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IN THE MATTER OF M/s
M/s TEVA PHARMCEUTICALS
CASE NO 1517

DECIDED BY
SANJEEV KR CHASWAL
UNDER INDRP ARBITRATION

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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

<tevaglobal.in>

and in the matter of INDRP case no : 1517

M/s. TEVA Pharmaceuticals Industries Limited

5 Basel Street,

Petach Tikva 49131,

Israel

.....

Complainant

tevaglobal@gmail.comⁱ

.....

Respondent

ARBITRATION AWARD

Disputed Domain Name: <tevaglobal.in>

That NIXI have appointed the undersigned as sole arbitrator pursuant to the complaint filed by the complainant M/s. TEVA Pharmaceuticals Industries Limited, 5 Basel Street, Petach Tikva 49131, Israel, represented by M/s. Silka Law, Stockholm, Sweden. by invoking this administrative domain arbitration proceedings through it authorized signatory, in respect of domain name "**www.tevaglobal.in**" against the Registrant / Respondent

The Registrant / Respondent, who has registered domain name <tevaglobal.in> through the IN. registry registrar M/s. GoDaddy.com, LLC, as the office address and other details of the Registrant /

Respondent are withheld by registrar through invoking "REDACTED FOR PRIVACY POLICY" as its details were not available earlier in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. TEVA Pharmaceuticals Industries has filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent, later who is identified as tevaglobal@gmail.com.

The Complainant herein has filed this arbitral complaint against the Registrant / Respondent for registering domain name illegally but as a matter of fact a identity theft and thereby claiming a relief of transferring the registered domain name <tevaaglobal.in> from the Respondent / Registrant to the Complainant herein.

The NIXI has provided the WHOIS records to the sole arbitrator on its initial proceedings that contains the name address and other details of the Registrant / Respondent and the same is being incorporated by the undersigned arbitrator for issuance of the notice in this domain complaint at first instance.

That after entering upon as sole arbitrator in the above said arbitral reference, as such, the undersigned had issued the directions to the complainant and the Registrant / Respondent herein to comply issued directions as stated herein in the time bound manner, as prescribed under the INDRP ARBITRATION rules and Procedures.

1. The Parties:

1.1 The Complainant in this arbitration proceeding is M/s. TEVA

Pharmaceuticals Industries Limited, 5 Basel Street, Petach Tikva 49131, Israel, represented by M/s. Silka Law, Stockholm, Sweden who has invoked this administrative domain arbitration proceedings through its authorized signatory, in respect of domain name <tevaglobal.in> against the Registrant / Respondent whose is identified by its Email: tevaglobal@gmail.com which is provided to sole arbitrator as per the details given by the WHOIS database maintained by the National Internet Exchange of India [NIXI].

2. The Domain Name and Registrar:

2.1 The disputed domain name <tevaglobal.in> is registered by the .IN. registry registrar M/s. GoDaddy.com, LLC, and on invoking privacy request of "REDACTED FOR PRIVACY POLICY" the registrar has withheld address and other details of the Registrant / Respondent, as such address details of the Registrant / Respondent were not available in public domain, as such the Complainant did not have address information in relation to the Registrant / Respondent, therefore the complainant M/s. TEVA Pharmaceuticals Industries has approached NIXI for availability of the address of the Registrant / respondent herein and further filed the complaint invoking domain arbitration proceedings against the Registrant / Respondent identified as tevaglobal@gmail.com.

3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the

disputed domain name with the NIXI accredited Registrar, the Respondent 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 to the Complaint, 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 thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder.

The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

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

3.3 The present Arbitral Proceedings have commenced on 5th of March 2022 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS details of the domain. The said notice was successfully



4

is served by the complainant to the Respondent / Registrant through email identified as tevaglobal@gmail.com.

3.4 Further as per the issued Notice to the Respondent / Registrant identified as having its Email: tevaglobal@gmail.com was directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 20th March 2022, failing which the Complaint shall be decided on the basis of the merits of the Complaint.

