



सत्यमेव जयते

INDIA NON JUDICIAL

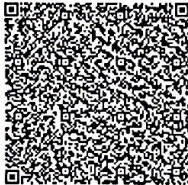
Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL92198026771383V
 Certificate Issued Date : 19-Apr-2023 02:28 PM
 Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
 Unique Doc. Reference : SUBIN-DLDLSHIMP1755365676268681V
 Purchased by : DEEPALI GUPTA
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : DEEPALI GUPTA
 Second Party : Not Applicable
 Stamp Duty Paid By : DEEPALI GUPTA
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

सत्यमेव जयते



₹100

Please write or type below this line

IN-DL92198026771383V

DEEPALI GUPTA
 SOLE ARBITRATOR

.IN Registry - National Internet Exchange of India
 INDRP Case No: 1662

In the matter of Arbitration Between:

Baxter International Inc

Versus

.....Complainant

None

[as given in the WHOIS details by .IN Registry for
 the domain name: www.baxtermedical.in].

.....Respondent

Disputed Domain Name : < BAXTERMEDICAL.IN >

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

DEEPALI GUPTA
SOLE ARBITRATOR
Appointed by the .IN Registry - National Internet Exchange of India
INDRP Case No: 1662

In the matter of:

Baxter International Inc
Baxter Parkway Deerfield, Illinois - 60015
United States of America
Through its authorised Representative:
Mr. Rahul Chaudhry
RCY House, C-235,
Defence Colony,
New Delhi – 110024
Telephone: +91 11 43500000
Fax: +91 11 43500003, 43500004
E-mail: domainname@rahulchaudhry.com

.....Complainant

Versus

None [as given in the WHOIS details for
the domain name: www.baxtermedical.in]
Tech Street: 2
Shenzhen, Guangdong,
Postal Code: 518000,
Country : China
Phone: (+86)17722606611
Email: wandou2022@protonmail.com
(Registrant)

.....Respondent

Disputed Domain Name : <**BAXTERMEDICAL.IN**>

ARBITRATION AWARD

DATED APRIL 24, 2023.

1) The Parties:

The Complainant in the present arbitration proceedings is Baxter International Inc, Baxter Parkway Deerfield, Illinois – 60015, United States

of America. The Complainant is represented by its Authorized Representative Mr. Rahul Chaudhry, RCY House, C-235, Defence Colony, New Delhi – 110024, India.

The Respondent in the present case is **None** [as given in the WHOIS details for the domain name: www.baxtermedical.in] Tech Street: 2, Shenzhen, Guangdong, Postal Code: 518000, Country : China Email: wandou2022@protonmail.com, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is < **BAXTERMEDICAL.IN** >

The Registrar is 'Dynadot LLC'

The Registrant is : **None** [as given in the WHOIS details for the domain name: www.baxtermedical.in] Tech Street: 2, Shenzhen, Guangdong, Postal Code: 518000, Country : China.

3) Procedural History:

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 28th 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 thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain 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.

- The Complaint was produced before the Arbitrator on 1st MARCH, 2023.

Thereafter Notice was issued to the Respondent on 3rd March 2023, at his e.mail address 'wandou2022@protonmail.com', communicating the appointment of the Arbitrator in the case relating to the disputed Domain name <BAXTERMEDICAL.IN> wherein the Complainant had sought the cancellation of the disputed Domain Name. The Respondent was called upon to submit their response within twelve (12) days of the receipt of the Arbitrators email i.e. on or before 15th of March, 2023.

- The Arbitrator received no response from the respondent within the said timeline and even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) FACTUAL BACKGROUND:

The Complainant 'Baxter International Inc' is a Corporation incorporated under the laws of Delaware, United States of America and is the world's first commercial manufacturer of prepared IV solutions. It is the largest manufacturer and distributor of hospital supplies and a leading provider of medical and specialty products worldwide.

Complainant was founded in the year 1931, by Doctors Ralph Falk and Don Baxter as Don Baxter Intravenous Products Corporation initially. Complainant is a global medical products company. The Complainant's core competency is Sterile medication production which manufactures a broad range of essential generic injectable medications—including both frozen and liquid preparations. Complainant's products and services under the BAXTER Marks are sold in more than 100+ countries, including India gauging global sales at \$12.8 Billion as of 2021. Complainant's trademark 'BAXTER' forms a distinguishing feature of its Corporate name as well as

its affiliated companies located in different jurisdictions worldwide, including India. The Complainant also has 35+ domain names operative with the word BAXTER as a prominent feature thereof, including but not limited to www.baxter.com and www.baxter.in. The said domain names are accessible by persons around the globe.

