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**ARBITRATION AWARD**

INDRP CASE No. 1450

**Obagi Holdings Company Ltd.[Complainant] v Ding RiGuo [Respondent]**

**Disputed Domain Name: OBAGI.IN**

**BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA**

**DATED: January 05, 2022**



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**ARBITRATION AWARD**

**In the matter of:**

**Obagi Holdings Company Limited**

**Mourant Ozannes Corporate  
Services**

**(Cayman) Limited 94 Solaris  
Avenue**

**Camana Bay, P.O. Box 1348**

**Grand Cayman KY1-1108 (KY)**

**[Complainant]**

**Disputed Domain Name:**

**-v-**

**Ding Riguo,**

**8F, No.199 Shifu Road,**

**Taizhou,**

**Zhejiang – 318000, China**

**www.obagi.in**

**[Respondent]**

**INDRP CASE No. 1450**



## 1. The Complainant

The Complainant is an associated concern of Obagi Cosmeceuticals LLC, which holds rights to the company's intellectual property assets in the U.S. and several other countries. Complainant, Obagi Holdings Company Limited, holds the company's intellectual property rights in other jurisdictions, including India.

## 2. The Respondent

Respondent [Ding RiGuo] in this administrative proceeding is identified its address, contact number and by the email address juc@qq.com as per WHOIS records.

## 3. The Registrar

The Registrar with which the domain name is registered is: Endurance Digital Domains Technology LLP.

## 4. Disputed Domain Name

<OBAGL.IN>

## 5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy - .INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates

*Vakul Sharma*  
ARBITRATOR  
VAKUL SHARMA



the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.

## 6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.
- (ii) Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on October 10, 2021 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1450] vide email dated October 10, 2021.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated November 1, 2021 from its email ID in accordance with the Rules.


- (v) Complainant has further vide email dated November 8 2021 has submitted the soft copy of the Complaint has been successfully delivered to the email ID of the Respondent [juc@qq.com] as maintained by NIXI in its WHOIS database. It further submitted a hard copy of the Complaint has also been dispatched to the Respondent's address as per WHOIS. Complainant further submitted vide email dated November 10, 2021 that the Respondent's (consignee) address was found closed due to which the hard copy of the Complaint could not be delivered."
- (vi) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated November 12, 2021 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit.
- (vii) I issued another notice dated November 29, 2021 informing the parties that in the interest of justice a final opportunity being given to the Respondent to submit its reply within next five days of the notice failing which the Complaint shall be decided *ex-parte* on the merits of the complaint.
- (viii) Despite giving a final opportunity, the Respondent has failed to submit any reply and hence vide notice dated December 6, 2021, I informed both the parties that *"the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint."*



- (ix) The Arbitration Award is now pronounced on this day, i.e., January 5, 2022 after considering the contentions of the Complainant, evidence on record and the Policy framework under my signatures. This is an *ex-parte* order as the Respondent has failed to file their Reply despite being given adequate opportunity.

## 7. Contentions of the Complainant

Complainant submits as follows:

- (i) It is an associated concern of Obagi Cosmeceuticals LLC, which holds rights to the company's intellectual property assets in the U.S. and several other countries.
- (ii) It was previously known as Obagi Medical Products Inc., and OMP, Inc. Complainant is a specialty skincare company originally founded in 1988. The OBAGI trademark has been continuously used by Complainant and its predecessors as the predominant mark for its skincare product lines since that time.
- (iii) Obagi markets and sells, and is the leading provider of proprietary topical aesthetic and therapeutic clinically-proven skin care systems in the physician-dispensed market.
- (iv) It uses the mark OBAGI as a trademark and a trade name. The mark OBAGI has been adopted from the surname of the original company founder Dr. Zein E. Obagi. Reliance is placed on Annexures 1 and 2 giving details of registration for OBAGI and OBAGI formative marks worldwide and India respectively.

