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INDIA NON JUDICIAL Government of Uttar Pradesh

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Certificate No.	: IN-UP85293130119393T
Certificate Issued Date	: 15-Jun-2021 02:37 PM
Account Reference	: NEWIMPACC (SV)/ up14008104/ NOIDA/ UP-GBN
Unique Doc. Reference	: SUBIN-UPUP1400810458432934278764T
Purchased by	: PUNITA BHARGAVA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	:
First Party	: PUNITA BHARGAVA
Second Party	: Not Applicable
Stamp Duty Paid By	: PUNITA BHARGAVA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY**

Arbitral Award in Case No. 1460
Ms. Punita Bhargava, Sole Arbitrator
Disputed domain name: <everydayhealth.co.in >

Statutory Alert:

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In the matter of

Everyday Health Inc.
345 Hudson, Floor 16,
New York, NY 10014, USA

(A subsidiary of Ziff Davis, LLC
114 5th Avenue, 15th Floor
New York, New York – 10011 USA)

... Complainant

v.

Arianna Bureau
Avenida Del Valle
34, Madrid
Spain

... Respondent

1. The Parties

The Complainant in this proceeding is Everyday Health Inc. of 345 Hudson, Floor 16, New York, NY 10014, US, a subsidiary of Ziff Davis, LLC of 114 5th Avenue, 15th Floor, New York, New York – 10011 USA) and is represented by M/s Remfry & Sagar of Remfry House at the Millennium Plaza Sector-27, Gurgaon-122009, Email: remfry-sagar@remfry.com; ca.brijesh@remfry.com and others. The Respondent in this proceeding is Arianna Bureau, Avenida Del Valle 34, Madrid, Spain with email domainsmart2@gmail.com and phone No.: (+34)91554586

2. Disputed Domain Name and Registrar

This dispute concerns the domain name <everydayhealth.co.in> (the ‘disputed domain name’) registered on June 14, 2021. The Registrar with which it is registered is 1APi GmbH of Im Oberen Werk 1, St. Ingbert – 66386, Germany Email: legal@1api.net

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (Policy), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated November 29, 2021 requested availability of Ms. Punita Bhargava to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure (Rules) on the same date. In accordance with Rules, NIXI vide its email of November 30, 2021 appointed the Arbitrator and also notified the Respondent of the Complaint. The Arbitrator sent an email to the Respondent on December 2, 2021 informing her of the commencement of the proceeding and providing it time of two weeks to file its reply.



No reply was received from the Respondent within the time prescribed and so the Arbitrator sent an email to all concerned parties on December 21, 2021 that she would proceed to pass its award ex-parte taking into consideration all the material presented before her.

The language of this proceeding is English.

4. The Complainant and its rights in EVERYDAY HEALTH as submitted by it

The Complainant states that it is part of Everyday Health Group, a reputed digital media company which owns websites and produces content relating to health and wellness. In the year 2016, Ziff Davis, LLC – a subsidiary of J2 Global, Inc. - acquired the Complainant.

The Complainant was founded in 2002 by entrepreneurs Benjamin Wolin and Michael Keriakos to invest in the creation of online health content for major "offline" health brands. At the time, it was known as Agora Media and subsequently, it merged with Streetmail.com to become Waterfront Media. The domain 'everydayhealth.org' was registered in the year 2002 and thereafter business/services were launched through the site www.everydayhealth.com. In 2010, the Complaint changed its name to Everyday Health. By 2011, its network of sites had over 28 million unique viewers per month, garnering over \$100 million in yearly revenue, including major partnerships with brands and personalities.

The Complainant states that it is a recognized leader in-patient and provider education and services attracting an engaged audience of over 60 million health consumers and over 800,000 U.S. practicing physicians and clinicians. Its mission is to drive better clinical and health outcomes through decision-making informed by highly relevant information, data and analytics. It empowers healthcare professionals and consumers with trusted content and services delivered through its world-class brands. One such brand is EVERYDAY HEALTH.

With 44 million monthly unique users, a registered community of 70 million, and a social media audience of 5.9 million, the Complainant states that it helps millions of people make the right decisions about their health and wellness. It uses educational design methodologies to guide its content experiences toward inspiration and enablement. Through products like Visualizer, Social Rx, Ask Your Doctor Explained, MyDaily, and Tippi, it strives to answer the specific questions that its audience might not have known to ask in a way that is visually, educationally, emotionally and personally appealing.