The Complainant is the registered proprietor of 'BAXTER' Marks in 103 countries around the world, including but not limited to India, Bangladesh, Bolivia, New Zealand, United Kingdom, Malaysia, Jamaica, Spain etc. By virtue of worldwide trade mark registrations, long, extensive and continuous use both as a trade name and trade mark, vast publicity, and the excellent quality of goods and services in relation to which the BAXTER Marks are used in India and worldwide, the Complainant has acquired a substantial reputation and goodwill globally. Consequently, the members of the trade and public associate and recognize the trademarks containing the distinctive 'BAXTER' Marks with the business of the Complainant and its goods and services alone. By virtue of such registrations, the Complainant has the exclusive statutory right to use the trade mark 'BAXTER' and variants thereof globally.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- a) The Complainant submits that the Complainant 'Baxter International Inc' is a Corporation incorporated under the laws of Delaware, United States of America. It is the largest manufacturer and distributor of

hospital supplies and a leading provider of medical and specialty products worldwide. Complainant was founded in the year 1931, by Doctors Ralph Falk and Don Baxter as "Don Baxter Intravenous Products Corporation" initially. By the end of 1939, the Complainant's name was changed to 'Baxter Laboratories Inc'. Subsequently, in the year 1976, the name of the Complainant was changed to 'Baxter Travenol Laboratories Inc.' and thereafter in the year 1987, the name was changed to the present name of the Complainant – 'Baxter International Inc.'

- b) It is submitted by the Complainant that complainant is a global medical products company and currently participates in a differentiated segment of the genetic injectables market with difficult-to manufacture oncology drugs and a broad portfolio of standard-dose, ready-to-use premixed injectable products, including essential anti-infectives, analgesics and critical care medicines. The Complainant's core competency is Sterile medication production which manufactures a broad range of essential generic injectable medications—including both frozen and liquid preparations—that treat some of the most pressing healthcare needs facing patients today.
- c) It is further submitted by the Complainant that since the year 1940, the Complainant has made extraordinary discoveries and medical breakthroughs to advance the next generation of healthcare innovations that enable patient care. Today, the Complainant's products and services under the BAXTER Marks are sold in more than 100+ countries, including India, gauging global sales at \$12.8 Billion as of 2021.
- d) Complainant's trademark 'BAXTER' forms a distinguishing feature of its corporate name as well as its affiliated companies located in different jurisdictions worldwide, including India, such as:-
 - Baxter Healthcare Pty Ltd – Australia
 - Baxter Belgium SPRL – Belgium
 - Baxter Deutschland GmbH, Germany
 - Baxter Healthcare Limited, United Kingdom
 - Baxter Pharmaceuticals (Asia) Pte Ltd., Singapore
 - Baxter Limited, Japan

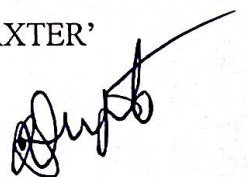
- Baxter India Private Limited, India
- Baxter Pharmaceuticals India Private Limited, India
- Baxter Innovations & Business Solutions Private Limited, India

- e) It is further submitted by Complainant that the Complainant also has 35+ domain names operative with the word 'BAXTER' as a prominent feature thereof, including but not limited to www.baxter.com (created on January 23, 1992) and www.baxter.in (created on February 16, 2005). The said domain names are accessible around the globe, including in India.
- f) It has been submitted by the Complainant that Complainant is the registered proprietor of BAXTER Marks in 103 countries around the world, including but not limited to India, Bangladesh, Bolivia, New Zealand, United Kingdom, Malaysia, Jamaica, Spain etc. By virtue of worldwide trade mark registrations, long, extensive and continuous use both as a trade name and trade mark, vast publicity, and the excellent quality of goods and services in relation to which the BAXTER Marks are used in India and worldwide, the Complainant has acquired a substantial reputation and goodwill globally, including in India. Consequently, the members of the trade and public associate and recognize the trademarks containing the distinctive BAXTER Marks with the business of the Complainant and its goods and services alone. The Complainant's BAXTER Marks has gained immense popularity and attained the status of a well-known mark:

'Baxter'

- g) The Complainant submitted that in India, the Complainant is the registered proprietor of 6 registrations consisting of the word 'BAXTER', the earliest of which is dated November 15, 1949. The said trademarks are valid and subsisting on the Register of Trade Marks and thereby confer upon the Complainant, the exclusive right to use the said mark in respect of the goods and services for which they are registered.