3.5 The respondent / registrant namely having its Email: tevaglobal@gmail.com had failed to submit reply, or any detail statement in the above arbitral reference even after receipt of notice of 5th of March 2022 through email address as sent under rule 5(c) of INDRP Rules and procedure for submission reply, detail statement, if any, on or before 20th of March 2022.

3.6 As per available email record placed before the sole arbitrator, the sole arbitrator is of considered view that the respondent / registrant was duly served through listed email address and despite of receipt of this notice the Registrant / Respondent had failed to submit its reply to the sole arbitrator panel office by 20th March 2022 .

3.7 It clearly proves that the respondent / registrant was not interested in pursuing the present arbitration proceedings, as such the sole arbitrator had on vide its order dated 21st of March 2022 foreclosed the right of the respondent / registrant of filing of reply or statement granted to the respondent / registrant and proceeded with deciding of this domain dispute complaint <tevaglobal.in> on merits.

4. Factual Background:

4.1 The Complainant counsel submits that the Complainant in these administrative proceedings is TEVA Pharmaceuticals Industries Limited, 5 Basel Street, Petach Tikva 49131, Israel, is represented by Silka Law, Stockholm, Sweden by invoking this administrative domain arbitration proceeding through its authorized signatory, in respect of domain name <tevaglobal.in> against the Registrant / Respondent is identified having its Email: tevaglobal@gmail.com.

5. Parties Contentions:

5.1 The complainant has submitted many submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <tevaglobal.in> illegally.

5.2 The Registrant / Respondent had failed to submit its reply or detailed statement to the sole arbitrator panel within 15 days of the issued notice but the Respondent had also failed to comply directions with the said notice as well.

5.3 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <tevaglobal.in> 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.

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

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

5.4 The Complainant counsel submits that the complainant M/s TEVA Company was established in 1901 with its global headquarters in Israel, see history here. Operating in sixty countries worldwide, TEVA (NYSE and TASE: TEVA) (www.TEVApHarm.com) is ranked among the top pharmaceutical companies in the world, and the world's largest generic medicines producer. TEVA is the world's largest generic medicines producer, leveraging its portfolio of more than 1,000 molecules to produce a wide range of generic products in nearly every therapeutic area.

5.5 The Complainant counsel further states that in specialty medicines, TEVA has a world-leading position in innovative treatments for disorders of the central nervous system, including pain, as well as a strong portfolio of respiratory products. TEVA integrates its generics and specialty capabilities in its global research and development division to create new ways of addressing unmet patient needs by combining drug development capabilities with devices, services and technologies.

5.6 The Complainant counsel further states that this standalone business unit of Complainant is TEVA API, it supplies high-quality APIs ('Active Pharmaceuticals Ingredients') to over 1,000 customers worldwide. TEVA

API's portfolio consists of more than 400 quality APIs manufactured at 16 state-of-the-art production facilities, employing over 5,000 highly-trained professionals. TEVA API is fully committed to environmental, health and safety (EHS) matters to ensure sustainable supplies.

5.7 The Complainant counsel further states that the complainant company has been operating across India for over 17 years more than nine (9) legal entities, TEVA is the largest Israeli company in the country. One of such legal entities in India is TEVA GLOBAL Business Services Private Limited, incorporated on 18 August 2004 [Annex VII]. TEVA's Activities contribute to building pharmaceutical capacity and capabilities in India, while simultaneously playing a pivotal part in TEVA's global manufacturing and R&D efforts.

5.9 The Complainant counsel further states that the company's footprint in India demonstrates not only the broad spectrum of activities that support drug development, but also the significant professional talent that TEVA has been able to attract in India. India Plays an important part in the company's strategy, with its unique combination of a collaborative, innovation-driven environment, remarkable talent pool, huge partnering potential, and scientific and clinical expertise.

