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BEFORE THE NATIONAL INTERNET EXCHANGE OF
INDIA

ARBITRATION AWARD

In The Matter of

BOEHRINGER INGELHEIM
VETMEDICA GmbH

Complainant

Versus.

Jiaai, EAC INTERNATIONAL

Respondent

Harini Narayanswamy

The Parties

The Complainant is Boehringer Ingelheim Vetmedica GmbH, of Strasse Germany and is represented in these proceedings by Laurent Becker of Nameshield, France. The Respondent is Jaiaai , EAC International of Sydney, New South Wales, Australia.

1. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <metacam.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is IN Registrar. The disputed domain name was registered on November 19, 2015. The Arbitration proceedings are conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

2. Procedural History

The Arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on April 28, 2016 and on May 6, 2016 transmitted by email a notification to the Respondent stating that the Respondent can make a written representing in these arbitration proceedings. Copies of the said notification were sent to other interested parties to the dispute under the INDRP Rules.

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Factual Background

The Complainant is a pharmaceutical multinational company that owns the trademark METACAM. The Complainant has provided details of its trademark registrations:

Trademark	Country	Registration Number	Registration Date
METACAM	International	547717	January 8, 1990
METACAM	Europe	2735850	June 13, 2002

The Complainant states that it owns several domain names with the METACAM trade mark and has submitted a list of its domain names as evidence.

The Respondent did not respond in these proceedings. From the registration record, it appears that the Respondent is located in Australia and has registered the disputed domain name <metacam.in> on November 19, 2015.

3. Parties contentions

A. Complainant's Submissions

The Complainant states it is a family owned pharmaceutical group, founded by Albert Boehringer around the year 1885, at Ingelheim, Rhein. It presently has about 142 affiliated companies world –wide with approximately 47,400 employees and has evolved to become a global research- driven pharmaceutical enterprise. The Complainant states its two main business areas are human pharmaceuticals and animal health and the net sales of its group, was about EUR 14.1 billion in the year 2013.

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METACAM is the trademark for “meoxicam”, a non steroid anti inflammatory drug that is used in the treatment of arthritis for pets. The Complainant states that the disputed domain name is identical to its trademark METACAM, which is used in its entirety in the disputed domain name without adding any letters or words. The Complainant contends that the addition of the ccTLD “.IN” is not sufficient to distinguish the domain name from its trademark METACAM.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent has no relationship with the Complainant’s business and is not authorized or licensed to use the METACAM trademark. The Complainant further argues, that the Respondent is not known by the disputed domain name as the registration information shows the Respondent’s name is “Jiaai”, and the registrant organization is “EAC International”. The Complainant states the Respondent organization has engaged in a pattern of registering domain names, and has provided a list of domain name cases where the Respondent has been found to lack rights in such domain names. These cases are:

- i) WIPO Case No. 2014 -0647, *Societe Anonyme des Galeries Lafayette vs. Eac International Co.*
- ii) WIPO Case No. 2014 -0372 *Boehringer Ingelheim International vs. Eac International Co.*
- iii) WIPO Case No. 2013-1902 *Barilla G. e. R Fratelli S.p.A . vs. Eac International Co.*
- iv) WIPO Case No. 2013- 1210 *Michelin Recherche et Technique S.A . Eac International Co.*

The Complainant argues, that the website associated with the disputed domain name, points to commercial links related to the Complainant’s area of business.

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The Complainant states that it had sent a cease and desist letter seeking reasons for registration of the disputed domain name, but the Respondent did not reply.

The Complainant states that the disputed domain name has been registered in bad faith as the disputed domain name is identical to its trademark. Given the distinctiveness of its trademark, the Complainant argues that the Respondent ought to have registered the domain name with full knowledge of the trademark. The Complainant further argues that the disputed domain name is being used in bad faith as the domain name points to a landing page with commercial links in relation to the Complainant. The Respondent therefore ought to have registered the disputed domain name to attract Internet users to its website for commercial gain by creating likelihood of confusion with the Complainant and its mark. The Complainant further argues, that the Respondent has not justified the registration of the disputed domain name. The Complainant therefore requests for the remedy of transfer of the disputed domain name.

Respondent's Submissions

The Respondent did not respond in these proceedings.

Discussion and Findings

The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- (i) The disputed domain name is identical or confusingly similar to a 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.

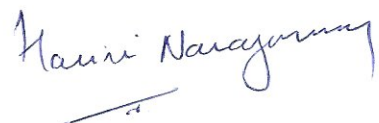
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Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has provided evidence of its registered trademarks, based on which, it is found that the Complainant has established its rights in the trademark METACAM. It is well accepted, that submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark. Based on the undisputed evidence and the documents filed by the Complainant, the Arbitrator finds that the mark has been used by the Complainant for a considerable period, prior to the registration of the disputed domain name. The Complainant's evidence on record show the international trademark registration for the METACAM mark bearing number 547717 is dated January 8, 1990.