- h) It has further been submitted by Complainant that recently, the Complainant became aware of the use of the mark 'BAXTER' as part of the impugned domain name 'www.baxtermedical.in' by the Respondent. The said domain name was created on 22nd December, 2022 as per the WHOIS status of the impugned domain name www.baxtermedical.in. A review of the website operating on the impugned domain name revealed that the Respondent is making use of the impugned domain name for gaining illicit profits by luring consumers into dishonest and fraudulent means of earning easy money. Upon further check on the internet about the impugned domain name, the Complainant observed that several YouTube videos were also uploaded on the platform www.youtube.com, wherein some people were found to be explaining the process and procedure as to how to earn money through the impugned domain name. Through the said videos, the Complainant noted that an app under the name – Baxter Medical is required to be installed by the user, which link is attached in the impugned domain name and then after entering the necessary details (viz. Name, password, contact number etc.,) a user account is created. Once the account is created, the user is required to purchase an investment plan viz., (1) Road to Wealth and (2) Wealth Exclusive. The user can, according to his investment ability, choose the plan and invest in the app. The investments in the said app are made in the Complainant's BAXTER Products and for each product, different prices are displayed. The said products comprise of several prices viz. Daily Income, Monthly Income etc. According to the investment amount mentioned, the user earns prices on a daily basis. In case the user wishes to withdraw the amount earned on the app, then he is required to share his bank details to effectuate the said withdrawal in his account. Screenshot along with the direct links of the impugned videos on YouTube depicting the impugned use of BAXTER Marks has been annexed as Annexure – J and relied upon.
- i) It has been submitted by Complainant that the Respondent is continuously using the impugned domain name www.baxtermedical.in and the website operating thereon features Complainant's 'BAXTER'



trademark and its products through which fraudulent investments are shown to earn money. The Respondent's act of earning money while using the Complainant's 'BAXTER' Marks are unlawful and illegal.

- j) The Complainant submits that the Respondent in its domain name www.baxtermedical.in has completely copied the Complainant's well-established mark BAXTER, and using the same to earn illicit profits by unlawful means. It is further submitted that the Complainant, including its subsidiaries, owns various domain names that include the mark 'BAXTER', including but not limited to www.baxter.com, www.baxter.com.sg, www.baxterhealthcare.ie/, www.baxteritalia.it/it, www.baxter.co.jp/ja etc. Respondent's domain name www.baxtermedical.in completely incorporates the Complainant's mark 'BAXTER'. The mere addition of the word "MEDICAL" does not make the impugned domain name distinguishable from the Complainant's registered and well-known mark 'BAXTER'. It is emphasised that the same is likely to suggest that the said domain name is related to the services provided by the Complainant, especially when the Complainant's products are displayed for fraudulent investment purposes on the website operating on this domain name. It is clear that the website on the impugned domain name is attempting to create confusion in the minds of customers by associating itself with the Complainant and thereby generating revenue by directing the said users to its website. The Respondent has registered the impugned domain name 'www.baxtermedical.in' thereby misappropriating, illegally and unauthorizedly, the Complainant's 'BAXTER' Marks. The impugned domain name has been advertised and used on various unscrupulous Telegram and YouTube channels, in order to illicit money from public.
- k) It is submitted by Complainant that the Respondent has merely added the word – medical to the Complainant's BAXTER Mark, which use of the word "*Medical*" as a suffix in the impugned domain name – www.baxtermedical.in that actually enhances confusion as it directly relates to the Complainant's operation of business viz. medical and pharmaceuticals. Complainant submits that even if users eventually discover that they are not at one of the Complainant's websites, based

upon the appearance of the famous BAXTER Mark in the impugned domain name, they will be led to believe that the Complainant has endorsed, sponsored or affiliated itself with the domain name and any services offered at the resolving website when this not the case. The contents on the impugned domain name fully suggests that the Respondent was aware of the BAXTER Marks and its registered domain names. The acts of the Respondent is likely to cause damage to the reputation, goodwill and business of the Complainant.