5.10 The Complainant counsel further states that the TEVA makes significant contributions to the Indian economy, providing over 3,500 direct job opportunities and substantial economic value through exports. TEVA API has its largest synthetic R&D hub in Greater Noida, Uttar Pradesh, India. Large-scale manufacturing capacity and strong R&D focus serving TEVA's global supply chain:

- 3 API plants in Gajraula, Malanpur, Ambernath

- 2 Finished pharmaceutical formulation plants in Goa
- 2 R&D centers in Noida and Ambernath

II) Complainant's Claim of Statutory Rights:

5.11 The Complainant considers their trademark TEVA as important and extremely valuable asset and thus in order to protect the same, have secured trade mark registration for the mark "TEVA" & other formative marks in India as well as globally. The trade mark registrations obtained in India and other jurisdictions are duly valid and subsisting as of this date.

5.12 The Complainant further submits that the Complainant is also the registered proprietor of the trademark "TEVA" as a word mark in Israel since 1975 (active) and in many other jurisdictions under other classes as well. The jurisdictions wherein the complaint have obtained the registration, to name a few include USA, Canada, European Union, New Zealand, Ukraine, France, Indonesia the complainant have obtained and is exclusive owner and proprietor of the registrations under numerous classes for the device marks TEVA and TEVA API in India starting since the year 1992

Mark	Reg No.	Date of Application	Country	Class
1.	572847	11 May 1992	India	5
2.	798769	16 April 1998	India	5
3.	3248985	28 April 2016	India	99
4.	4369984	06 December	India	1

2019
5. 4369985 06 India 35
December
2019

5.13 The Complainant as having prior adoption, the Complainant's trade name / mark is identified by the purchasing public exclusively with the Complainant and has acquired an enormous goodwill in several countries across the globe including India. On account of the high degree of inherent and acquired distinctiveness, which the mark TEVA is possessed of, the use of this mark or any other identical or deceptively similar mark, by any person other than the Complainant, would result in immense confusion and deception in the trade leading to passing off.

5.14 The Complainant submits that its main domain name <tevapharm.com> was registered in 1996. The present official website at .com is a comprehensive, unique and acclaimed introduction to the products and services. Further, it has an Indian specific active website at: **tevapharm.in**.

5.15 The Complainant further submits that the profile and popularity of the Complainant under the trademark "TEVA" has been continuously increasing since the date of adoption and has received wide recognition. A simple Google search of the term "TEVA" or "Teva Global" throws up a huge number of results, which exclusively pertain to the Complainant and its mark in Indian media.

5.17 The Complainant submits that It also has been conferred with numerous accolades & awards including 'Best Export Award for Outstanding Export Performance' conferred by Export Promotion Council, Ministry of Commerce and Industry, Government of India.

5.18 The Complainant submits that the following are some of the domain names owned by the Complainant, while it owns more than 600 domain names, incorporating the mark TEVA.

DOMAIN NAME	REGISTRATION DATE
tevapharm.com	14 June 1996
tevaglobal.com	24 July 2001
teva-pharm.com	18 December 2000
tapi.com	20 November 2000
tevatapi.com	28 June 2007
teva.in (redirects to .com)	16 February 2005 (sunrise period)
tevapharm.in (in active use)	16 February 2005 (sunrise period)

5.19 The Complainant further submits that in December 2021, the TEVA Group became aware as to registration of two domain names <tevaglobal.in> and <actavispharma.in> registered simultaneously on October 20, 2021 at 18:52:08 UTC and 18:52:07 UTC respectively, see here and here. The WHOIS for both reads the organisation name as, Karnataka, India. The Complainant submits that the WHOIS information is false and misleading as is otherwise also an indirect subsidiary of the Complainant Company.