The Complainant states that its website www.everydayhealth.com is its primary presence on the Internet for global promotion. Additionally, the websites www.everydayhealthgroup.com and www.j2global.com reference the EVERYDAY HEALTH brand of the Complainant and disseminate information about it and its business/services. The aforesaid websites are accessible worldwide, including in India and the public gathers extensive information about the Complainant and its EVERYDAY HEALTH brand. The Complainant states that out of the total number of

users that have accessed its website www.everydayhealth.com in the past 12 months, 7% are based in India. The Complainant has filed articles and details of its social media followers as part of the Complaint.

EVERYDAY HEALTH is a valued IP of the Complainant and it has secured statutory rights the same and variants thereof in U.S., Australia, Canada, EU and UK per the details filed. The Complainant also owns over 400 domain comprising <everydayhealth.____> with earliest registrations dating back to the years 2002 and 2004 and has filed a list of such domains and representative WHOIS details.

The Complainant states that its goodwill and reputation as regards the trade/service mark/name EVERYDAY HEALTH pervades both the real world as well as the cyber space. The website www.everydayhealth.com garners a significant number of hits every month and is accessible worldwide, including from India. It submits that trade/service mark/name EVERYDAY HEALTH is exclusively identified with the Complainant and its business on account of long use and is representative of the its brand identity, business reputation and public identification throughout the globe, including India. The Complainant states that it not only possesses statutory rights by virtue of its registrations for the mark, but also common law rights due to the lengthy use period. The Complainant submits that it has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in its trade/service mark/name EVERYDAY HEALTH which has all the characteristics of a 'well known' mark. The Complainant vigorously enforces and defends its valuable intellectual property rights against acts of violation/misuse.

5. The Respondent and its conduct, as submitted by the Complainant

The Complainant states it recently became aware of the disputed domain name registered in the name of Arianna Bureau. The disputed domain was registered on June 14, 2021, many years after the Complainant's first adoption and use of its EVERYDAY HEALTH name and mark. The website www.everydayhealth.co.in leads to a parked page containing ads/links to health-related content (similar to that of the services offered by the Complainant) and is generated by the Registrant using 'Sedo Domain Parking', a website that facilitates generation of 'parked domains' for the purpose of selling the same.

A Reverse WHOIS search revealed 32 domain names currently registered to the Registrant including some that pertain to famous brands. Internet searches also revealed a domain name complaint against the Respondent wherein the domain in question was transferred to the complainant concerned.

A cease and desist notice dated September 14, 2021 was addressed by Ziff Davis, LLC (parent company of the Complainant) to the Registrant enumerating rights in the reputed EVERYDAY HEALTH name and mark and calling upon the Respondent to, inter alia, immediately transfer the disputed domain name. In response, the Registrant demanded amount of USD 5999 for transfer of the disputed domain to Ziff Davis, LLC. Consequently, another letter dated September 15, 2021 was addressed by Ziff Davis, LLC to the Respondent once again seeking compliance of the demands of the cease

and desist notice, conveying that it has no interest in purchasing the disputed domain and highlighting the bad faith of the Respondent. No response was received to this communication or the one after dated September 22, 2021.

The Complainant has filed extracts relating to the Reverse WHOIS search, copy of the WIPO Administrative Panel decision in Case No. DCO2016-0003 against the Respondent and its correspondence with the Respondent.

6. Grounds for Complaint under INDRP as pleaded by the Complainant

The Complainant submits that the disputed domain name is identical to and comprises in its entirety the Complainant's trade/service mark/name EVERYDAY HEALTH, which is a registered trade mark of Complainant. It has been registered in US since December 21, 2010 (application date – November 30, 2009) and has been in use since at least as early as 2006. The disputed domain name is also identical to the over 400 domain names comprising the trade/service mark/name EVERYDAY HEALTH registered in the name of the Complainant. The Complainant's domain names <everydayhealth.org> and <everydayhealth.com> were created/registered, on April 15, 2002 and September 27, 2004. The disputed domain name was registered only on June 14, 2021. Thus, Complainant has prior rights in the trade/service mark/name and domain name comprising the trade/service mark/name EVERYDAY HEALTH *vis-à-vis* the Registrant. The Complainant also submits that the Registrant has registered the disputed domain name with the *mala fide* intent to gain undue leverage from it and to make illicit pecuniary gains. The disputed domain name has no meaning or significance independent of the Complainant's trade/service mark/name EVERYDAY HEALTH.