VAKUL SHARMA  
ARBITRATOR



- (v) As a part of its initiative to expand its reach, the Complainant operates the website, [www.obagi.com](http://www.obagi.com). The said website provides details regarding its products and information about the Complainant and can be accessed from any jurisdiction around the world, including India. The Complainant further operates some Country Code Top Level Domains (ccTLDs) as well.
- (vi) It submits that its licensee and authorized distributors alone have limited rights to use the trademark and trade name/corporate name 'OBAGI' in India. No one other than those permitted by the Complainant can use 'OBAGI' as a trademark or part of corporate name or in any manner whatsoever.
- (vii) The products of the Complainant are widely available in India since at least 2014. The said products are primarily marketed through the Complainant's distributor, Palsons Derma.

In the context of the above, Complainant in its complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

**I. Whether the domain name is identical and/or confusingly similar to a trademark in which the Complainant has rights?**

- (a) Complainant submits that it offers specialty pharmaceutical products which include a wide range of skin care products. Reliance is placed on screen prints of the complainant's website evidencing the products offered by it [Annexure 9].

*Vakul Sharma*  
A circular blue ink stamp with the text 'VAKUL SHARMA' around the top and 'ARBITR' around the bottom. A signature 'Vakul Sharma' is written across the stamp.

Reliance is also placed on registration certificate, evidencing registration of "OBAGI" and "OBAGI" formative marks in classes, 3 and 5 in favour of Obagi Holdings Company Limited [Annexure 10].

- (b) Complainant further submits that the Respondent has adopted the exact mark of the Complainant as part of the Offending Domain, only to be sold to the highest bidder. Moreover, any use of the Offending Domain will lead to confusion amongst customers and may give the impression that the Respondent is associated with the Complainant or that the Offending Domain is the India specific website of the Complainant. Furthermore, the Respondent's adoption of the well-recognized trademark 'OBAGI' of the Complainant, as part of the Offending Domain is a violation of the Complainant's rights in and to the mark 'OBAGI'.

**II. Whether The Respondent has no rights or legitimate interests in respect of the domain name?**

- (a) Complainant submits that the Respondent has no right to use/ register the mark 'OBAGI' of the Complainant in any manner, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the mark 'OBAGI'. Further, since the adoption of the mark 'OBAGI' by the Respondent is not licensed/permitted, thus adoption of the mark 'OBAGI' as part of Offending Domain or in any manner whatsoever, results in infringement and passing off the rights of





the Complainant in and to the trademark 'OBAGI' . Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'OBAGI'.

- (b) Complainant further submits that the Respondent has been offering the Offending Domain for sale since its registration. This evidences that the Respondent has no legitimate interest in using the Offending Domain. The sole aim of the Respondent is to make illegal monetary gains from the reputation and goodwill of the mark OBAGI, which has been built by the Complainant through years of toil.

**III. Whether the domain name is and being used in bad faith?**

- (a) Complainant submits that the bad faith is evident from the adoption of 'OBAGI' in the Offending Domain, which is the property of the Complainant and is associated with the Complainant only. The Offending Domain is worded in such a manner that it appears to be India specific website of the Complainant. Furthermore, the mark OBAGI is a well- recognized mark and is not a commonly used word. The said mark is only associated with the Complainant and none else. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith.

  
A circular blue stamp with the text "VAISHAKUL SHARMA" at the top and "ARBITRATOR" at the bottom. The signature "Vaishakul Sharma" is written in blue ink over the stamp.

(b) Complainant further submits that the dishonesty and bad faith is also evident from the fact that the Offending Domain is being offered for sale by the Respondent since it has been registered.

(c) It further states that the adoption of the trademark, OBAGI, of the Complainant is without a license or other authority, is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The adoption of the Offending Domain by the Respondent is not for non-commercial purposes and would not fall under the ambit of 'fair use'. The only reason for adoption of the mark 'OBAGI' is to make illegal profit. The adoption of the Offending Domain is contrary to the honest commercial practices of trade.

## 8. Respondent's Contentions

Despite given adequate opportunities, Respondent has failed to submit any Reply.

