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IN THE MATTER OF ARBITRAL
REFERENCE OF DOMAIN
NAME "NOVARTIS HEALTH
CARE, IN.

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**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

In the matter of Arbitration Proceeding for the Domain name
"www.novartishealthcare.in"

AND IN THE MATTER OF INDRP CASE NO : 1496

Novartis AG

4002 Basel,

Switzerland

.....

Complainant

Vs.

Jack M

Godsmak

Vashi, Navi Mumbai Sector - 17

Mumbai, Maharashtra, 400705

Email: ssmbbc8@gmail.com

Respondent

ARBITRATION AWARD

Disputed Domain Name: www.novartishealthcare.in

1. The Parties:

- 1.1 The Complainant in this arbitration proceeding is Novartis AG. 4002 Basel, Switzerland a company duly incorporated under Swiss Laws, having its registered office at Basel, Switzerland made a domain complaint to the National Internet Exchange of India (NIXI) the Complainant; represented by the Complainant's authorized representative Ms. Mamta R. Jha, INTTL ADVOCARE, Express Trade Tower, B-36/ Sector -132, Noida Expressway/ Noida - 201303.



1.2 The Complainant has invoked this arbitration proceedings against the Registrant/ Respondent organization named as **Godsmak** by raising plea of that the registration of the domain name **www.novartishealthcare.in** in the name of the Registrant/ Respondent is contrary to and in violation of paragraph 4 of the INDRP rules and further transferring disputed domain name **www.novartishealthcare.in** that was registered in the name of Registrant / Respondent organization named as **Godsmak** having its address unknown.

2. The Domain Name and Registrar:

2.1 The disputed domain "**www.novartishealthcare.in**" is registered by Registrant / Respondent organization named as **Godsmak** having unknown address and the said disputed domain name is registered as "**www.novartishealthcare.in**" through the registrar M/s. GODADDY LLC, who had registered the this disputed domain name for the registrant/ respondent herein.

3. Arbitration Proceedings Procedural History:

3.1 This is an arbitration proceeding initiated in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. In accordance to the INDRP Rules of Procedure [the Rules] as approved by NIXI and the Indian Arbitration and Conciliation Act, 1996 has mandate to look in to disputes for registering the disputed domain name with the NIXI's accredited Registrar, the Complainant agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent and the Complainant, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation



Act, 1996, and the Rules framed and rules of IN Domain Name Dispute Resolution Policy and the Rules framed thereunder.

- 3.3 The Arbitrator has also submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI. As such NIXI on satisfaction of impartiality and independence of the arbitrator thus has allocated the matter as above to the arbitrator herein.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.3 Present Arbitral Proceedings have commenced on 25th January 2022 against Godsmak Registrant / Respondent whose address was unknown, who had registered domain name "www.novartishealthcare.in" through the registrar GODADDY LLC, as the details of the Registrant/ Respondent were not made available in public domain by the registrar hence the applicant moved complaint as such the Complainant has did not have information in relation to the Registrant / Respondent that was said to be unknown and the same are yet to be brought on record, as such the complainant has reserved its right to amend the complaint as and when any additional information with regard to the address of the Registrant / Respondent is made available to the complainant's.

- 3.4 Accordingly, during the course of initiation of arbitral proceeding against the Godsmak the Registrant / Respondent herein, the National Internet Exchange of India ["NIXI"], has provided the address of the Registrant / Respondent Jack M, Godsmak. Vashi, Navi Mumbai Sector - 17 Mumbai, Maharashtra, 400705 Email: ssmbbc8@gmail.com to the sole arbitrator as well as to the the complainant herein, as such the complainant had moved an amended compliant incorporating the address by incorporating address of the Registrant / Respondent.

- 3.5 As such the undersigned being sole arbitrator in this arbitral proceeding had issued the directions to the complainant to serve the copies of the complaint to the Registrant/



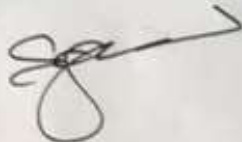
Respondent through their address Jack M. Godsmak. Vashi, Navi Mumbai Sector - 17 Mumbai, Maharashtra 400705 Email: ssmbbc8@gmail.com, on 25th of January 2022 in the time bound manner, as per INDRP ARBITRATION rules and Procedures.

3.6 That complainant had served the notice to the Registrant / respondent who has registered domain name www.novartishealthcare.in at their address Jack M. Godsmak. Vashi, Navi Mumbai Sector - 17 Mumbai, Maharashtra 400705 Email: ssmbbc8@gmail.com as per INDRP rules and after completion 1st notice period of 15 days, the Registrant/ Respondent did not file the reply to the notice.

