



सत्यमेव जयते

# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

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|---------------------------|---|
| Certificate No.           | : IN-CH38847319656240U                          |
| Certificate Issued Date   | : 25-Nov-2022 05:52 PM                          |
| Certificate Issued By     | : chrajkumi                                     |
| Account Reference         | : IMPACC (GV)/ chimp07/ E-SAMPARK SEC-35/ CH-CH |
| Unique Doc. Reference     | : SUBIN-CHCHIMPSP0776751228480385U              |
| Purchased by              | : SAJAL KOSER                                   |
| Description of Document   | : Article 12 Award                              |
| Property Description      | : Not Applicable                                |
| Consideration Price (Rs.) | : 0<br>(Zero)                                   |
| First Party               | : SAJAL KOSER                                   |
| Second Party              | : RAJESH KUMAR                                  |
| Stamp Duty Paid By        | : SAJAL KOSER                                   |
| Stamp Duty Amount(Rs.)    | : 100<br>(One Hundred only)                     |



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### ARBITRATION AWARD

**BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH**

**INDRP CASE NO. 1613 OF 2022**

**DISPUTED DOMAIN NAME: < WWW.PEVONIA.IN >**

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JD 0006823298

#### Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

Pevonia International LLC, 300 Fentress Boulevard, Florida 32114 USA.

...Complainant

Versus

Justin, 4-1-501, Phase 2, LongHuYanLanShan, XiaSha District, Hangszhou, Zhejiang, 310018, CN.

...Respondent

A. INTRODUCTION:

The Complainant in the present case is PEVONIA INTERNATIONAL LLC, a manufacturer of personal and beauty care products through its authorized representative has submitted the present complaint for arbitration in accordance with INDRP Policy and Rules of Procedure, which is been entrusted to the undersigned.

B. THE PARTIES:

I) Complainant

The Complainant in the present case is PEVONIA INTERNATIONAL LLC (herein after referred to as "Complainant" ), a manufacturer of personal and beauty care products. The Complainant manufactures and distributes its products for spas and professional aestheticians and also sells its products directly to consumers within the U.S. through its on-line website ([www.pevonia.com](http://www.pevonia.com)) and through other on-line retail stores. According to the Complainant, its products have a global distribution network to cater to customers in several jurisdictions of the world. The Complainant was founded in the year 1991 in USA and since then has launched several successful cosmetic products which have reached significant number of users. The Complainant has submitted the present complaint.



II) **Respondent**

According to the Complainant, the search conducted on 19<sup>th</sup> August 2022 in the official website of i.e., [www.whois.com](http://www.whois.com) did not reveal the Respondent details and the address provided is merely Zhejiang, CN. Further, the disputed domain name has been created on 19<sup>th</sup> November 2020. Copy of the search result on the impugned domain name **WWW.PEVONIA.IN** is found in the records of 'WHOIS' as attached with Complaint as 'Annexure - A'. AND/OR (newly identified Respondent) Justin, 4-1-501 LongHuYanLanShan, XiaSha District, Hangzhou, Zhejiang, 310018 CN . A copy of the whois record pertaining to the impugned domain name i.e., [www.pevonian.in](http://www.pevonian.in) procured from .IN Registry on 28<sup>th</sup> September 2022 is annexed with the Complaint as 'Annexure-A1'. The Complainant has also placed on record printout of the web pages as 'Annexure-B'.

III) **The Domain Name and Registrar**

This dispute concerns the domain name identified below (as mentioned earlier):

<WWW.PEVONIA.IN>

IV) **The Registrar with whom the domain name is registered is:**

Registrar: Dynadot LLC

Address: 210 S Ellsworth Ave # 345 San Mateo, CA 94401US

Telephone Number: NIL

Fax Number: +1.415-869-2583

Email: [info@dynadot.com](mailto:info@dynadot.com)

C. **PROCEDURAL HISTORY:**

- i) Vide email dated 28.09.2022, the undersigned was appointed as an Arbitrator to adjudicate the above mentioned dispute. Vide email of


the same date sent to all the concerned parties, the undersigned submitted statement of Acceptance and declaration of impartiality and independence.

- ii) As the undersigned received the complaint and all the documents as annexed with the complaint and being satisfied that the Respondent has also received the same, Notice to the Respondent was issued on 05.10.2022 requiring the respondent to file reply within 15 days as provided in INDRP Rules of Procedure.
- iii) As within the stipulated period and thereafter also till 26.10.2022, since, the Respondent neither filed reply nor submitted any response to the complaint/notice, vide order dated 26.10.2022, the Respondent was proceeded against ex-parte and the matter was fixed for passing award.