- l) It is further submitted by the Complainant that the Respondent neither has any legitimate interest in the trademark 'BAXTER' nor is the lawful owner of any right relating to the Complainant's mark. The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the Complainant's 'BAXTER' Marks. Respondent is not commonly known by the infringing domain name. It is submitted that the impugned domain name www.baxtermedical.in of Respondent was created on 22nd December, 2022. Further, a perusal of the website operating on the said domain name shows that the Respondent is making use of the impugned domain name to gain illicit profits by luring consumers into dishonest and fraudulent means of investment schemes to earn easy money. Therefore, it is evident that the Respondent has no legitimate interest to use the impugned domain name.
- m) It is submitted further by the Complainant that the Respondent cannot demonstrate or establish any legitimate interest in the domain name www.baxtermedical.in. Respondent registered the impugned domain name long after Complainant started using the mark 'BAXTER' in 1992 and have established rights in the said trademark through extensive use around the world. Further, the domain name www.baxter.com and www.baxter.in of the Complainant were created on January 23, 1992 and February 16, 2005 respectively, way before the date of creation of the impugned disputed domain name. Given that Complainant's adoption/extensive use of the mark 'BAXTER' predates Respondent's registration of the impugned domain name and the word 'BAXTER' is a coined word having no dictionary meaning, the burden is on the

Respondent to establish its rights or legitimate interests in the impugned domain name.

- n) It is thus submitted by the Complainant that from the facts as submitted, it is clear that the Respondent had adopted the mark 'BAXTER' with the full knowledge of the Complainant's mark. Thus, the use of the mark 'BAXTER' and the adoption of the impugned disputed domain name by the Respondent is to capitalize on the goodwill of the Complainant.
- o) It is further submitted by the Complainant that the disputed domain name was registered or is being used in bad faith. It is stated that the facts and circumstances as submitted indicate that the Respondent has registered or acquired the impugned disputed domain name with dishonest intention to mislead and divert the consumers of the Complainant. The malafide is further evident from the Respondent's use of the Complainant's well-known 'BAXTER' Mark and its products to earn revenues with dishonest and illicit means.
- p) It is submitted by Complainant that the Respondent has registered and is using the disputed domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's 'BAXTER' mark and domain names www.baxter.com and www.baxter.in and from the likelihood that internet users will mistakenly believe that the impugned domain name and its associated website is connected to the Complainant and its goods/services. The Respondent has registered and is using the impugned domain name primarily for the purpose of disrupting the business of the Complainant and diverting the public, who is searching for the Complainant, to its website and has no prior rights in and no authorization to use given by the Complainant for the BAXTER trademark.
- q) It is submitted that the Registering of the impugned domain name and further acts of Respondent demonstrate Respondent's clear intention to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The registration of a similar domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith.

- r) It is further submitted by Complainant that considering the international fame of the Complainant's trademark 'BAXTER', including the reputation in India, Complainant has reason to believe that the Respondent intentionally registered the impugned domain name to trade off the goodwill associated with the Complainant's mark. The Complainant places reliance on *De'Longhi Appliances S.r.l v. Ye Genrong, INDRP/1262 (September 8, 2020)*, which observes that actual knowledge of the Complainant's distinctive marks before registering the domain name constitutes bad faith.
- s) It is further submitted that the Respondent has also made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3(b) of the INDRP that, "*to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*" and under Paragraph 3(d) that, "*the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations*". It is thus submitted that it was incumbent upon Respondent to ensure that it was not encroaching on any third-party rights while registering the domain name as held in *Voltas Ltd. v. Sergi Avaliani, INDRP 1257 (September 22, 2020)*.

6) RELIEF SOUGHT:

The Complainant requests that the disputed domain name www.baxtermedical.in be cancelled.

7) RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

8) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

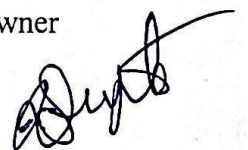
Identical or confusingly Similar:

The Disputed Domain Name incorporates the Complainant's 'BAXTER' mark in its entirety. The Complainant has submitted that respondent's domain name incorporates the Complainant's 'BAXTER' mark exactly, with the word 'medical' as suffix.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. It is evident that the disputed domain name "BAXTERMEDICAL.IN." incorporates the Complainant's trademark 'BAXTER' in its entirety with the added word 'medical' as a suffix appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is non-distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

Further a TLD / ccTLD such as '.in' is an essential part of domain name. Therefore it cannot be said to distinguish the Respondents Domain Name <BAXTERMEDICAL.IN> from the Complainants trademark 'BAXTER'.