3.7 That after issuance of notice to the Registrant/ Respondent, the registrant/ respondent had failed to file statement or its reply or detailed statement within prescribed time period i.e. by 12th February 2022, but Registrant/ Respondent had submitted an email through his email address Jack M <ssmbbc8@gmail.com> on 3 Feb 2022, 12:16 to the sole arbitrator with CC to the complainant herein. The contents of the email are reproduced as record:

"I acknowledge the receipt of your mail and the notice. I request that this matter be settled as soon as possible and closed due to the following reasons 1. The domain was created in error 2. The domain was never used and as matter of fact, we don't even have access to the account in Go Daddy under which these domains were created I request for a peaceful amendment and closure on the above complaint and hereby do state on the record that the domain has not and will not go live. There has been no usage of this domain. Kind Regards, Response to the email on complaint on 3- Feb- 2022."

3.8 The Registrant / Respondent has made a clear a statement in his email that the domain name "www.novartishealthcare.in" created in error and the domain was never used and as matter of fact. As per the categorical statement submitted by the complainant through his email, it clearly shows that the Registrant / Respondent have accepted that the domain name www.novartishealthcare.in was created in error and he is not using it nor intent to use it commercially.



3.9 The Arbitrator is of the considered opinion that the Registrant / Respondent has intently and knowingly adopted the domain name www.novartishealthcare.in of third party and now admitted the fact through his email that it was registered in error, hence the arbitrator is of the view that the Registrant/ Respondent was fully aware that he has adopted the domain name www.novartishealthcare.in unauthorisedly despite of very much well aware of reputation attached to the trade and domain name that belongs to third party he still went ahead for registration of the domain name in his favour..


3.10 Keeping in view of the circumstances as stated above the undersigned as being arbitrator is of considered opinion that in the present circumstances the Registrant/ Respondent has admitted it was an error on his part and is not interested in pursuing the present arbitration proceedings, as such the sole arbitrator accepts his email submission of dated 3rd of February 2021 as his reply or statement otherwise granted to the Registrant/ Respondent and in view of his categorical admission statement made in his email, the undersigned being arbitrator accepts his reply and proceeds further by passing the final order in the this matter.

4. Factual Background:

4.1 The Complainant has submitted that the complainant company is world leader in the healthcare industry and specializes in innovation through the research and development of products that improve the health and well-being of patients around the world. The Complainant's products are available in more than 150 countries. In 2020, the Group achieved net sales of USD 48.7 billion. The Complainant spent around USD 9.0 billion on research and development in 2020.

4.2 The counsel for the complainant further submits that the Complainant Company has received several international awards for progress in research and development, working environment and corporate responsibility activities. The Complainant has also received several awards in India in the area of social responsibility



