of copyright, normally an injunction must follow mere delay is not sufficient to defeat the grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was in itself dishonest.

*Sun Pharmaceuticals Ltd. v. Wyeth Holdings Corporation Ltd* [2005(30) PTC 14(Bom)]; the Hon'ble High Court of Bombay ruled that delay is immaterial unless it is shown that there is definite proof of acquiescence of the plaintiff. Moreover even if there is an inordinate delay on the part of the plaintiff in taking action against the defendant the relief of injunction is not to be denied. Inordinate delay or laches may defeat the claim of damages or rendition of accounts but the relief of injunction should not be refused.

In *Syncom Formulations v. SAS Pharmaceuticals* [2004 PTC 632(Del)], it was held that the accepted position in law is that delay or laches in approaching a court for an injunction in case of passing off (remedy in case of unregistered mark) is not fatal- at best the plaintiff might not be entitled to relief of damages or rendition of accounts but the relief of injunction should not be refused, even in case of honest concurrent user.



### **Complainant**

The Complainant in his complaint, inter alia, contended as follows:

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

The Complainant, based on various Indian and international trademark registrations across various classes owns the trademark "Wockhardt". Based on the use of the said trademark in India and several other countries across the world submitted that it is the sole proprietor of and has sole and exclusive rights to use the said trademark "Wockhardt".

The Complainant is the registered proprietor of the mark "Wockhardt" in India and several countries across the world. The Complainant submits that as the disputed domain name is 'www.wockhardt.in', it is clearly identical/confusingly similar to the Complainant's trademark – "Wockhardt Limited" in which the Complainant has exclusive rights and legitimate interest.

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

The Complainant Wockhardt Limited is a global pharmaceutical and biotechnology organization headquartered in Mumbai, providing affordable, high quality medicines for a healthier world. It is India's largest research based global healthcare enterprise with relevance in the fields of Pharmaceuticals, Biotechnology and a chain of advanced super specialty hospitals. The complainant is an Indian Multi National company with a multi ethnic workforce of 7500 employees from 14 different countries. It has four research centers and 14 manufacturing plants, with business ranging from the manufacture and marketing of pharmaceutical and Bio Pharmaceutical formulations, Active Pharmaceutical Ingredients (APIs) and Vaccines.

### **Statutory rights:**

The Complainant contends that the trademark "Wockhardt" and other related formative marks have acquired global reputation and goodwill and are well known marks. The Complainant holds several domain name registrations incorporating the Wockhardt Limited trademark, including wockhardtfield.com; wockhardthospitals.net and wockhardt.com

### **Respondent**

Respondent Chandulal Ranchhoddas Kundaliya, Proprietor, Trade-Easterly, is a service-oriented unit, engaged in providing various kinds of tailor made services. The Respondent's field of business is Information Technology and it has developed various websites e.g. lohana.in, jamangarcity.com (the first city portal), trade-easterly.com. The Respondent is also engaged in creating the intellectual property assets by registering the domains and developing the brands on the basis of successful brands in the areas in which it is not registered. The area of service also includes research and analysis of the various brands potential and registration of domain names and in the appropriate cases handing over the domain names registered to the legitimate claimants.



### **Discussion and Findings**

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand "Wockhardt". 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 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.

### **The Respondent's Default**

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

*"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."*

Rule 11(a) empowers the arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

*" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case.

The 'Rules' paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

### **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 there under."*

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.

**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 that it has intellectual property, particularly trademark rights, and other rights in the mark "Wockhardt" by submitting substantial documents. The mark has been highly publicized and advertised by the Complainant in both the electronic and print media; both in India and globally and the disputed domain name is similar to that of the Complainant's mark, services and domain names. The Complainant's trademark 'Wockhardt' is a well-known and famous mark under Section 2 (zg), Trade Marks Act, 1999.

The Supreme Court of India passed a judgement in 2004 where it held that a domain name has all the characteristics of a trademark, thus trademark and a domain name although used in a different manner and in different fields, can be identical or confusingly similar. [M/S Satyam Infoway Ltd. V. M/S Siffynet Solutions (P) Ltd., JT 2004 (5) SC 41]

A mere glance at the disputed domain name gives rise to enormous confusion as to its origin. The disputed domain name registered by the Respondent is identical to the Corporate as well as the trademark of the Complainant. The complainant enjoys statutory and common law proprietary rights over the trademark 'WOCKHARDT' and the public identify the said trademark exclusively with the complainant and no one else. 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: *Lego Juris A/S v. Robert Martin*, INDRP/125, (February 14, 2010); *G.A. Modefine S.A. v. Naveen Tiwari*, INDRP/286, (February 20, 2009)]

The complainant contends that there was complete malafide intention on the part of the Respondent to register the disputed domain name wockhardt.in because not even a single letter differs between the disputed domain name and the corporate name of the





Complainant. In fact in many decisions of the UDRP, it has been held that a mere omission of one letter of a trademark has no effect in determining the confusing similarity of the between the trademark and the disputed domain name. [**Relevant Decisions:** *Reuters Ltd. V. Global Net 2000 Inc.* WIPO Case No. 2000-0441, *Alta Vista Company v. Grandtotal Finances Ltd.* WIPO Case No. D2000-0848]. However in the present case, the dispute is on a higher footing because the Respondent has picked up the trademark of the Complainant verbatim, without even changing a single letter. This clearly shows that the disputed domain name registration by the Respondent is a clear case of abusive registration of a well-known mark.