5.20 The Complainant also submits that the Respondent / registrant Pharmaceuticals (owning Trademark) originated in Iceland in the early twenty-first century. After a successful run for over a decade, it was acquired by American pharmaceutical company Watson for USD 5.55 billion in April 2012. In June 2015, Actavis Plc changed its name to Allergan Plc. Later, in August 2016, Complainant completed acquisition of Allergan's generics business



5.21 The Complainant further submits that the said two domain names are parked with the pay-per-click links related to the Pharma and related industries in a bid to exploit the goodwill and reputation of the Complainant in bad faith. The aforesaid facts bring out a prima-facie case against the Respondent. Further, the Complainant relies on the following arguments in support of this Complaint against <tevaglobal.in>, in terms of the respective INDRP clauses. While a separate INDRP complaint is being filed in relation to the other domain name <actavispharma.in>.

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

5.22 The Complainant counsel submits that the Complainant was the first in the world to have conceived and adopted the mark TEVA in respect to goods and services covered under class 5. The Complainant is a registered proprietor of the trademark TEVA & TEVA API in many countries around the world including India and has been continuously and exclusively using the same in relation to its business for many years

5.23 The Complainant counsel submits that the Complainant first to register the first word mark TEVA in 1975 in Israel, i.e. almost 46 years prior to the date on which Respondent registered the domain <tevaglobal.in>. By virtue of long standing use and registration, Complainant's Trademark TEVA qualifies to be a well-known mark and is liable to be protected. In the matter of *Living Media, Limited v. India Services [WIPO D2000-0973]*, it has been held that "trademark registration is itself prima-facie evidence that the mark is distinctive".



5.24 The Complainant counsel submits that in India, it has a valid and subsisting Trademark TEVA since 2005 and TEVA API since 2019. The impugned domain name <tevaglobal.in> is identical to Complainant's registered trademark, as well as domain names incorporating TEVA. The complainant counsel had placed Reliance on the WIPO matter of **TEVA Pharmaceutical Industries Ltd. v. Domain Administrator, / Torsten Burger [WIPO D2021-0924]**, wherein the Panel found Complainant has rights in the mark TEVA and the impugned domain names incorporating TEVA mark were transferred to the Complainant.

5.25 The Complainant counsel further submits that the impugned domain name is visually and phonetically identical and/or confusingly similar to the Complainant's trademark **TEVA** in which the complainant has statutory as well as common law rights. The Respondent has registered the domain name <tevaglobal.in> that solely incorporates in its entirety the Complainant's reputed trademark **TEVA**, to just to cause confusion and deception in the minds of the public. The numerous panels have held in so many decisions - **CEC Entertainment Concepts, L.P. v. Samir Vasaya [Domain: chuckecheese.in; INDRP/1154]; Havells India Limited v. Whois Foundation WIPO D2016-1775]** that a domain name which wholly incorporates a Complainant's registered mark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks.

5.26 The Complainant counsel further submits that the Complaint is the registered proprietor of the many marks world over having word per se TEVA. The Complainant submits that as the domain name is <tevaglobal.in> is clearly identical / confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

5.27 The Complainant counsel further submits that the ccTLD “.in” is necessary for India-specific top level domains on the Internet and is not taken into consideration, while comparing the disputed domain name with the Complainant’s well-known trademark. Thus, the disputed domain name is identical / confusingly similar to the Complainant’s registered marks.

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

5.28 The Complainant further submits that the Complainant trademark TEVA has been registered globally under various jurisdictions including India. It had applied the said mark in India on 11 May 1992 (registration date: 23rd March 2005) Further the Company TEVA Global Business Services Private Limited was incorporated in India on 18 August 2004. The Complainant has active websites at <tevapharm.com> and <tevapharm.in> that is visited by the public and trade world over.

5.29 The Complainant further submits that the TEVA is well known distinctive mark known globally including India. As such its continuous and extensive use by the Complainant for many decades, the mark TEVA has acquired secondary meaning. In the matter of AOL LLC v. DiMarco, FA1275978 (Forum Sept. 9, 2009) “Secondary Meaning” is acquired when ‘in the minds of the public, the primary significance of a product feature... is to identify the source of the product rather than the product itself.’ Also see INDRP matter of HuntNews.in [INDRP/782].