- 4.3 In the year 1997, Novartis Healthcare Private Limited was incorporated on 13. 10. 1997 in India. Another subsidiary Novartis India Private Limited (includes the predecessor in business and trade) was incorporated in the year 1947. The word NOVARTIS is a coined word having no dictionary meaning, and is entitled to the highest degree of protection. The Complainant Company has been using the corporate name NOVARTIS and also using the same as trade mark/ house mark/ domain name for all its activities and Services internationally as well as in India.
- 4.2 The Complainant further submits that the trade mark NOVARTIS is a registered as mark internationally as well as in India. The earliest international registration of the trade mark NOVARTIS dates back to the year 1996 in Switzerland. Presently the said trade mark is registered in over 70 countries, further the trade mark NOVARTIS and its formative marks are registered trademarks in India since the year 1996.
- 4.3 The complainant Company trade mark NOVARTIS is a valid and subsisting trade mark in India and the Complainant is a lawful proprietor thereof. And the Complainant has the exclusive statutory right to use the trade mark NOVARTIS in India and internationally.
- 4.4 The Complainant's earliest registrations for the trademark NOVARTIS dates back to the year 1996. The Complainant Company has domain name registrations for various domain names, to its credit, by incorporating its Company name as trade name/ trade mark/ house mark NOVARTIS. Such as www.novartis.com, www.novartis.in, www.novartis.us, www.novartis.com.ar, www.andmo.novartis.com, www.novartis.com.br, www.novartis.ca.cn, www.novartis.ca.fr, www.cac.novartis.com, www.saludhable.novartis.com, www.novartis.com.mx, www.novartis.com.ve, www.pharma.us.novartis.com, www.novartis.com.au, www.novartis.com.bd, www.novartis.com.cn, www.novartis.com.hk, www.id.novartis.com, www.novartis.co.jp, www.novartis.com.my, www.novartis.co.kr, www.novartis.com.hk, www.novartis.com.tw, www.novartis.at, www.novartis.be.fr, www.novartis.be.nl, www.novartis.cz.es, www.novartis.bg, www.novartis.dk, www.novartis.com.eg.cn, www.novartis.ee, www.novartis.fi.
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- 4.5 The Complainant company is the owner of the trade mark as corporate name, trade name, trade mark, house mark / domain name internationally as well as in India in the field of pharmaceutical and healthcare industries. The Complainant through its group companies having trade name NOVARTIS as part of their trading name has presence in almost every continent and is one of the largest pharmaceutical companies in the world. The Complainant is known for revolutionary drugs, which have led to the eradication and or treatment for several lives threatening and lifestyle diseases.
- 4.6 On account of extensive use of the mark NOVARTIS as part of Company name/ trade name/ trade mark/ house mark/domain name/ the said mark has become a well-known trade mark having huge reputation and goodwill internationally as well as in India. It establishes beyond any doubt that the Complainant has huge reputation and goodwill associated with the mark NOVARTIS.
- 4.7 The Complainant counsel further submits in his pleadings that any unauthorized use of the mark NOVARTIS by a third party as a part of Company name/ trade name/ trade mark/ house mark/ domain name, or in any other form whatsoever constitutes infringement/ passing off/ unfair competition and will be in violation of the Complainants statutory and common law rights.
- 4.8 The Complainant has also successfully filed several UDRP complaints and obtained favourable Orders. Some of such Orders transferring the domain names of <http://novartisro.com/> and <http://novitas.us/> in favour of the Complainant as such as the order from the Casablanca Commercial Court of Appeal. The Complainant has been taking several actions of filing oppositions and sending legal notices to third parties and has been zealously guarding any misuse of its trade mark/ trade name/ domain name.
- 4.7 The Complainant's further submits in its complaint that the Complainant's have exclusive proprietary rights in the NOVARTIS brand to the exclusion of all others and is well established. These rights are matters of public knowledge in India and abroad and the NOVARTIS trademark/ trade name can only be deemed famous and well-known throughout the world.



5. **Parties Contentions:**

The complainant has raised three pertinent grounds as per INDRP Rules of Procedure for seeking relief is stated as under:

A. Complainant Grounds for proceedings

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*
- III. The Complainant counsel states that the disputed domain name has been registered or is/are being used in bad faith.*

I) Background of the Complainant and its statutory and common law rights related prior adoption and use:

The Complainant submits its contentions in its complaint that are described in details as under:

- 5.1 The Complainant is world leader in the healthcare industry and specializes in innovation through the research and development of products that improve the health and well-being of patients around the world. The Complainant's products are available in more than 150 countries. In 2020, the Group achieved net sales of USD 48.7 billion.
- 5.2 The Complainant have spent around USD 9.0 billion on research and development in the year 2020. The counsel for the complainant further submits that the Complainant has received several international awards for progress in research and development, working environment and corporate responsibility activities. The Complainant has also received several awards in India/ in the area of social responsibility.



5.3 In the year 1997, Novartis Healthcare Private Limited was incorporated on 13. 10.1997 under Indian Laws of India. Another subsidiary Novartis India Private Limited (includes the predecessor in business and trade) was incorporated in the year 1947. The word NOVARTIS is a coined word having no dictionary meaning, and is entitled to the highest degree of protection. The Complainant has been using the corporate name NOVARTIS and also using the same as trade mark/ house mark/ domain name for all its activities and Services internationally as well as in India.

5.4 The Complainant further submits that the trade mark NOVARTIS is a registered trade mark internationally as well as in India. The earliest international registration of the trade mark NOVARTIS dates back to the year 1996 in Switzerland. Presently the said trade mark is registered in over 70 countries, further the trade mark NOVARTIS and its formative marks are registered trademarks in India since the year 1996..

II) Complainant's Claim of Statutory Rights:

5.5 The Complainant's earliest registration for the trademark NOVARTIS dates back to the year 1996. The Complainant has domain name registrations for various domain names for its Company name/ trade name/ trade mark/ house mark NOVARTIS to its credit, also. Such as www.novartis.com, www.novartis.in www.novartis.us www.novartis.com.ar, www.andmo.novartis.com www.novartis.com.br www.novartis.ca.cn www.novartis.ca.fr www.cac.novartis.com www.saludhable.novartis.com www.novartis.com.mx www.novartis.com.ve www.pharma.us.novartis.com www.novartis.com.au www.novartis.com.bd - www.novartis.com.cn www.novartis.com.hk www.id.novartis.com, www.novartis.co.jp www.novartis.com.my www.novartis.co.kr www.novartis.com.hk www.novartis.com.tw www.novartis.at www.novartis.be.fr www.novartis.be.nl www.novartis.cz.cs www.novartis.bg www.novartis.dk www.novartis.com.eg.en www.novartis.ee www.novartis.fj