The Complainant submits that the Registrant's adoption and use of a dishonestly adopted and confusingly similar domain name does not amount to a '*bona fide*' offering of goods and services. Given the Complainant's use and repute of its name and mark EVERYDAY HEALTH, the registration of the disputed domain name for the sole purpose of selling it to the rightful owners, is not *bona fide*. The Complainant submits that it is settled law that use which dishonestly and intentionally rides on the repute of another's mark cannot constitute '*bona fide*' offering of goods and services. The fact that the disputed domain is openly parked as a Sedo Domain with intent of commercial gain demonstrates bad faith and cannot be *bona fide* offering of goods or services. The Complainant submits that the Registrant is not commonly known by the disputed domain name and is not authorized or licensed by the Complainant to use the same or EVERYDAY HEALTH. EVERYDAY HEALTH is associated with the Complainant due to extensive and continuous use. The Registrant cannot establish any association with the disputed domain name. The Registrant is not making any legitimate non – commercial or legitimate fair use of the disputed domain name. Rather, the conduct of the Registrant cannot come under the definition of *bona fide* use. Registration of the disputed domain name is with a view to benefit from the goodwill and reputation of the Complainant's trade/service mark/name EVERYDAY HEALTH, divert visitors/customers by creating initial Internet confusion and thereby commercially gaining from such use. Thus, the Registrant is indulging in unfair use of



the disputed domain name and is tarnishing the goodwill and reputation of the Complainant's in the trade/service mark/name EVERYDAY HEALTH.

The Complainant states that the Registrant was aware of and had actual notice of its prior rights in the name and mark EVERYDAY HEALTH as also the Complainant's business. Yet it chose to adopt the disputed domain name, the website corresponding to which leads to a page depicting links and ads of healthcare related content. Registration of the disputed domain name is detrimental to the Complainant's rights in its trade/service mark/name EVERYDAY HEALTH. Further, the Respondent is preventing a rightful owner to register and use disputed domain name in relation to its business/services/products. The disputed domain name creates likelihood of confusion as to source, sponsorship, affiliation with the Complainant. Further, Internet users desirous of accessing the Complainant's website may reach the website corresponding to the disputed domain name and get confused. Lastly, the bad faith of the Registrant is evidenced from its demand of a high amount for transfer of the disputed domain name being fully aware that the Complainant would want to have possession of same. The Complainant submits that the Registrant purposely registered the disputed domain name, solely looking for a huge payday, and ripping off the Complainant in an untoward manner. The Registrant's possession of the disputed is therefore an act of bad faith.

The Complainant also submits that the impugned domain is in violation of paragraphs 3(b), 3(c) and 3(d) of INDRP and requests transfer of the same.

7. Respondent's default

Despite notice of the present proceeding in terms of the Rules and an opportunity to respond, no response has been received from the Respondent by the Arbitrator.

8. Discussion and Findings

The Arbitrator has reviewed the Complaint and the Annexures filed by the Complainant. The Arbitral Tribunal has been properly constituted.

The Policy requires that the Complainant must establish three elements *viz.* (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.

On a combined reading of the grounds of complaint and after studying the documents filed in support, the Arbitrator finds that all three elements are satisfied as required by the Policy; these are discussed below.

(i) Identical or Confusingly Similar

The Complainant owns and operates the website www.everydayhealth.com and provides health and wellness related content under the under the same. It has 44 million monthly unique users, a registered community of 70 million, and a social media audience of 5.9 million, and helps millions of people make the

right decisions about their health and wellness. 7% of the users that have accessed its website www.everydayhealth.com in the past 12 months are based in India. The Arbitrator has reviewed the said site and the extracts from the same filed with the Complaint.

The Complainant has owned the domain names <everydayhealth.org> and <everydayhealth.com> since 2002 and 2004 respectively as also over 400 other domain names with the <everydayhealth.____> designation. It has filed a list of these along with the Whois extracts as part of the Complaint. The Complainant also has registrations for EVERYDAY HEALTH and variants in USA, Australia, Canada, EU and has filed a list of its registrations in these countries. EVERYDAY HEALTH is registered in USA since 2010 with a claim of use going back to 2006. The Complainant has promoted its services under EVERYDAY HEALTH name and mark through its website; the websites www.everydayhealthgroup.com and www.j2global.com also reference and promote the EVERYDAY HEALTH name and mark of the Complainant. Thus, the Complainant has rights in the EVERYDAY HEALTH name and mark.

The Arbitrator notes that the disputed domain name is <everydayhealth.co.in> i.e., the disputed domain name wholly incorporates the Complainant's EVERYDAY HEALTH name and mark. It has been routinely held that when a domain name wholly incorporates a complainant's mark, this is sufficient to establish identity or confusing similarity. It is also settled that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded.