5.29 The Complainant further submits that any person or entity using the mark TEVA as a domain name that too with related keyword referring to its corporate name ‘TEVA Global’ is bound to lead customers and users to

infer that its product or service has an association or nexus with the Complainant and lead to confusion and deception. It is indeed extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. *[Daniel C. Marino, Jr. v. Video Images Productions, WIPO-D2000-0598]*.

5.30 The Complainant further submits that the Respondent / Registrant was never authorised by the Complainant to register the impugned domain name <tevagobal.in> hold the domain name or make use of its TEVA Trademark in any manner. The Domain Name registered by the Respondent / registrant is clearly intended to “pass off” and have a free ride on its reputation and goodwill. Undoubtedly, the Respondent is deliberately trying to portray a connection between the disputed domain name and the Complainant, through the parked page at the domain name.

5.31 The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant’s well-known trademark **VELCRO**, in order to capitalize / profit from the goodwill associated with the famous mark. *Similarly in the INDRP matter of Velcro Industries B.V. v. Velcro Technologies [INDRP/858; VelcroTechnologies.in]: “There is no showing that 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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but has been parked with the Domain Registrar, GoDaddy LLC only. It has been held that merely registering the domain name is not*

sufficient to establish rights or legitimate interests. [*Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO-D2000-1244*].

5.32 The Complainant further submits that the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*].

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

5.33 It is submitted that the Complainants' use of the trademark TEVA goes back to the 1970s. The TEVA trademark has acquired immense goodwill and popularity in the last five decades by virtue of its open, continuous and extensive use by the Complainant. While in India, it was first registered in 2005, but it has incorporated companies in India since two decades, as 'TEVA GLOBAL Business Services Private Limited'. The said incorporated Company is part of TEVA Group and the Company name has been wrongly used as a part of the disputed domain name, without any authorization with a malafide to mislead the Complainant customers.



5.34 It is submitted that even on a preliminary search over the Internet or survey among the public in general reveals that the TEVA brand is associated with the Complainant and it has been used by them in their trade and business for decades. That it is inconceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainant and its 'well-known' trademark. The registration of a Domain Name which is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith [see *ITC Limited v Travel India / INDRP Case No 065*].

5.35 It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith. It is further submitted that the WHOIS information further indicates the knowledge on the part of the Respondent

5.36 It is further submitted that the Respondent knowingly chose to register and use the disputed domain name <tevaglobal.in> to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others but, given the above facts, Respondent is, thus guilty of wilful suppression, concealment and misrepresentation by providing inaccurate / incorrect information to the Registry as well.

5.37 It is further submitted that WHOIS provides the organisation name tevaglobal@gmail.com. The Complainant submits that the Respondent has deliberately provided false WHOIS information and the same refers to the Complainant's subsidiary only. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

5.38 Though WHOIS provides the organisation name of the company with a Karnataka address. The Complainant submits that the Respondent has deliberately provided false WHOIS information and the same refers to the Complainant's subsidiary only. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

B. Contention of the Complainant:

5.38 It is further submitted the Complainant has a long and well-established reputation in the Complainant's mark through its exclusive use in the pharmaceutical industry. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario

is the Complainant. [*Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)*].