## 9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the Complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainant must prove that:



- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been registered or is being used in bad faith.

**The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.**

**I have considered the Complainant's pleadings, documentary evidence and conditions as laid down in the aforesaid Policy. My opinion is as follows:**

- (a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?**

The Complainant has placed on record details of its 'OBAGI' under different classes of trademark and formative mark registrations worldwide, including India and also submitted screen shots/screen prints related to availability of the Complainant's products on (i) various e-retailer websites [Annexure 2], (ii) own website [Annexure 9] and (iii) Google keyword search [Annexure 8] as documentary evidence to highlight that 'OBAGI' name, as a trade name, corporate name, and domain name is distinct identifying the Complainant, its products and services. There is no document on record to suggest that the Respondent has





ever been given a license, franchise or authorization to incorporate the 'OBAGI' trademark in the disputed domain name: <OBAGI.IN>. To strengthen the arguments, the Complainant has given references to certain ccTLDs registered by it, namely: <OBAGI.RO>, <OBAGI.CO.KR>, <OBAGI.CO.ZA> alongwith copies of trademark and formative mark registration details as a *bonafide* proof that its interest in the disputed domain name is legitimate.

I consider that there is a force in the arguments of the Complainant that the words <OBAGI.IN> is legally associated with Complainant's company. Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:*

*(a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*

*(b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*

*(c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*

*(d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.*

In my opinion, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <OBAGI>, which is followed by a *suffix*, .IN [ccTLD] to complete the domain name string <OBAGI.IN>. I am inclined to accept the Complainant's submission that the Respondent's registration of an identical name <OBAGI> which is a unique word



adopted from surname of the Complainant's original founder is an attempt on the Respondent to derive substantial benefits from the Complainant's worldwide goodwill and reputation. I am of the opinion that the Respondent by a deliberate design, mischievously chose to register the disputed domain name which is identical to the Complainant's trademark with the sole purpose of selling. Respondent knew it all along that the disputed domain name being identical to the Complainant's registered trademark would earn him substantial money. It seems that the Respondent's only motive has been to sell <OBAGI.IN> to the highest bidder and for this reason he has listed the disputed domain name since 2014 at many global domain names trading platforms, including <sedo.com> for the sole process of selling. I am accepting the documentary evidence as submitted by the Complainant annexed as Annexure(s) 6 and 7, i.e., screen shot/screen print of the listing page highlighting [www.obagi.in](http://www.obagi.in) "This premium domain is for sale!", placed by the Respondent to cause wrongful loss to the Complainant. It is to be noted that the Respondent has failed to deny the said evidence relied upon by the Complainant despite being given ample opportunities. I am of the opinion that the benefit under the circumstances lies with the Complainant. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(b) – (c) of the policy as mentioned above. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.





**(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?**

As discussed above, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <OBAGI>, which is followed by a *suffix*, .IN [ccTLD] to complete the domain name string <OBAGI.IN>, this clearly demonstrates lack of legitimate interests on the part of the Respondent to own the domain name <OBAGI.IN>.

Also, Paragraph 6 of the INDRP provides:

*6. Registrant's Rights and Legitimate Interests in the Domain Name*

*Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b) :*

*(a) 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;*

*(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

*(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

I have evaluated the evidence on record and came to a conclusion that none of the aforesaid limbs as highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. I





found merit in the Complainant's contention that it has statutory and common law rights on the mark 'OBAGI'. I accept the evidence place on record by the Complainant as Annexure(s) 1 and 2 as registration details of OBAGI worldwide trademark and formative mark registrations to showcase its 'legitimate interests' in the brand name 'OBAGI'. It is to be noted that the Respondent has failed to counter or deny assertion made by the Complainant. I, therefore, found merit in the Complainant's submission that by offering to sell the disputed domain name, the Respondent has no legitimate purpose to register the disputed domain names, other than to illegally sell these domain names for commercial gain. The *malafide* intent was clear as early as in 2014. Screenshots/screen prints as placed on record by the Complainant as Annexures 6-7 establish the fact that the Respondent actions are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name. In view of the above, the requirement of the Policy as stated in Paragraph 4(b) is satisfied.

