



उत्तर प्रदेश UTTAR PRADESH

AL 019295

20 AUG 2010  
Bodhisatva Acharya  
LL.M.  
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. .... Of 2010

ARBITRATION AWARD: DISPUTED DOMAIN NAME: [www.biovail.in](http://www.biovail.in)

In the matter of:

BIO VAIL CORPORATION  
7150 MISSISSAUGA ROAD,  
MISSISSAUGA,  
ONTARIO,  
CANADA L5N 8M5

Filed by its authorized representative attorney -

Sapna Chettri,  
Archer & Angel,  
K-4, South Extension-II,  
New Delhi-110049

....Complainant.

**Vs.**

**'TOM',  
13, NORTH ROAD,  
CRAWLEY,  
WEST SUSSEX RH101JU  
UNITED KINGDOM.**

Email: lv212999@gmail.com ..... **Respondent.**

## **A W A R D**

### **1. The Parties:**

**The complainant** in this arbitration proceeding is **BIOVAIL CORPORATION, 7150 MISSISSAUGA ROAD, MISSISSAUGA, ONTARIO, CANADA L5N 8M5**, filed by its authorized representative attorney **Sapna Chettri, Archer & Angel, K-4, South Extension-II, New Delhi-110049**

**Respondent** in this arbitration proceeding is **'TOM'. 13, NORTH ROAD, CRAWLEY, WEST SUSSEX RH10 1JU, UNITED KINGDOM.** With Email: lv212999@gmail.com

### **2. The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.biovail.in](http://www.biovail.in)

### **3. Procedural History:**

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name [www.biovail.in](http://www.biovail.in) following the clause 4 of the policy of **.IN Registry** and **.IN Registry** appointed **Mr. Bodhisatva Acharya (The Arbitrator)** as sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on July 1<sup>st</sup>, 2010. The complaint was produced before the Arbitrator on July 3<sup>rd</sup>, 2010 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on July 3<sup>rd</sup>, 2010, with a 10 days deadline to submit his reply but the email address was found wrong and a notice failure was received by the Arbitrator hence the AWARD is being declared on the August 30<sup>th</sup>, 2010 as Ex-parte.

#### **4. Factual Background:**

(A) The complainant **BIOVAIL CORPORATION** was long back set up in 1980s when its predecessor company **TRIMEL CORPORATION** which was a medical company, founded in 1982, entered in field of controlled-release, drug-delivery technology. **TRIMEL** was one of the 1<sup>st</sup> company in the world to recognize the potential of this emerging sector. Dr. Arnold Beckett as chief scientist Officer, **TRIMEL** built a foundation upon which to quickly create a market-leadership position in controlled-release drug-delivery technology. In 1988 the company had sold its medical-publications division to focus on drug-delivery under the name '**BIOVAIL CORPORATION INTERNATIONAL**'

(B) The Complainant found its present form under the *Business Corporation Act* (Ontario) on February 18<sup>th</sup>, 2000, as a result of the amalgamation of **TXM Corporation** and **BIOVAIL Corporation International**. **BIOVAIL Corporation** was constituted under the Canada Business Corporation Act and was effective on June 29<sup>th</sup>, 2005.

(C) **BIOVAIL CORPORATION** has its headquarter in Mississauga, Ontario, Canada which is the leading Pharmaceutical company and the trade mark **BIOVAIL** is known as a name of trusted in the field of pharmaceutical companies. The trust in **BIOVAIL** is a result of Complainant's continuous efforts and long use and the international reputation of the trade mark **BIOVAIL** may be seen on internet search engine [www.google.com](http://www.google.com).

(D) On April 5<sup>th</sup>, 2010 the complainant came to know that Respondent had registered the disputed domain name [www.biovail.in](http://www.biovail.in) then complainant had tried to contact respondent but due to the false information providing by the respondent to WHOIS database complainant couldn't approach to respondent.

(E) Lastly complainant authorized its representative by power of attorney to file a complaint for an Arbitration Proceeding and hence the complaint has produced before Arbitrator of NIXI for Arbitration Proceeding on July 1<sup>st</sup>, 2010.

#### **5. Parties Contentions:**

**(a) Complainant** contends that

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

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

(iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

**(b) Respondent** contends that

The respondent gave no response and produced no reply before Arbitrator.



## **6. Discussion & Findings:**

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 Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right.

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

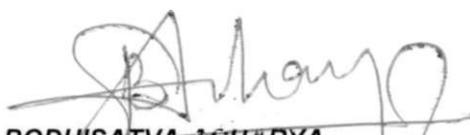
(iii) The Registrant's domain name has been registered or is being used in bad faith.

After having gone through the records, documents, produced by the Complainant, Arbitrator's findings are that The complainant has acquired registrations throughout the world and the complainant has incurred large expenses in promoting its goods and services under the BIOVAIL trade mark by way of advertisements in news papers, journals, publications, and on television having wide viewership throughout the world and complainant also has incurred expenses on websites like [www.biovail.com](http://www.biovail.com) [www.biovail.org.in](http://www.biovail.org.in) and [www.biovail.co.in](http://www.biovail.co.in) and the complainant has proved all the aforesaid premises in his favor and he is has produced all the documentary proof in his favor to satisfy the Arbitrator The Respondent is not with clean hand and his intention is wrong by giving the false information about him. Therefore he has no right to use the disputed domain name.

## **7. Decision:**

Hence the Arbitrator decides, 'the disputed domain name [www.biovail.in](http://www.biovail.in) is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name [www.biovail.in](http://www.biovail.in) shall be transferred to the Complainant with immediate effect.

  
**BODHISATVA ACHARYA**  
**SOLE ARBITRATOR**  
**INDIA.** 30/08/2010

DATED: AUGUST 30th, 2010,  
PLACE: NEW DELHI NIXI