5.39 It is further submitted that it is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

a) *Complainant's name was famous at the time of registration: Cho Yong Pil v. Sinwoo Yoon, WIPO-D2000-0310.*

b) *Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

c) *The very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith: America Online Inc. v. Chinese ICQ Network, WIPO-D2000-0808.*

d) It is further submitted that in *CEC Entertainment Concepts, L.P. v. Samir Vasaya [Domain: chuckecheese.in; INDRP/1154]*, it was held that even where the domain name has not been used to identify a web site, Panels have held that the ICANN Policy 'use in bad faith' requirement is

met by registering a domain name that will ultimately result in consumer confusion. In the matter of *CBS Broadcasting, Inc. v. LA-Twilight-Zone [WIPO Case no D2000-0397]* - finding bad faith where Respondent failed to provide any evidence to controvert Complainant's allegation that it registered the domain name in bad faith and where any future use of the domain name would do nothing but cause confusion with the Complainant's mark, except in a few limited noncommercial or fair use situations, which were not present.

e) Thus, the Respondent is guilty of registering and using the disputed domain name <tevaglobal.in> in bad faith in terms of Para 7 of the INDRP.

f) The Complainant submits that the Respondent has deliberately provided false WHOIS information and the same refers to the Complainant's subsidiary only. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

C. Contention of the Respondent:

5.40 The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

6. Discussion and Findings:

- 6.1 It is evident that the Respondent knowingly chose to register and use the disputed domain name <tevaglobal.in> to divert customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.
- 6.2 It is further clear the Respondent / registrant that the WHOIS provides the company name with a Karnataka address. The Complainant submits that the Respondent has deliberately provided false WHOIS information and the same refers to the Complainant's subsidiary only. Hence, the Respondent is not commonly known by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.
- 6.3 Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

[a] The Respondent's Default:

- 6.4 As per INDRP Rules of Procedure, it require as defined under Rule 8(b)

that the arbitrator must ensure that each party is given a fair opportunity to present its case. The above Rule 8(b) be read as follows

"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."

- 6.5 Further the Rule 11(a) of INDRP Rules of Procedure, as it empowers the arbitrator to move on with an ex parte decision in case any party, that does not comply with the time limits or fails to reply against the complaint.

The Rule 11(a) of INDRP Rules of Procedure as defined as under:

"In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

- 6.6 The Respondent was given notice of this administrative proceeding in accordance to above the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

- 6.7 As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer nor presented the assertions, evidence or contentions in any manner. The undersigned as being arbitrator opined that the Respondent has been given a fair opportunity to

present his case, thus non submission of the reply by the Respondent to the Arbitrator, entail the sole arbitrator to proceed on the Complaint in accordance to its merit.

- 6.8 The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules paragraph as per 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

[b] The issues involved in the dispute:

As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

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

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

6.8 The Respondent / registrant is required to submit to a mandatory Arbitration proceeding in the event of a Complainant filed by a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

6.9 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

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

6.10 It has been proved by the Complainant that it has intellectual property, particularly trademark TEVA and TEVA API by submitting substantial documents of its prior adoption and continuous use and the trading name TEVA originated in 1901, and since then it is Complainant's house mark, the Complainant's stores were changed to 'TEVA and has been in use continuously ever since, TEVA and TEVA API Complainant's Marks') having obtained registration in over many jurisdictions worldwide in relation to its business.

6.11 The Complainant owns and uses various domain names by incorporating its trademark TEVA including <tevapharm.com> <tevaapi.com>,

<tapi.com> and also Indian specific ccTLDs <teva.in> and <tevapharm.in>. Hence, any individual coming across the disputed domain name or associated email ID ending with "@tevaglobal.in" assumes it to be the Complainant's website for the Indian region and instantly associates the same with the Complainant.

6.12 The mark TEVA has been highly known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations:

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

6.11 The Respondent / Registrant has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name "tevaglobal.in" is identity theft, identical with or deceptively similar to the Complainants' "TEVA" mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

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

6.12 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

6.13 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

6.15 The Respondent has failed to submit reply thus not rebutted the contentions of the Complainant and has not produced any documents or submissions to establish his interest in protecting his own right and interest in the domain name. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that

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

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered or is being used in bad faith.

6.16 It has been contended by the Complainant that the Respondent / Registrant has registered and has used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

6.17 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent 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 Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain,

Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

6.18 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.