**D. PRELIMINARY SUBMISSIONS OF THE COMPLAINANT:**

While establishing jurisdictional basis for the present arbitration proceedings, the Complainant submitted that the dispute falls properly within the scope of the .IN Domain Name Dispute Resolution Policy (INDRP) and the Administrative Panel has the jurisdiction to decide the dispute for the following reasons:

- a) That the domain name in question is identical to the Complainant's trade mark **PEVONIA**;
- b) That **PEVONIA** also forms a dominant part of the complainant's corporate name since the year 1991;
- c) That the Respondent has no claims, rights or legitimate interests in respect of disputed domain name;
- d) That the domain name [www.pevonias.in](http://www.pevonias.in) has been registered in bad faith;
- e) That the Complainant has obtained trademark registration for **PEVONIA** in several countries;





- f) That the Complainant also owns and controls the domain name [www.pevonias.com](http://www.pevonias.com);
- g) That the Complainant has generated good and valuable reputation and vast amount of goodwill has accrued to the Complainant in the name of **PEVONIA** through internet over several years;
- h) That the Respondent has adopted and registered the disputed domain name, which is identical to the trade mark and/or corporate name of the Complainant, thereby wrongfully, illegally and dishonestly trading upon the reputation of the Complainant.

The Complainant has also placed on record a true and correct copy of the INDRP Policy and INDRP Rules of procedure as applicable to the domain name in question as 'Annexure-C' to this complaint.

**E. The Complainant has based its Complaint on the following grounds in order to fulfill the requirements as provided in the relevant clauses of INDRP dispute resolution policy:**

- i) **That the disputed domain name is identical or confusingly similar to a trade mark in which the complainant has rights.**
  - a) It is the case of the Complainant that it provides personal care products to spas and professional aestheticians and also sells directly to consumers through a multitude of retail channels, including but not limited to its personal on-line store found at **[www.pevonias.com](http://www.pevonias.com)**. Further, the Complainant is known for its innovative products which are safe and most scientifically advanced, proven to be effective natural solutions to address multitude of skin care concerns.
  - b) Further, the Complainant's products are also retailed on several popular e-commerce platforms such as [www.amazon.in](http://www.amazon.in), [www.myshopify.com](http://www.myshopify.com), [www.ubuy.co.in](http://www.ubuy.co.in), [www.Luxury.tatacliq.com](http://www.Luxury.tatacliq.com). The trademark **PEVONIA** and the

associated products have extensive market presence and significant client base in India.

- c) It is also mentioned in the Complaint that the Complainant has direct operations and distribution network in Japan, Spain, Australia, Korea, Sweden, Austria, Latvia, Malaysia, Switzerland, Bulgaria, Lithuania, Trinidad & Tobago etc. Though, in the Complaint, Complainant stated that an extract from the Complainant's website on the list of jurisdictions where the Complainant has operations is annexed as Annexure D but the same has not been made part of the Complaint and therefore the said statement of the Complainant is not established. Annexure D are the pages from 'google search'. However, according to the Complainant, its brand **PEVONIA** has been trusted and has a customer base of professional estheticians at the finest spas in nearly 100 countries. It is noted here that this averment has also not supported by any cogent document or evidence.
- d) In addition to the above, it is the case of the Complainant that its products are frequently featured in exclusive magazines throughout the world. The Complainant's market place can be explored using everyday search engine tools like **GOOGLE**, **BING** etc. The Complainant has an impressive social media presence on platforms like "**LINKEDIN**" and "**INSTAGRAM**". Information on the Complainant and the associated business can be found in: <https://www.youtube.com/user/pevonias>
- e) It is further case of the Complainant that the use of the keyword **PEVONIA** in any leading search engine throws up the web pages of the Complainant among the leading hits. The good search engine pages are annexed as Annexure D with the Complaint and not as Annexure E as mentioned in the complaint as Annexure E are the Trade Mark Certificates.