The disputed domain name incorporates the METACAM mark in its entirety. A domain name that incorporates a trademark in its entirety is adequate to establish that the disputed domain name is identical to the mark. See *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP case 148 September 27, 2010 <gingerhotels.co.in>. (A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.) As rightly argued by the Complainant, the addition of the country code top-level domain (cc TLD) suffix ".in" does not lessen the confusing similarity of the domain name with the trademark. See *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010.


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In the Arbitrator's considered view, if an unsuspecting customer of the Complainant, should come across the disputed domain name, he or she would be confused or misled to believe that the disputed domain name is in some way connected to the Complainant or its business.

For the reasons discussed, the Complainant is found to have satisfied the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to make a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent is not commonly known by the domain name and has no connection with the Complainant. The Respondent has not responded in these proceedings and rebutted the Complainant's arguments. There is no material on record that indicates that the Respondent is likely to have any rights in the disputed domain name. On record, it is found that the disputed domain name is being used by the Respondent for displaying various sponsored links including links to pet product websites for dog shampoo, dog flea treatment, prevention of parasites on pets etc. It is well established that hosting such pay per click links by using a well known trademark of another in the domain name, is exploitative use of the trademark.

The use of the Complainant's trademark in the disputed domain name is likely to mislead the Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain

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name gives a false impression to users. Therefore, it is found based on the facts here that the use of the disputed domain name for various pay per click pet related sponsored links is not legitimate use or *bona fide* use of the domain name under the Policy.

The Arbitrator finds based on the facts and circumstances discussed, that the Complainant has made a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has emphasized two main points in support of its assertions that the disputed domain name has been registered and is being used in bad faith. These are: (i) the Complainant has well-established rights in the trademark METACAM at the time the disputed domain name was registered, and (ii) the Respondent has intentionally attempted to attract Internet users, by creating a likelihood of confusion with the Complainant's mark as to the source of endorsement or affiliation of the website linked to the disputed domain name;

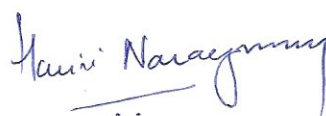
The Arbitrator finds the Complainant has established its prior adoption of the METACAM mark and its well established rights in the mark. Particularly, as the word "Metacam" is not a dictionary word and has no meaning except to signify the the trademark of the Complainant, it is likely that the Respondent was aware of the Complainant's prior rights in the mark when he registered the disputed domain name.

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The Registration of a domain name that is confusingly similar or identical to a famous mark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. It can be reasonably inferred from the facts and circumstances discussed here that there appears to be an intention of attracting persons to the Respondent's website based on the fame of the trademark, and such registration and use is considered bad faith under the Policy. See for instance: *Wendy's LLC vs. Apex Limited*, INDRP Case No. 737, January 12 2016 (Where the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with the WENDY'S trademark and was held to be registration and use of the domain name in bad faith).

Operating a website that has pay-per click links that seeks to exploit or gain from the reputation associated with another's trademark is recognized as bad faith use of a domain name. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. Registration of the disputed domain name using the well established trademark of the Complainant known for pet pharmaceutical products and posting numerous sponsored links related to pet medicinal products on the website is recognized as bad faith registration and use as envisaged under the Policy. See *F.D Management Inc. & Another vs. Song Guang Xui*, INDRP Case No. 734, dated December 10, 2015 pertaining to the domain name <elizabetharden.in>.

The Respondent in the present case is found to have registered the disputed domain name to get undue advantage from the goodwill associated with the Complainant's trademark, and as such is found to have registered and used of the disputed domain name in bad faith, as understood under the INDRP Policy.


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The Arbitrator further notes the Respondent organization, "Eac International", has exhibited a pattern of registrations of domain names that have been found to be registered and used in bad faith. Exhibiting a pattern of such conduct by a respondent is known to demonstrate bad faith registration and use under the INDRP Policy. See *BASF SE vs. Gao Gou*, INDRP Case No. 752 dated January 28, 2016 (where the respondent was found to have been involved in previous domain name disputes and thereby found to exhibit a pattern of conduct of registration and use of domain names based on trademark rights of others which is contemplated as bad faith under the Policy).

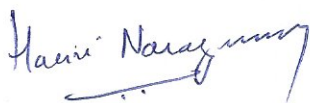
Finally, the Arbitrator notes, that the Respondent has not replied the Complainant's communications and has not responded in these proceedings or given any reasons for registering the disputed domain name. Such behavior also reinforces the indication of bad faith.

For all the reasons discussed, the Arbitrator finds the disputed domain name has been registered and is being used in bad faith under the Policy.

Decision

The Complainant has successfully established the three elements under the INDRP Policy in these proceedings.

For the reasons discussed, it is ordered that the disputed domain name: <metacam.in> be transferred to the Complainant.



Harini Narayanswamy (Arbitrator)

Date: JUNE 28, 2016