6.19 Moreover, use of similar disputed domain name by the Respondent / Registrant would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product / services on the Respondent's website, as disputed domain name *tevagobal.in*, which have been widely used in India and all over the world by the Complainant and are associated exclusively with the complainant, by the trade and public in India and all over the world.

6.20 Further the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "TEVA" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "TEVA" as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Moreover, the

Respondent / Registrant has not given any proper contact details and has not been replying to the communications sent by the complainant.

Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.

7. DECISION

7.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant 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 has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide. The Respondent / Registrant had no previous connection with the disputed domain name and has clearly registered the disputed domain name in order to prevent the Complainant who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name.

7.3 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.



[Relevant WIPO decisions:

Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; *Thaigem Global Marketing Limited v. Sanchai Aree* D2002-0358; *Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano* D2003-06611

- 7.4 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Thus it is very much clear that the Respondent / Registrant is using the disputed domain name 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.

[Relevant WIPO decisions: *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* D2003-0455; *Belupo d.d. v. WACHEM d.o.o.* D2004-01101

- 7.5 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has 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.

- 7.6 That the complainant further submitted that it is evident from the WHOIS record that the Respondent / Registrant company tevaglobal@gmail.com

who had registered disputed domain name basically is the Complainant's own subsidiary company in India and it has carried out potential identity theft by registering its own parent company trademark as domain name, and further the Respondent being complainant subsidiary appears to have concealed details when registering the disputed domain name.

7.7 In view of the potential identity theft by registering domain similar to its own parent company by the respondent as such the Complainant has requested that while deciding the matter on disputed domain name *tevaglobal.in*, the name of the respondent may be redacted from the publication of the final award and sought cautious approach in the matter for naming the respondent company, as the Registrant / Respondent is being subsidiary company, hence need to be redacted in the final award.


7.8 The complainant has further submitted orders of WIPO panel in domain disputes, wherein the panel arbitrator had redacted the names of the respondent for identity theft on specific request made by the complainant, wherein one of the panel arbitrator has redacted the name of the respondent from final arbitration award and has passed the award redacting the name of the respondent award reference ***Blackbaud, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted [WIPO Case No. D2021-4138; February 2022]***: *"The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent's name from this decision."* Also see ***Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted, WIPO Case No. D2009-1788.***

7.9 keeping in view of the submissions made by the complainant to redacted

the name of the respondent company from final award in the present matter, in view of the same the sole arbitrator accepts the requests of the complainant and directs redaction of the name of the respondent from final award.

In accordance to the INDRP defined Policy and Rules, for purposes of properly executing this order the sole arbitrator also directs the Registrar's attention transfer <tevaglobal.in> as per Schedule-I hereto that identifies the company listed respondent / registrant to the disputed domain name in the formal record of registration and further directs that the disputed domain name, <tevaglobal.in>, be transferred from the Respondent company to the Complainant with a specific directions to NIXI to monitor the transfer in time bound manner.

The sole arbitrator directs the NIXI that Schedule-I shall not be published along with this decision.


SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI
NEW DELHI DATE 31-03-2022

ⁱ The Respondent being complainant subsidiary appears to have concealed details when registering the disputed domain name and in light of the potential identity theft similar domain, of its own parent company, the complainant had made a request to Sole arbitrator in its complaint to redact the Respondent's company name from this final award decision. in the present case the Sole Arbitrator has referred and identified the registrant / respondent by email address tevaglobal@gmail.com in its final award but the Sole arbitrator has attached and appended the full address of the respondent in separate order attached as Schedule I appended to this final award with an specific instruction to the Registrar regarding transfer of the disputed domain name registered by the Respondent to the Complainant herein due to the exceptional circumstances of this case. The Sole Arbitrator has further authorized the NIXI to transmit Schedule I to the Registrar of Domain name, as indicated being Schedule I as attached to its final award with further directions that the Respondent's company name shall not be published in final award. Reference See Black baud, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted Case No. D2021-4138⁸ and other case Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted, WIPO Case No. D2009-1788.