- f) As per Complainant, on account of extensive usage of the trade mark **PEVONIA**, the adoption and/or usage of **PEVONIA** by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception amongst the end customers. Such unauthorized usage of the Complainant's trade mark **PEVONIA**, and domain names comprising of **PEVONIA** by others would amount to infringement of Complainant's trade mark rights and is liable to be prevented in the Court of Law.

ii) **That the Respondent has no rights or legitimate interests in respect of the domain name**

- a) In order to prove its case under the abovementioned class of disputes, the complainant submits that the trade mark **PEVONIA** has acquired both statutory right and Common Law right and the complainant has relied upon various Trade Mark registrations for the purpose of the instant complaint as mentioned in the tabular form under para B of the Complaint and has also annexed Copy of the trade mark registration certificates which are annexed as Annexure E and not 'Annexure F' as mentioned in the Complaint.
- b) It is stated that the Respondent has no right to and legitimate interest in the domain name www.pevonias.in. The Respondent illegally and wrongfully adopted the trade mark **PEVONIA** of the Complainant with the intention to create an impression of an association with the Complainant.
- c) It is further case of the Complainant that the respondent wrongfully and fraudulently adopted and registered the impugned domain name www.pevonias.in in order to utilize the name and reputation without having any rights thereto and in spite of having full knowledge of the Complainant's presence

internationally, including India.

- d) Further according to the complainant, in view of identical nature of goods and common client base, the Complainant submits that the respondent's intent is to en-cash on the goodwill and reputation associated with the Complainant's trade mark **PEVONIA**.
- e) It is further stated that the Complainant and/or any other associated entity has not licensed or otherwise permitted the respondent to use **PEVONIA** nor has it permitted the respondent to apply for or use any 'Domain Name' incorporating the mark **PEVONIA**.
- f) The Complainant further submits that the disputed domain name clearly incorporates the Complainant's trade mark **PEVONIA** in the entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the **INDRP**. In support of its abovementioned averments, the Complainant has relied upon the Award passed in the case of **INDRP/642 MOZILLA FOUNDATION Vs Mr. CHANDAN [www.mozilla.in](http://www.mozilla.in)** and has been annexed as 'Annexure F' and not Annexure G as erroneously stated in the Complaint. According to the Complainant, the disputed domain name will give unwary visitors to the domain an impression that the disputed domain name has been authorized by the Complainant. It is pertinent to mention that the Complainant has no connection with the disputed domain name holder and the Complainant has never permitted the respondent to create the disputed domain name.
- g) The Complainant in support of its Claim that it has enormous presence on the Internet and ownership of the domain names consisting of the word '**PEVONIA**' has submitted details in tabular form in para (vii) of Part B of the Complaint and has also submitted WHOIS records of some domain names which are





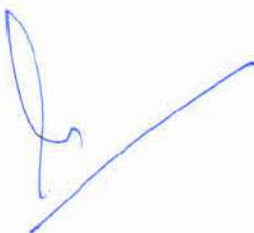
annexed as Annexure G and the same copy has again been annexed as Annexure H with the Complaint.

**iii) The domain name was registered and is being used in bad faith.**

- a) In support of the above ground, the Complainant has stated that the respondent registered the domain name WWW.PEVONIA.IN in its favor with the "Dynadot LLC" and Referral URL: <http://www.dynadot.com> as the registrar, the administrative contact being Zhejiang, CN. The domain name WWW.PEVONIA.IN was created on 19<sup>th</sup> November 2020.
- b) According to the complainant, an innocent consumer is bound to be misled by this impugned domain name WWW.PEVONIA.IN registered by the respondent. In the entirety of facts and circumstances obtainable in the present case as also in the wake of objections available in the present case, registration of the impugned domain name by using the word 'PEVONIA' without seeking prior concurrence/approval/permission of Complainant amounts to "passing off" on the part of the respondent/user of the domain name. The clear intention of the respondent appears to be to commit fraud and mislead innocent and gullible consumer by unfair and dishonest means.
- c) Complainant further submits that the use and existence of the impugned domain name will cause damage and injury both to the Complainant's business, their reputation and to the consumers and general public. The respondent has attempted to make a deliberate misrepresentation to the public at large and it certainly cannot be a matter of mere coincidence. The misrepresentation is bound to cause confusion and deception in the minds of the purchasing public.
- d) As per the Complainant as mentioned in the complaint, the

members of the public have come to associate the trade mark **PEVONIA** solely with the Complainant. Therefore, any on-line promotion or reviews which may be carried out by the respondent under the name **PEVONIA** is bound to cause confusion and/or likely to cause confusion in the minds of the public as being associated with the Complainant and its Group of Companies. The research conducted on the business of the respondent shows that the same is identical to the Complainant's business interest as evident from Annexure B.

