

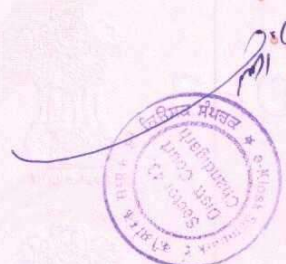


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH34598563142341U
Certificate Issued Date : 29-Apr-2022 11:22 AM
Certificate Issued By : chamikumi
Account Reference : IMPACC (GV)/ chimpasp07/ E-SMP KIOSK SEC-43/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0768709036998927U
Purchased by : RAJESH KUMAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SAJAL KOSER
Second Party : Not Applicable
Stamp Duty Paid By : SAJAL KOSER
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1520 OF 2021-22

DISPUTED DOMAIN NAME: <OPTIMUMNUTRITION.CO.IN>

KC 0012687429

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2. The onus of checking the legitimacy is on the users of the certificate.
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Glanbia Performance Nutrition Limited, Glanbia House, Kilkenny, Ireland.

...Complainant

Versus

Ankit Shah, 2344, Kohinoor City, Off Lbs Marg, Kiroi Rd, Kurla West, Mumbai –
400070, Maharashtra, India.

...Respondent

1. **INTRODUCTION:**

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain name Dispute Resolution Policy (the INDRP), adopted by the National Internet Exchange of India (the NIXI), and the INDRP rules and Procedure (the Rules of Procedure).

2. **THE PARTIES:**

The Complainant in the Complaint has submitted the following information with regard to the status and details of the parties to the lis as well as disputed domain name as under:

A) **The Complainant**

As per the Complainant, the Complainant is Glanbia Performance Nutrition Limited, a company organized under the laws of Ireland, and its predecessor in interest was organized in January of 1948. Further, the Complainant is a subsidiary of Glanbia PLC ("Glanbia"), which is the leading international cheese and nutritional ingredients, Glanbia collectively owns and operates Glanbia Performance Nutrition (NA), Inc. and Glanbia Performance Nutrition (Manufacturing), Inc. (Collectively, "GPN). According to the

Complainant, GPN is a renowned manufacturer and marketer of quality consumer performance nutrition products supporting an active lifestyle with deep roots in the sports nutrition industries. The contact details of the Complainant as given in the Complaint are as follows:-

Name & Address: Glanbia Performance Nutrition Limited,
Glanbia House, Kilkenny, Ireland.

The Complainant's authorized representative in this administrative proceeding is:

Akhilesh Kumar Rai, AZB & Partners, Plot No. A8, Sector 04,
Noida – 201301, UP India, Phone: +911204179999
Email: akhileshkumar.raai@azbpartners.com

B) The Respondent

As mentioned in Complaint, according to the WHOIS records, the disputed domain name www.optimumnutrition.co.in ("Offending Domain") is registered in the name of Mr. Ankit Shah and therefore, he has been impleaded as the Respondent in the present proceedings. As per the whois records, the Registrant details are as follows:

Registrant Organization: Not Available.

Address: Ankit Shah, 2344 Kohinoor City, Off Lbs Marg, Kirol Rd, Kurla West, Mumbai 400070, Maharashtra India.

Contact Number: (+91) 9495961664

Email: ankitshahgd@gmail.com

The Extract of WHOIS search has been attached by the Complainant as **Annexure 6** with the Complaint at pages 82 to 84 and a perusal of the same shows that the information submitted by the Complainant is correct.

C) Domain Name and Registrar

i) According to the Complaint and documents on record, This dispute concerns the domain name www.optimumnutrition.co.in

ii) Further, as per the WHOIS record, the accredited registrar of the Impugned Domain is GoDaddy. The details of the Registrar, as given in the Complaint are as under:

Address: 14455 North Hayden Road, Suite 226 Scottsdale, AZ 852606993, United States of America.