The Arbitrator accordingly finds that the first element is satisfied and that the disputed domain name is identical to the Complainant's trademark.

(ii) Rights or Legitimate Interests

As regards the second element, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. With respect to this requirement, a complainant is generally required to make a prima facie case that a respondent lacks rights or legitimate interests and once such prima facie case is made, the burden of proof shifts to the respondent to come forward with evidence demonstrating rights or legitimate interests in the disputed domain name. Paragraph 6 of the Policy contains a non-exhaustive list of the circumstances which, if found by the Panel to be proved, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name.

In the present case, the Complainant states that it has no relationship with the Respondent and has not authorized or licensed the Respondent to register or use the disputed domain name. The Respondent is not commonly known by the disputed domain name and cannot establish any association with the disputed domain name. The Registrant is not making any legitimate non-commercial or legitimate fair use of the disputed domain name. Rather, in

parking the disputed domain name with Sedo and trying to sell the same, it is clear that it was registered with a view to benefit therefrom and sell it to the Complainant or divert its visitors/customers by creating initial Internet confusion and thereby commercially gaining from such use. This is not bona fide, legitimate or fair use thereof. Accordingly, based on the contentions made by the Complainant, it has made a prima facie case that none of the circumstances stated in Paragraph 6 of the Policy are found in the case at hand. Therefore, the Respondent lacks rights or legitimate interests in the disputed domain name. It is also settled that if the respondent fails to come forward with relevant evidence, the Complainant is deemed to have satisfied the second element. See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org WIPO Case No. D2015-1149.

In view of all of the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Registered or Used in Bad Faith

As regards the third element of bad faith, based on the contentions of the Complainant describing use of the EVERYDAY HEALTH name and mark, a review of the Complainant's website and the documents filed with the Complaint, the Arbitrator accepts that EVERYDAY HEALTH is associated with the Complainant. Its rights significantly predate the registration of the disputed domain name by the Respondent. The Arbitrator accepts the Complainant's contention that the Respondent had knowledge of Complainant and its rights in the EVERYDAY HEALTH name and mark when it registered the disputed domain name; and had actual knowledge of the same based on the communications between the parties. The Complainant has a legitimate interest in the disputed domain name and the registration of the same by the Respondent is evidence of his bad faith and intent to take undue advantage of the goodwill and reputation of the Complainant. It is also settled law that registration of a domain name that is identical/confusingly similar to a trade mark of an entity that has no relationship to that mark is sufficient in itself for a finding of bad faith. The disputed domain name creates a false association between it and the Complainant and will lead the average consumer to believe that the disputed domain name is owned by the Complainant and relates to services offered or authorised by the Complainant. Even if the disputed domain name does not resolve to an active website, a finding of use in bad faith can be found when no website appears at the domain name. In the present case, the disputed domain name is parked with Sedo. The Arbitrator accepts that by listing the disputed domain name for sale, the Respondent is actively inviting/soliciting offers for its purchase which is indicative of its intention to gain/earn illegal profits/monetary amount. Such conduct supports a finding of bad faith. This has also been held so in FDC Limited v. Terra Preta GmbH, INDRP/913 and Bharti Airtel Limited vs. Registration Private, Domains By Proxy, LLC, WIPO Case No. D2018-2950. Further, the bad faith of the Respondent is evidenced from its demand of a high amount for transfer of the disputed domain name being fully aware that the Complainant would want to

have possession of same. The acts of the Respondent do not confer any legitimacy on it and are indicative of bad faith on its part. See StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, WIPO Case No. D2018-0497.

The Arbitrator has reviewed the results of the reverse WHOIS search provided by the Complainant which reveal that the present Respondent has registered over many domain names including those that contain third party trademarks. The Arbitrator also notes that the Respondent has been implicated in at least one case where domain name registered by it was ordered to be transferred to the complainant. It can be said that the Respondent is engaged in a pattern and practise of registering and using/offering for sale domain names corresponding to marks of third parties - which strengthens the inference of bad faith. Thus, the Arbitrator concludes that the Respondent's conduct constitutes bad faith registration or use of the disputed domain name within the meaning of the Policy.

Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the Policy.

9. Decision

For all the foregoing reasons, the Complaint is allowed and it is hereby ordered in accordance with paragraph 10 of the Policy that the disputed domain name be transferred to the Complainant. There is no order as to costs.

This award has been passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Punita Bhargava

Sole Arbitrator

Date: January 15, 2022