- e) It is stated that the registration of the impugned Domain Name by the respondent is made in bad faith. It is furthermore stated that it is undoubtedly the dishonest motive of the respondent to register such domain name comprising of popular and reputed Trade Marks to clandestinely negotiate for transfer of the same for consideration. Further, The conduct of the respondent leaves no doubt as to its unscrupulous motive and illegal intentions and the Complainant is apprehensive that the respondent is in active search of an assignee for the impugned domain name and would sell the same and make illegal profit.
- f) The Complainant has further averred in the Complaint that 'inaction' is within the concept of 'bad faith' and is supported by the actual provisions of the Uniform Policy. Paragraph 4(b) of the Uniform Policy identifies, without limitation, circumstances that shall be evidence of registration and use of a domain name in bad faith, for the purpose of paragraph 4(a) (iii). Only one of these circumstances [4(b) (iv)], by necessity, involves a positive action post-registration undertaken in relation to the domain name (using the name to attract customers to a web site or some other on-line location). The other three circumstances contemplate either a positive action or inaction in relation to the domain name. The circumstances identified in paragraphs 4(b)





(i)(ii) and (iii) can be found in a situation involving a passive holding of the domain name registration. Furthermore, according to the Complainant, it must be recalled that the circumstances identified in paragraphs 4(b) are "without limitation"-that is, paragraph 4(b) expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith.

g) Finally, the Complainant stated that in the particular facts and circumstances of this case, leads to following conclusions:

1. The Complainant's trade mark '**PEVONIA**' has a strong reputation and is widely known, as evidenced by its substantial use throughout the world.
2. The respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the domain name.
3. Taking into account all of the above and the other facts and circumstances submitted in the complaint, it is not possible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as the tort of passing off, an infringement of consumer protection legislation or an infringement of the complainants rights under the trade mark law.
4. That furthermore it is stated that the domain name WWW.PEVONIA.IN is obviously connected to the trade mark '**PEVONIA**' belonging to the Complainant, that the very use of the impugned domain name by someone with no connection with the Complainant suggests opportunistic bad faith.

A handwritten signature in blue ink, consisting of a stylized 'V' shape followed by a long, sweeping horizontal line.

**F. RELIEF SOUGHT:**

On the basis of the averments made in the Complaint as well as documents annexed, the Complainant, in accordance with Paragraph 10 of the INDRP Policy, requested that the domain name <**WWW.PEVONIA.IN**> may kindly be transferred to the Complainant and for any other appropriate orders.

**G. FINDINGS:**

After going through unrebutted and uncontroverted averments and submissions made in the Complaint as well as the documents annexed, the undersigned is of the view that the Complainant has been able to prove the ingredients of sub paras/sub clauses (a) to (c) of Clause 4 of the INDRP dispute Resolution Policy. From the contents and grounds mentioned in the complaint, it has been proved on record that the Disputed Domain Name is not only identical but so also is confusingly similar to the Trademark in which the complainant has rights. It has also been proved that the Respondent Registrant has no rights or legitimate interest in respect of the Domain name and also that the Domain name has been registered by the Respondent and is being used in bad faith. The Complainant has been able to prove its case in terms of clause 4 of the INDRP Dispute Resolution Policy and also falls within the ambit of Clause 7 of the said policy as and wherever applicable. Since, the Respondent has not chosen to contest the present case, therefore, this Tribunal has no other alternative but to consider and accept the unrebutted contentions of the Complainant as made out in the Complaint.

**H. CONCLUSION:**

As evident from the findings above, since, the Complainant has proven its case as required under the INDRP Dispute Resolution Policy, therefore, the Complaint is allowed with cost and the following award is being passed in favour of the complainant and against the Respondent.



I. **AWARD:**

In view of above, it is awarded that the disputed domain name <WWW.PEVONIA.IN> is transferred to the complainant Pevonia International LLC. Accordingly, the registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark <WWW.PEVONIA.IN> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

J. **COST:**

As due to abovementioned wrongful acts of the Respondent, the complainant has been unnecessarily forced to initiate the present arbitral proceedings, therefore, the cost of the proceedings are also awarded in favour of the Complainant.



(Sajal Koser)

Arbitrator

04.12.2022