Email Address: abuse@godaddy.com and udrp@disputes@godaddy.com

Phone Number: +1 (480) 505-8800

3. PROCEDURAL HISTORY:

- i) Vide mail dated 23.03.2022, the undersigned was appointed as an Arbitrator by National Internet Exchange of India (NIXI) to adjudicate and decide upon the dispute relating to the Domain name <OPTIMUMNUTRITION.CO.IN>.
- ii) Thereafter, vide mail dated 24.03.2022, the undersigned submitted Statement of Acceptance and Declaration of Impartiality and Independence.
- iii) Subsequently, vide mail dated 25.03.2022, the undersigned also received soft copies of Complaint and complete set of documents

enclosed as Annexures which were also supplied to all the concerned parties.

- iv) That on the next day 26.03.2022, the undersigned and all the concerned parties including the Complainant received few mails from the Respondent wherein he mailed various submissions and statements that he only bought the site, did not even by hosting, no coding is done, never done anything, ready to give back the site etc. etc. and also requesting to not file any case or impose any costs etc. The mails are on record of the case. Subsequently, vide mail dated 28.03.2022, Respondent submitted that he is not interested in this domain, Please transfer this domain.
- v) After receiving the above mails from the Respondent, since, the Respondent had already received the copy of the Complaint and all Annexures and also vide reply/response given through above mails admitted his acts of omissions and commission and requested to take a lenient view, therefore, Notice to the Respondent was dispensed with in exercise of powers under rule 8 of INDRP Rules of Procedure and the matter was fixed for passing the Award.

4. CASE OF THE COMPLAINANT:

- i) It is the case of the Complainant that the Complainant is the World's leading producer and marketer of quality consumer performance nutrition products supporting an active lifestyle. Further, the Complainant owns a number of premium sports nutrition brands including, but not limited to, Optimum Nutrition ("ON"), Bio-Engineered Supplements & Nutrition. Inc. ("BSN"), American Body Building ("ABB"), Isopure, think! (Formerly think Thin), Nutramino, Amazing Grass, Body & Fit, and Slim Fast (the GPN Brands"). The GPN

Brands are globally recognized sports nutrition leaders that provide a comprehensive line of products across multiple categories. GPN manufacturers, distributes, markets, and sells a full range of performance nutrition products, with global revenue exceeding hundreds of millions of U.S. Dollars. By virtue of GPN's efforts and considerable sums of money for promotional activities, the Complainant has developed valuable goodwill and an industry-leading reputation with respect to the GPN Brands. As an established global nutrition group, the Complainant has multinational operations, and its products are sold and distributed in over one hundred and thirty (130) countries.

- ii) It is further case of the Complainant that one of the most renowned brands of the Complainant is OPTIMUM NUTRITION (Complainant's Mark) and in the course of trade, the Complainant uses the mark OPTIMUM NUTRITION as a word mark and in the form of a label, ON and ON OPTIMUM NUTRITION. The Optimum Nutrition brand name has been used by the Complainant since 1986, and the ON trademark has been used by the Complainant through its predecessors in title since 2003.
- iii) The Complainant has further mentioned in the Complaint that under the Complainant's Mark, it markets various products including but not limited to. The Complainant also offers apparel and accessories under the Complainant's Mark. The information regarding the abovementioned products can be found on the Complainant's websites with the URL www.optimumnutrition.com which can be accessed from all around the world including India. The Screen prints from the website has been annexed as **Annexure 1** with the Complaint.

- iv) **Annexure 2** with the Complaint are screen prints from WIPO's (World Intellectual Property Organization) Global Brand database Showing Complainant's applications and registrations for the Complainant's Mark ON, OPTIMUM NUTRITION and its formative marks which have been registered/applied for registration by the Complainant in various countries of the world as mentioned in the Complaint.
- v) **Annexure 3** with the Complaint is the copies of the registration certificates/online status of the trademark registrations of the Complainant's Mark in India. According to the Complainant, these registrations have been renewed from time to time and are valid and subsisting as is evident from the evident from the documents annexed.
- vi) **Annexure 4** are copies of invoices evidencing sales of "OPTIMUM NUTRITION" branded products in India since the year 2000 and also that the products bearing the Complainant's Mark have been sold continuously and extensively in India at lease since the year 2000. The document Annexure 5 shows that the products of the Complainant are widely available in India through various e-retailer websites, including but not limited to Amazon.in. Flipkart.com, HealthKart.com, Nutrabay.com bodybuildingindia.com etc.