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 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."

The Respondent in its reply has failed to justify as to why it registered the domain name [www.wockhardt.in](http://www.wockhardt.in) and it has failed to prove the contrary that the domain name registered is not confusingly similar to the Complainant's Trademark. The Respondent has failed in his responsibility discussed above. and in the light of the pleadings and documents filed by the Complainant; The Panel comes to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' marks and its business. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

**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 in its reply has rebutted the contentions of the Complainant but he has not produced any documents to show that he has legitimate rights over the disputed domain name.

The Respondent does not have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the "Wockhardt" mark, a mark in which the Complainant has the sole and exclusive right and that is well known owing to the Complainant's efforts.

Furthermore, the Respondent whose name is Shri Kishore Tarachandani is not commonly known by the disputed domain name nor does the Respondent actually engage in any business or commerce under the name Wockhardt Limited. [**Relevant Decision:** *Wockhardt Limited v. M/S Keep Guessing*, INDRP/024 (June 27, 2007)]

The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent. [**Relevant Decision:** *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO, June 27, 2000)]

The Respondent is not making any legitimate, non-commercial or fair use of the disputed domain name because there is no website associated with the disputed domain name. This is also evidence of the Respondent's lack of rights or legitimate interest in the disputed domain name. [**Relevant Decision:** *Kenneth Cole Production Inc. v. Viswas Infomedia*, INDRP/93 (April 10, 2009)].

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in 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 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 and Respondent, 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 panel rejects the contention of the Respondent that there is no bad faith in registration of the domain name after the sunrise policy and that there is no bad faith when there is no sale of the complainants products in India. It is also a well settled principle that the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. **[Relevant Decision: *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250 (December 30, 2011)]**

The Respondent's registration 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. The Complainant has a long and well-established reputation in the Complainant's marks through its exclusive use. There cannot be any doubt from the evidence put before this panel that the Complainant's marks are well known and that the Respondent intended to capitalize on that confusion. Therefore the panel comes to the conclusion that the registration is in bad faith By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent 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. **[Relevant Decision: *Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd.*, INDRP/215 (July 9<sup>th</sup> 2011); *Kenneth Cole Production Inc. v. Viswas Infomedia*, INDRP/93 (April 10, 2009)]**

Further, the disputed domain name does not resolve to any website. It is well settled that the registration of a domain name that incorporates a third party mark without any legitimate commercial interest is evidence of bad faith registration and use of the domain name. **[Relevant Decision: *Franklin Resources, Inc. and Franklin Templeton Asset Management (India) Pvt. Ltd v. Mr. David Dlugitch*, INDRP/076 (January 15, 2009)]**

With regard to famous names, it should also be noted that many UDRP panels have concluded Bad Faith registration when the trademark owner's name was famous at the time of registration by another individual amounting to bad faith registration. **[Relevant Decision: WIPO/D2000-0310 [choyongpil.net]**



Consequently it is established that the disputed domain name was registered in bad faith as well as used in bad faith

### Decision

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

- (i) the Complainants' trademark is a well known and famous mark and has a strong reputation and is widely known on a global basis;
- (ii) the Respondent has provided no evidence 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.

It is inconceivable that the Respondent could have registered the disputed Domain Name without being aware of the Complainant's rights. In light of the Respondent's presumed knowledge of the Complainant's rights, it is reasonable to infer that the Respondent could not have registered the disputed Domain Name without the intention to target these rights in some manner. Furthermore, if the Respondent is allowed to use the disputed Domain Name as the name of any business, product or service, it would also harm the reputation and goodwill of the complainant for which it would be commercially useful without violating the Complainant's rights. Thus, the disputed domain name was registered in bad faith.

The Complainant's trademark 'Wockhardt' is a well-known and famous mark under Section 2 (zg), Trade Marks Act, 1999, as per the evidence provided to this panel. With regard to well-known and Famous Names, successive UDRP panels have found Bad faith registration because Complainant's name was famous at the time of registration [**Relevant Decisions:** *Cho Yong Pil v. Sinwoo Yoon* [WIPO/D2000-0310](#) [choyongpil.net]. "Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith" *The Caravan Club v. Mrgsale*, [NAF/FA95314](#) [thecaravanclub.com ], *America Online Inc. v. Chinese ICQ Networks* [WIPO/D2000-0808](#) [very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith - 4icq.com].

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.

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. In the present dispute, the Respondent in its reply has failed to provide any material evidence and any decision of any panel which would favour his case. He has merely rebutted the arguments of the complainant without any legal basis, which are non-convincing. 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<sup>st</sup> 2006); *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24<sup>th</sup> 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.wockhardt.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.wockhardt.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

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Rodney D. Ryder  
Sole Arbitrator

Date: August 14, 2012