**(c) Whether the Registrant's domain name has been registered or is being used in bad faith?**

As discussed above, use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name in the absence of any legal arrangement with the Complainant – only proves *malafide* intent on the part of the Respondent.

Further, Paragraph 7 of the policy provides:

**7. Evidence of Registration and use of Domain Name in Bad Faith**



*For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*

*(b) the Registrant 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 Registrant has engaged in a pattern of such conduct; or*

*(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

The documentary evidence placed on record by the Complainant clearly shows that the Respondent has indeed taken advantage of the Complainant's goodwill and reputation by registering the disputed domain name <OBAGI.IN> primarily for the purpose of selling only. The *malafide* intent is clear from the fact that the said disputed domain name has been referred to as "premium" and being offered for sale by the Respondent. The evidence in the form of screenshots/screen prints placed on record, which has not been denied/contested by the Respondent shows reckless behaviour on the part of the Respondent. I agree with the assertion made by the Complainant that the Offending Domain (disputed domain) is worded in such a manner that it appears to be India specific website of the Complainant. Furthermore, the mark OBAGI is a well-recognized mark and is not a commonly used word. The said mark is only





associated with the Complainant being the surname of its original founder. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith. However, I found it strange that the disputed domain name is at sale since 2014, and yet it took Complainant seven long years to approach NIXI under INDRP. The Complainant has failed to offer any explanation for its casual approach.

I have reason to believe that the Registrant, identified as "Ding RiGuo" is a habitual offender and a "cybersquatter", who has been involved as Respondent in many domain names disputes wherein the said Respondent had used similar *modus operandi* by registering identical/confusingly similar domain names incorporating well-known trademarks, and then offering for sale such disputed domain name(s) in order to earn money. In all these disputes filed under INDRP, the decisions went against the Respondent identified as "Ding RiGuo". I am referring few of the cases here involving "Ding RiGuo": *Ben Sherman Group Ltd. v Riguo Ding* [INDRP/168, 18/11/2010] ; *E. REMY MARTIN (REMY CONTREAU) v Ntlon Inc., Riguo Ding* [INDRP/186, 11/02/2011]; *Tenaris Connections BV v Riguo Ding* [INDRP/257, 17/11/2011]; *Carl Karcher Enterprises v Ding RiGuo* [INDRP/419, 22/12/2012]; *L'Oreal v Ding RiGuo* [INDRP/437, 22/03/2013]; *CMA CGM v Ding RiGuo* [INDRP/530, 25/10/2013]; *Clarins v Mr. Ding RiGuo* [INDRP/728, 18/11/2015]; *Google Inc. v Ding Riguo* [INDRP/794, 04/06/2016]; *EH Europe GMBH v Ding Riguo*, [INDRP/814, 23/08/2016]; *American Airlines Inc. v Ding RiGuo* [INDRP/967, 16/04/2018]; and *Société Anonyme des Galeries Lafayette v Ding RiGuo*, [INDRP/1083, 05/07/2019] – to point out a distinctive conduct on the part of the Respondent/Registrant, who seems to be a 'serial cybersquatter'. I am of the opinion that such reckless behaviour/conduct has no space in "domain name ecosystem" and all such

YAKUL SHARMA  
Vali Sharma  
ARBITRATOR



actions should never been given any legitimacy either by the registry or accredited domain name registrars.

A word of caution here, as there could be many individuals having the identity "Ding RiGuo", but would they all be having a common email ID: juc@qq.com as the case herein? It is imperative that the .IN Registry must take a serious note of such "serial cybersquatters" and devise a method to block registration process initiated by such "serial cybersquatters" at the threshold itself.

Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Registrant's registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4(c) is satisfied.

#### 10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <OBAGI.IN> to the Complainant.


There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award are being sent to both the parties thru email for their information and record.

Vakul Sharma

(Sole Arbitrator)



 Vakul Sharma  
Dated, January 5, 2022