5. FURTHER SUBMISSIONS OF THE COMPLAINANT:

- i) That the Complainant has submitted that in view of the above, it is evident that the Complainant has been using the Complainant's Mark for more than 30 years and has built an enviable reputation in respect of the said mark (s). The relevant section of the public

associates the complainant's Mark with the Complainant alone and none else.

- ii) Also, that the Complainant, its licensee and its authorized distributors alone have limited rights to use the Complainant's Mark in India. No one other than those permitted by the Complainant can use OPTIMUM NUTRITION as a trademark or part of corporate name or in any manner whatsoever.
- iii) That in order to protect its rights in and to the Complainant's Mark, the Complainant also undertakes various searches to ascertain any third party adoptions for its said marks. The Complainant has also initiated several actions against such third party adoption of the Complainant's Mark or any mark deceptively similar to complainant's mark.
- iv) That from the description provided under the head A of the Complaint. Complainant, it is evident that the Complainant has a long and extensive use of the Complainant's Mark and by virtue of such use, the said marks can be termed as a well recognized mark and that in order to protect the Complainant's Mark from third party adoption, the Complainant undertakes various periodical searches and actions against such adoptions. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.optimumnutrition.co.in in the name of the Respondent.
- v) That the offending domain is currently parked free, as the Respondent hasn't developed a site on it yet and temporarily uses the Domain Registrar's (i.e. GoDaddy) name servers. Registrars usually promote their services on parked domains or only display

advertisements. Attached with the Complaint as **Annexure 7** is a screen print of the webpage hosted on the offending domain.

- vi) That in addition to the above, the current webpage on the offending domain gives options of selecting between: Optimum Nutrition Gold, Optimum, Whey Protein, Creatine, Bcaa and Protein Powder, which are all the products offered by the Complainant. Further, when the user clicks on one of these options the webpage on the offending Domain provides links to various other webpages where the said products can be found. Currently, the webpage on the Offending Domain is acting like a search engine for Complainant's products available on third party websites. Attached herewith as **Annexure 8** are screen prints of the offending Domain evidencing the aforesaid submissions.
- vii) That it is evident that the Respondent has no legitimate use of the Offending Domain. Additionally, the Respondent has no valid reasons for adopting the mark OPTIMUM NUTRITION as part of the Offending Domain. It is to be noted that OPTIMUM NUTRITION" connotes and denotes the goods and services of the complainant alone. Even the search for the mark OPTIMUM NUTRITION on Google search engine only displays results pertaining to the Complainant. Attached herewith as **Annexure 9** are documents evidencing the Google search. In view of the same, it is evident that the adoption of the said mark by the Respondent in the Offending Domain only reeks of dishonestly in the first instance. The Respondent has no right whatsoever to use or adopt the Complainants Mark.
- viii) That the manner in which the Offending Domain has been worded, i.e. www.optimumnutrition.co.in, gives a false impression that the offending domain is the India specific website of the Complainant,

whereas such is not the case. The Respondent will create confusion amongst the consuming public by using the mark OPTIMUM NUTRITION in the Offending Domain.

- ix) That further, the Respondent is not a bonafide user of the Offending Domain, as the Respondent created the Offending Domain in the year 2020 and is yet to operate a website on the same. Further, the Offending Domain displays an option for the purchase of the offending Domain. IT appears that the Respondent is only interested in sale of the Offending Domain to the highest bidder, thereby profiting from established reputation and goodwill generated by the Complainant over years.
- x) That in addition to above, the adoption of the Offending Domain by the Respondent is malafide for the following reasons:

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

- a) As mentioned above, the Complainant offers, specialty nutritional products which include a wide range of healthcare products. Attached with the Complaint as Annexure 10 are screen prints from the website of the Complainant evidencing the products offered by it under the complainant's mark.
- b) The complainant is the lawful and legitimate proprietor of the Complainant's mark as can be evidenced from the registration certificates enclosed herewith as **Annexure 3.**
- c) The Respondent has adopted the exact mark of the Complainant as part of the offending domain, only to cash upon the goodwill of the Complainant, without any

permission, express or implied. Moreover, any use, if any of the offending Domain will lead to confusion amongst customers and may gave them an impression that the Respondent is associated with the Complainant or that the offending domain is the India specific website of the complainant.