5.6 The Complainant is the owner of the trade and corporate name, trade name/ trade mark/ house mark/ domain name internationally as well as in India in the field of



pharmaceutical and healthcare industries. The Complainant through its group companies having NOVARTIS as part of their trading name has presence in almost every continent and is one of the largest pharmaceutical company's in the world. The Complainant is known for revolutionary drugs which have led in the eradication and treatment for several free threatening and lifestyle diseases.

On account of extensive use of the mark NOVARTIS as part of Company name/ trade name/ trade mark/ house mark/domain name/ the said mark has become a well-known trade mark having huge reputation and goodwill internationally as well as in India. It establishes beyond any doubt that the Complainant has huge reputation and goodwill associated with the mark NOVARTIS.

- 8.7 The Complainant's further submits in its complaint that it has exclusive proprietary rights in the NOVARTIS brand to the exclusion of all others and well established. These rights are matters of public knowledge in India and abroad and the NOVARTIS brand can only be deemed famous and well-known throughout the world.

- 8.8 That after issuance of 1st notice to the Registrant/ Respondent, the registrant/ respondent did not filed its reply or detailed statement within prescribed time period by 12th February 2022, but after receipt of the notice the Registrant/ Respondent had submitted an email on through his email address Jack M <jackm123@gmail.com> on 3 Feb 2022, 12:16

"I acknowledge the receipt of your mail and the notice. I request that this matter be sealed as soon as possible and closed due to the following reasons 1. The domain was created in error 2. The domain was never used and in matter of fact, we don't even have access to the account in Go Daddy under which these domains were created I request for a peaceful amercement and closure on the above complaint and hereby do state on the record that the domain has not and will not go live. There has been no usage of this domain. Kind Regards, Response to the email on complaint on 3- Feb-2022."



5.9 The Registrant/ Respondent has made an statement that in his email of 3rd of February 2022 that the domain name "www.novartishealthcare.in" created in error and the domain was never used and as matter of fact . As per the statement submitted by the complainant through his email, it clearly shows that the Registrant / Respondent have accepted that the domain name www.novartishealthcare.in was created in error and he is not using it commercially.

1. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

5.10 The Complainant complaint is based solely on the premise as being prior adopter and user of trademark NOVARTIS and its domain "www.novartishealthcare.in" in worldwide of the said trademark for many years, submitted that it is the sole proprietor of and has sole and exclusive rights to use, the said trademarks, which includes the trademark NOVARTIS and domain name www.novartishealthcare.in'.

5.11 The Complainant submits that as the disputed domain name is www.novartishealthcare.in as such the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

5.12 It is submitted that the disputed domain name "www.novartishealthcare.in" itself suggests that it has been registered with malafide intention and without any legitimate interest It is submitted that the same has been registered by the Respondent with ulterior motives to ride upon the reputation and goodwill of the Complainant associated with its well-known trade mark NOVARTIS.

5.13 The Registrant / Respondent's disputed domain name can be mistaken to be as the domain name of the Complainant and can be used to deceive consumers as the disputed domain name suggests that it is the Complainant's Novartis healthcare domain name. Considering that NOVARTIS has been recognized as one of the best pharmaceutical companies in the world providing assistance in healthcare There is thus, an imminent



likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name. The disputed domain name is registered in bad faith and can be used for illegal and unlawful purposes and ought to be transferred in the name of the Complainant.

- 5.14 The Complainant further submits that the "overall impression" left by the domain name "www.novartishealthcare.in" suggests that this domain name belongs to the Complainant in relation to its business in India and consumer confusion will inevitably result. The disputed domain name is meant to suggest an ownership by the Complainant and anyone coming across the disputed domain name thereto will naturally assume that this name is owned or affiliated with the Complainant. It is thus in violation of the Complainant's rights.

II) The Respondent has no rights or legitimate interests in respect of the disputed domain name

- 5.14 The Respondent's registration of the disputed domain name is much subsequent to the Complainant's use and registration of the NOVARTIS name and mark. It is also settled that mere registration of a domain name does not give rise to a 'legitimate interest'.

III) The Respondent's disputed domain name has been registered or is being used in bad faith.