The Complainant has submitted evidence of its trademark registrations for the "BAXTER" mark in India as also in other Jurisdictions globally and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use. Further in addition to the above, the Complainant is also the owner



of thirty five plus domain names having the mark 'BAXTER' as a prominent feature thereof including www.baxter.com and www.baxter.in. Complainant is the registered proprietor of 'BAXTER' Marks in 103 countries around the world, including India. The Complainant has relied upon certified copies of trademark registrations for the mark 'Baxter' in numerous countries including 6 registrations in India, the earliest of which is dated November 15, 1949.

In *Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079), it was held that use of the trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own

any registered rights in any trademarks that comprise part or all of the disputed domain name. It is further observed that the trademark 'BAXTER' was already registered in India when the Respondent registered the Disputed Domain Name www.baxtermedical.in on 22nd December, 2022. Further, a perusal of the website operating on the said domain name shows that the Respondent is making use of the impugned domain name to gain illicit profits by luring consumers into dishonest and fraudulent means of investment schemes to earn easy money thereby clearly illustrating their mala fide intentions to reap unjust profits therefrom.

The Complainant has submitted that the Disputed Domain Name, 'BAXTERMEDICAL.IN', includes the identical well-known and earlier trademark 'BAXTER' and mirrors the domain name 'BAXTER.IN' and 'BAXTER.COM' of the Complainant inasmuch as the Disputed Domain Name incorporates the trademark 'BAXTER' in its entirety. That the term 'BAXTER' is etched in the minds of the members of trade and public as signifying the Complainant's goods and services.

That the use of the Domain Name by the respondent, in which the Complainant enjoys a global reputation, by misleading and luring consumers by dishonest and fraudulent means of investment schemes to earn easy money, so as to gain illicit profits by the respondent, cannot constitute a legitimate non-commercial interest in the Domain Name. The Claimant states that prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name.

The Complainant has argued that due to extensive use of the 'BAXTER' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the mark 'BAXTER' through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the 'BAXTER' mark which is distinctive of the Complainant and its products & services, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has further argued that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its

rights in the 'BAXTER' mark. It is found that the Complainant has provided evidence of its prior adoption of the 'BAXTER' mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

In the case of *Paris Hilton v. Deepak Kumar*, [WIPO Case No. D2010-1364] (September 23, 2010), it was held that "if the owner of the domain name is using it in order to unfairly capitalize upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalize on or otherwise take advantage of the Complainant's trade marks and resulting goodwill."

Use of the said trademark 'BAXTER' by the Respondent with the intention of attracting consumers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. Refer to, *Google LLC V Gurdeep Singh*, INDRP Case No.1184 (<googlepays.in>) where use of GOOGLE mark in the domain name <googlepays.in> by the respondent in that case was found to lack rights or legitimate interests because the mark was used to attract customers by a respondent who was found to have no connection with the well known mark. The use of the Complainant's 'BAXTER' mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The Respondent has not participated in these proceedings. The Complainant has categorically submitted that it has not consented, authorized or permitted the Respondent for use of the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights

and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.

Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'BAXTER' mark. The disputed domain name has been registered on 22nd December 2022 whereas the trademark registration of 'BAXTER' mark as depicted in the certified copies of trademark registrations annexed by the Complainant was obtained by the Complainant in India on 15/11/1949 under Class 5, and on 24/08/1987 under Class 5, Class 1, Class 10 and Class 9, and on 24/02/2020 under Class 41 and the said trademarks are valid and subsisting and confer upon the claimant the exclusive right to use the said mark. These facts establish the Complainants prior adoption of the BAXTER mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the international recognition and reputation associated with the BAXTER mark.

Further the evidence placed on record depicts that the Respondent has registered the Disputed Domain Name primarily for the purpose of gaining illicit profits by luring consumers into dishonest and fraudulent means of earning easy money. The Screenshot along with the direct links of the impugned videos on YouTube depicting the illicit use of BAXTER Marks has been annexed as Annexure – J by the Complainant thereby clearly illustrating the respondents mala fide intentions to reap unjust profits therefrom. This only shows the *mala fide* intention of the Respondent to wrongfully gain monetary benefits at the cost of the goodwill and reputation of the Complainant's trademark 'BAXTER'.

It is observed that such acts constitute misrepresentation. Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public. The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's well-known and earlier trademark 'BAXTER' to improperly benefit the Respondent financially and are in violation

of applicable laws. It has been argued by the Complainant that these activities demonstrate bad faith registration.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the 'BAXTER' Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'BAXTER' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <BAXTERMEDICAL.IN > registered in the name of respondent be immediately cancelled.



Deepali Gupta
Sole Arbitrator
Date: 24th April, 2023.