- d) The Respondent's adoption of the well recognized trademark 'OPTIMUM' NUTRITION' of the Complainant, as part of the Offending Domain is a violation of the Complainant's rights in and to the Complainant's mark.

B. That the Respondent has no rights or legitimate interests in the domain name:

- a) The Respondent has no right to use/register the mark 'OPTIMUM NUTRITION' of the Complainant in any manner, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the Complainant's mark. The adoption of the mark 'OPTIMUM NUTRITION' by the Respondent is not licensed/permitted, thus adoption of the mark 'OPTIMUM NUTRITION' as part of offending Domain or in any manner whatsoever, results in infringement and passing off the rights of other Complainant in and to the Complainant's mark. Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark OPTIMUM NUTRITION.
- b) The Respondent has parked the offending domain for free and has also provided an option for sale of the Offending Domain. This evidences that the Respondent

has no legitimate interest in using the Offending Domain. The sole aim of the Respondent is to make illegal monetary gains from the reputation and goodwill of the Complainant's Mark, which has been built by the Complainant through years of toil.

C. That the domain name is registered and being used in bad faith.

- a) The bad faith is evident from the adoption of 'OPTIMUM NUTRITION' in the Offending DOMAIN, which is the property of the Complainant and is associated with the Complainant only. The Offending Domain is worded in such a manner that it appears to be India specific website of the Complainant.
- b) The mark OPTIMUM NUTRITION is a well recognized mark and is not a commonly used commonly used combination of word. The said mark is only associated with the Complainant and none else. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith.
- c) The dishonesty and bad faith is also evident from the fact that the Offending Domain has been parked by the Respondent and is made available for sale.
- d) The adoption of the trademark, OPTIMUM NUTRITION, of the Complainant is without a license or other authority, is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The adoption of the Offending Domain by the Respondent is not for non-commercial purposes and

would not fall under the ambit of 'fair use'. The only reason for adoption of the mark 'OPTIMUM NUTRITION' is to make illegal profit. The adoption of the Offending Domain is contrary to the honest commercial practices of trade.

- xi) The Complainant finally submitted that the Respondent is eroding the distinctive character of the Complaint's Mark, and diluting the same. In view of the foregoing, the balance of convenience rests entirely in favour of the Complainant. Accordingly, in the interest of justice and as measure of relief in equity, it is requested that the appropriate authorities be instructed by the Learned Tribunal to have the Offending Domain transferred to the Complainant.

6. FINDING:

The complainant has been able to prove its case as per the INDRP Dispute Resolution Policy on the basis of pleadings, legal grounds and the documents duly supporting its averments and moreover, the Respondent not only accepted his acts of omission and commission but so also admitted the case of the Complainant to the fact that the domain was created with no intention to use it and nothing has been done on the said site. The Respondent also submitted to give back the site/domain and also requested to transfer the domain. In view of the above observations, the Complaint deserves to be allowed in favour of the Complainant.

7. CONCLUSION:

The Complaint no. 1520 of 2021-22 relating to disputed domain name <OPTIMUMNUTRITION.CO.IN> is allowed and an award is passed in favour of the Complainant and against the Respondent.

8. **AWARD:**

In view of above, it is ordered that the **disputed domain name OPTIMUMNUTRITION.CO.IN** is transferred in favour of the Complainant.

In view of the requests made by the Respondent in the mails dated 26.03.2022 and 28.03.2022, no order as to imposition of costs upon the Respondent is being made. Moreover, in Para 28 where the Complainant requested for remedies, no request was made by the Complainant for awarding the costs. However, with this decision, a warning is given to the Respondent to be careful in future and not to indulge in any such kind of mischief or any illegal act of omission and commission which may lead to initiation of similar proceedings, otherwise, no excuse shall be accepted or lenient view shall be taken in future.

Signed on this 29th April 2022.



(Sajal Koser)
Arbitrator