- 5.15 The Complainant counsel has stated that after issuance of 1st notice to the Registrant / Respondent, the registrant/ respondent did not file its reply or detailed statement within prescribed time period by 12th February 2022, but the registrant/ respondent after receipt of the notice had submitted an email on through his email address Jack M <ssmbbc8@gmail.com> on 3 Feb 2022, 12:16

"I acknowledge the receipt of your mail and the notice. I request that this matter be settled as soon as possible and closed due to the following reasons 1. The domain was created in error 2. The domain was never used and as matter of fact, we don't even have access to the account in Go Daddy under which these domains were created I request for a peaceful amendment and closure on the above complaint and hereby do state on the record that the domain has not and will not go live. There has been no usage of this domain. Kind Regards, Response to the email on complaint on 3- Feb-2022."

5.16 The Registrant/ Respondent has made an admission statement that in his email of 3rd of February 2022 that the domain name "www.novartishealthcare.in" created in error and the domain was never used and as matter of fact . As per the statement submitted by the complainant through his email, it clearly proves that the Registrant / Respondent have accepted that the domain name www.novartishealthcare.in was created in error and the Registrant / Respondent is not using it commercially.

5.17 It was further submitted that the Registrant / Respondent has concealed authentic contact details intently through Registrar and so the complainant may not be able to know or carry out the communications with the Registrant / Respondent . It is therefore clear that the Registrant / Respondent has no legitimate rights in the domain name and is acting in bad faith.

6. Discussion and Findings:

6.1 As per the pleadings placed before me by the complainant as well as the email sent by Registrant / Respondent that the Registrant / Respondent does not have any business relationship with the business of the Complainant or with any of its subsidiaries or any legitimate interest in the mark / brand **www.novartishealthcare.in**. Moreover, the Complainant has neither given any license nor authorized the Registrant/ Respondent to use the Complainant's domain **www.novartishealthcare.in**. Further the Registrant / Respondent has admitted that it has registered domain name in error.

6.2 After going through the pleadings of the complainant herein and the contents of the



email of the Registrant / Respondent herein, it clearly shows that the Registrant / Respondent has register the domain name to just to squat on it without any legitimate interest and is trying to use goodwill of third party.

- 6.2 Once a complainant makes a prima facie case and further the Registrant / Respondent makes a email statement by admitting the fact the domain was registered in error as such the Registrant / Respondent lacks rights to the domain name www.novartishealthcare.in at issue in hand, the Registrant / Respondent admission in the dispute clearly proves that it does not have legitimate interest in the domain name.

As in the case of *Manish Vig Vs Indira Chugh*¹ AIR 2002 Del 243 the Delhi High court has defined cybersquatting as "an act of obtaining fraudulent registration of domain name with intent to sell it to the lawful owner of the name at a premium" in another case squatting in *Shields Vs Zuccarini* 254 F 3d 476(3dCir,2001) the court has defined as an expression that has come to mean the bad faith, abusive registration and use of the distinctive trademarks of others as internet domain names, with the intent to profit from the goodwill associated with those trademarks.

7. DECISION

- 7.1 Thus in accordance to the Registrant / Respondent categorical statement made vide his email dated 3rd of February 2022 and further the registrant/ respondent has failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein.
- 7.2 The Complainant counsel has stated that after issuance of 1st notice to the Registrant / Respondent, rather the registrant / respondent did not filed its reply or detailed statement within prescribed time period by 12th February 2022, but the registrant/ respondent had submitted an email on through his email address Jack M <ssmbbc8@gmail.com> on 3 Feb 2022, 12:16



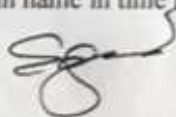
"I acknowledge the receipt of your mail and the notice. I request that this matter be settled as soon as possible and closed due to the following reasons 1. The domain was created in error 2. The domain was never used and as matter of fact, we don't even have access to the account in Go Daddy under which these domains were created I request for a peaceful amendment and closure on the above complaint and hereby do state on the record that the domain has not and will not go live. There has been no usage of this domain. Kind Regards, Response to the email on complaint on 3- Feb-2022."

The Registrant/ Respondent has made an statement that in his email that the domain name "www.novartishealthcare.in" created in error and the domain was never used and as matter of fact . As per the statement submitted by the complainant through his email, it clearly shows that the Registrant / Respondent have accepted that the domain name **www.novartishealthcare.in** was created in error and he is not using it commercially.

Thus it is very much clear that the Registrant / Respondent have registered the disputed domain name in error and in bad faith and 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.

- 7.4 The Registrant / Respondent's has admitted in his email that the registration of the Domain Name is created by him is an error on his part. As such Registrant / Respondent have no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.

In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name **www.novartishealthcare.in** be transferred from the Registrant / Respondent to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



NEW DELHI

DATE 18-02-2022



SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI