



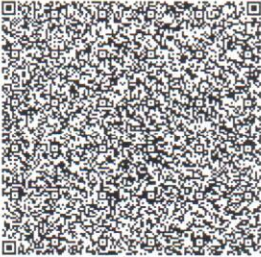
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate Issued Date : 29-Aug-2014 02:26 PM
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DL DL-SHCIL97665735822430M
Purchased by : A K SINGH ADVOCATE
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : A K SINGH ADVOCATE
Second Party : NA
Stamp Duty Paid By : A K SINGH ADVOCATE
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

BOEHRINGER INGELHEIM PHARMA
GmbH & Co. KG
BINGER STRABE 173
55216 INGELHEIM AM RHEIN

...(Complainant)

Versus

YERECT INTERNATIONAL LIMITED
175 BLOOR STREET, EAST SUITE 1100
SOUTH TOWER, M4W 3R8 TORONTO
CANADA

...(Respondent)

Statutory Alert:

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THE PARTIES:

The Complainant in this proceeding is Boehringer Ingelheim Pharma GmbH & Co. KG, a global research-driven pharmaceutical enterprise. The main business areas of the Complainant are: Human Pharmaceuticals and Animal Health.

The Complainant is represented through its authorized representative:

Name: SCHIEDERMAIR Rechtsanwälte
Contact: Rechtsanwältin Stephanie G. Hartung, LL.M.
Address: Eschersheimer Landstrabe 60, 60322 Frankfurt am Main/Germany
Telephone: +49.69.95508312
Fax: +46.69.95508100
E-mail: hartung@schiedermair.com

The **Respondent** in this proceeding is YERECT INTERNATIONAL LIMITED, 175 Bloor Street, Suite 1100 South Tower, M4W 3R8 Toronto, Canada, +1.416.3231176, chromebooks@hotmail.com.

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.buscopan.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name with whom the disputed domain name www.buscopan.in is registered, is WEBIQ DOMAINS SOLUTIONS PVT. LTD. (R131-AFIN).

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by the .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name www.buscopan.in. .IN Registry has supplied a copy of the Complaint to me.

On 17.07.2014, I sent an email to the parties informing them about my appointment as the Arbitrator, and also directing the Complainant to supply the copy of the Complaint along with the annexures to the Respondent and, in case the Complaint had already been served upon the Respondent, to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 17.07.2014 with the instructions to



file its say within fifteen (15) days from the receipt of my email of the same date or the receipt of the copy of Complaint, whichever is later.

As per the Complainants mail dated 17.07.2014 and NIXI's mail dated 24.07.2014, the hard copy of the Complaint had been dispatched to the Respondent. However, there is no confirmation that the same had been received by the Respondent. The Complainant in its mail dated 31.07.2014, has alleged that the Respondent has provided incorrect Whols information as regards its address and phone number. Similarly, vide mail dated 07.08.2014 I was informed by NIXI as well that the copy of Complaint sent by it to the Respondent has been lying at the destination due to incomplete address. Nevertheless, the soft copy of the Complaint was served on the Respondent vide Complainants mail dated 17.07.2014 which was also marked to me.

Since no response was received from the Respondent within the given period of fifteen (15) days, in the interest of justice and as a last opportunity a further time of seven (7) days was granted to the Respondent to file its reply vide my mail dated 05.08.2014. The same has also expired and no response has been received from the Respondent.

The Respondent failed/neglected to file its say/ reply to the specific allegations made in the Complaint within the stipulated time despite receipt of soft copy of the Complaint and annexure. I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make it a part of the proceedings. Since the Respondent has failed to join the proceedings, or to file any response, the present *exparte* award is passed on the basis of documents on record.

FACTUAL BACKGROUND

The following information is derived from the Complaint and supporting evidence as submitted by the Complainant.

The Complainant in this administrative proceeding is Boehringer Ingelheim Pharma GmbH & Co. KG, a global research-driven pharmaceutical enterprise having about 140 affiliated companies worldwide with roughly 46,000 employees. The main business areas of the Complainant are: Human

Pharmaceuticals and Animal Health. It is also the registered proprietor of the trademark BUSCOPAN and its variations in all forms.

The Complainant states that it is the prior adopter of the mark "BUSCOPAN" and the owner of the trademark/service mark "BUSCOPAN". The Complainant is well known all around the world by the name BUSCOPAN, and has made profits under the said name.

The Complainant further states that its use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result of the Complainant's marketing and promotion of its goods and services under its trademark "BUSCOPAN", the mark has gained worldwide recognition and goodwill, and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

The Respondent in this proceeding is YERECT INTERNATIONAL LIMITED who has not filed any response and submissions to the Complaint despite being given an adequate notice and several opportunities by the Arbitrator.

PARTIES CONTENTIONS:

(a) Complainant

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name;
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

The Respondent has not filed any proper response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

DISCUSSIONS AND FINDINGS:

As previously indicated, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by it.



Rule 8 (b) of the INDRP Rules of Procedure provides that *"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"*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no proper response was received. Therefore, the Arbitrator has proceeded with the arbitration proceedings on the basis of material on record.

Rule 12 (a) of the INDRP Rules of Procedure provide that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable."*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to file proper reply.

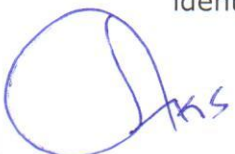
A perusal of the submissions and evidence placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "BUSCOPAN" and its other variations.

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

1. The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
2. The Registrant has no rights or legitimate interests in respect of the domain name; and
3. The Registrant's domain name has been registered or is being used in bad faith.

1. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

It is prima facie obvious that the disputed domain name www.buscopan.in is identical to the Complainant's BUSCOPAN trademark.



The Arbitrator finds that the Complainant has provided ample documentary evidence of its ownership rights in the trademark, which inter alia include its trademark registrations in India and in numerous countries all over the world. The Complainant has also demonstrated its prior adoption of the BUSCOPAN mark which has been in continuous use for over decades, in the world market. The Complainant, therefore, has undoubtedly established its unassailable rights in the BUSCOPAN mark.

It is well recognized that incorporating a trademark in its entirety, (particularly if the mark is an internationally well-known mark) is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark, as held in *Starbucks Corporation v. SRITE Institute, INDRP/456 (2013)*.

Further, at the time of registration of the disputed domain name www.buscopan.in, the Complainant had already been using the marks "BUSCOPAN" as its trademark and in its domain names with firmly established rights in the same. Also, at the time of registration of the disputed domain name by the Respondent, the Complainant's trademark had already acquired the status of a well-known mark. The Respondent can neither show any rights superior to that of the Complainant in the trademark "BUSCOPAN" nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name.

The fact that the Respondent even tried to sell the disputed domain name to the Complainant shows that the Respondent had clear intention to earn money by selling the same to the Complainant on an inflated price. Another reason behind getting an identical mark registered in such a case is that the Respondent got the disputed domain name registered with the intention to trade upon the fame of the Complainant's mark in violation of para 4 (b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

The Respondent has not responded to the above submissions. The Arbitrator, therefore, comes to the conclusion that the disputed domain name is confusingly similar and identical to the trademark of the Complainant.



2. The Registrant has no rights or legitimate interests in respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)-

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*

The Complainant's mark is well known and it has gained rights purely based upon prior use. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, and confers no right or legitimate interest in favour of the Respondent.

Moreover, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the disputed domain name which is identical to that of the Complainant. The Complainant adopted and registered the mark "BUSCOPAN" long time before the disputed domain name was registered by the Respondent. Any pre-registration search would have made the Respondent aware of the Complainants repute and it would have been extremely difficult to avoid knowledge of the Complainants trademark brand. In the case of *mVisible Technologies, Inc. vs. Navigation Catalyst Systems, Inc.*, WIPO Case No. D2007-1141 it was held that, "although there may be no obligation that a domain name registrant conduct trademark or search engine searches to determine whether a domain name may infringe trademark rights, a sophisticated domain owner who regularly registers domain names for use as PPC landing pages cannot be wilfully blind to whether a particular domain name may violate trademark rights. In this context, a failure to conduct adequate searching may give rise to an inference of knowledge."

The Complainant states that it has strong reasons to believe that Respondent is commercially active as a typical *Domainer or Domain Name Speculator*. The



Respondent happens to be the owner of a number of domain names which apparently have been registered and are being used in a manner that infringes upon the registered trademark rights of third parties e.g. *adidas.group.org*, etc. Additionally, the Complainant has alleged that the Respondent is using the disputed domain name as a pay-per-click [PPC] parking page diverting internet users to competing services and/or products similar to those of the Complainant, making confusion likely in the minds of the consumers. The use of a domain name as a PPC landing is not in itself an illegitimate practice, however "if any of the links on a PPC parking website take advantage of the Complainant's trademark, that is not a fair use". (*Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH vs. Private Whois Service*, WIPO Case No. D2011-1753).

The Complainant has thus demonstrated successfully that the registration and use of the disputed domain name by the Respondent was done in bad faith as per paragraph 6 (iii) of the policy, in the sense that its use amounted to an attempt to intentionally attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website and the services offered thereon.

3. The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

The Complainant has alleged that the Respondent has registered and used the disputed domain name in bad faith. As stated above and alleged by the Complainant, the Respondent registered or acquired the disputed domain name primarily for the purpose of selling it to Complainant. It is submitted that the Complainant was contacted by the Respondent through an email, sent on February 16, 2014, notifying the Complainant that the disputed domain name was for sale. A Warning Letter was also sent by Complainant's authorized legal representative on May 21, 2014 and it was answered by the Respondent on the very same day, offering the disputed domain name to be sold for a price of EUR 1,500.00. In *Wal-Mart Stores, Inc. vs. Machang*, INDRP Case No. 539 (November 21, 2013), it was stated: "*the Respondent offered to sell the domain name to the Complainant for an amount of \$1890 USD with an intention to make a profit out of the said domain name. Such behaviour constitutes evidence that*

the Respondent has no right or legitimate interest in respect of the disputed domain name”.

It is further submitted that by using the disputed domain name, Respondent intentionally attempted to attract, for commercial gain, Internet users to its websites, by creating a likelihood of confusion with Complainant's BUSCOPAN trademark as provide by Policy, Paragraph 6 (iii). Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark. Thus, mere registration of a domain name similar to such a well-known trademark would be an evidence of the Respondent's bad faith.

Since the Respondent has not responded to the Complaint and has not filed a proper reply, it can be safely presumed that it has nothing to say. The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain, and the use of the disputed domain name is in bad faith as defined under paragraph 6 (iii) of the policy.

DECISION AND AWARD:

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its Complaint.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e., www.buscopan.in to the Complainant. Parties are directed to bear their own cost.



Mr. A.K. Singh

Sole Arbitrator

30th day of August, 2014