

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Novartis AG, of CH-4002, Basel, Switzerland. The Complainant is represented by its authorized representatives Mr. Rahul Chaudhry, Lall Lahiri and Salhotra, LLS House, Plot no. B-28, Sector – 32 (Industrial Area), Gurgaon – 122 001, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Ye Genrong, Chaoyaomen Street, 1080 Km, Beijing, 100008, China as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.novartis.co.in. The Registrar is Directi Internet Solutions Pvt. Ltd.

3) Procedural History:

This arbitration proceeding is 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) were approved by NIXI on 28th June, 2005 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.

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

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula 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 Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on March 28, 2013 and the notice was issued to the Respondent on April 02, 2013 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On April 17, 2013 the Arbitrator granted further opportunity to the Respondent to submit its response on or before April 26, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter.



In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions

- a) The Complainant, Novartis AG is a world renowned manufacturer and merchant of inter alia pharmaceutical and medicinal products of all kinds.
- b) The Complainant is also a world leader in the research and development of products that protect and improve health and well being. The complainant has been ranked as the World's most admired pharmaceutical company by the Fortune Magazine. The Complainant came into existence on March 07, 1996 after a merger between two Swiss based Chemical life sciences giants Sandoz AG and Ciba Geigy AG. The core business of the Complainant and its group companies including Novartis India are pharmaceuticals, vaccines, consumer health, generics, eye care and animal health.
- c) The word NOVARTIS is an invented word and has been in use as a corporate name and trademark since the year 1996 by the Complainant.
- d) The complainant is the registered proprietor of the mark Novartis in various jurisdictions around the world including Australia, Brazil, Canada, China, Japan, New Zealand, USA and community trademark application. The complainant is the prior adopter and user of the trademark NOVARTIS, which was coined by the Complainant. The first use of the said mark can be traced to the year 1996.
- e) The Complainant is well-known around the world by the mark NOVARTIS and substantial revenue has been generated by the complainant under the said name. Complainant has spent a considerable amount of money promoting the NOVARTIS brand worldwide like they publish articles, advertisements, brochures and circulated in different countries including India discussing the popularity and recognition of the NOVARTIS trademark.



- f) The Complainant's website www.novartis.com was created on April 02, 1996 and is equally popular among the viewers all over the world including in India. Relevant information pertaining to the Complainant and its well known brand is readily available on the website www.novartis.com. The Complainant has also registered various domain names for and containing the mark NOVARTIS including but not limited to www.novartis.com; www.novartis.in; www.us.novartis.com and www.novartis.co.uk.
- g) Recently the Complainant became aware of the website www.novartis.co.in domain name is deceptively similar with the Complainant's NOVARTIS mark, as the Respondent's domain name incorporates Complainant's mark in its entirety.
- h) The Respondent's website www.novartis.co.in appears to be a parking page following a "pay-per-click" format and listing various websites and/or business under titles such as "Job Vacancies", "Chemistry Services", "Make huge income at home", "pharmaceutical training" and others which continue to change periodically. The website also goes further by providing links to other websites upon clicking on any of the links. Thus, it is clear that the website is attempting to create confusion in the minds of consumers by associating itself with the Complainant and thereby generating revenue by directing the said users to other websites and other businesses providing other goods and services.
- i) The links being hosted by Respondent on the impugned website direct users to other websites such as www.Quikr.com, www.shine.com, www.olx.in, www.monsterindia.com etc among others. The said website has been specifically designed to redirect users from the website of the Respondent to other providers rendering other goods and services by creating confusion as to the origin of the website and of the links being hosted therein.
- j) The Respondent's domain name www.novartis.co.in is identical, phonetically and substantially similar to the well-known mark/ domain name / corporate name of the Complainant. The Respondent has made use of the entire trademark and trade name of the Complainant as part of its domain name with no distinguishing feature therein.
- k) The Respondent neither has any legitimate interest in the mark NOVARTIS nor is the lawful owner of any right relating to the Complainant's mark. The Respondent bears no relationship to the business of the Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the Complainant's mark.



- l) A consumer searching for information concerning Complainant is likely to be confused as to whether the Respondent is concerned, affiliated or associated with or sponsored or endorsed by Complainant.
- m) The Complainants website www.novartis.com was created on April 02, 1996 and the use of the mark NOVARTIS has commenced as early as 1996. However, the Respondent's website www.novartis.co.in was created on August 19, 2011 which is more than 15 years after the Complainant had commenced the use the mark, corporate name and domain name NOVARTIS. The complainant being the prior user of the registered mark NOVARTIS is the lawful owner of the trademark/ corporate name NOVARTIS and the Respondent does not have any legitimate interest in the domain name.
- n) Thus, the circumstances indicate that the Respondent has registered or acquired the domain name with dishonest intention to mislead and divert the consumers and to tarnish the well known trade mark/ corporate name NOVARTIS of the Complainant.
- o) Thus it is clear that the Respondent has registered and is using the domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's NOVARTIS marks and from the likelihood that interest users will mistakenly believe that the impugned domain name and its associated websites are connected to the complainant and its goods/ services.
- p) The Respondent has registered and is using the domain name primarily for the purpose of disrupting the business of the Complainant and has no prior rights in and no authorization to use given by the Complainant concerning the NOVARTIS trademark.
- q) The Respondent use of the domain name www.novartis.co.in to operate link farms that provide links to other website promoting various products and services. The same itself amounts to evidence in bad faith.
- r) Respondent is thus not using the domain name for legitimate personal or business purposes. Instead, it is apparent that the intention of the Respondent is to create initial-user confusion and divert users to its website and thereafter provide links to website providing other goods and services and thereby generating revenue for itself.

5) Respondent

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 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'NOVARTIS' leads to the conclusion that the Complainant has superior and prior rights in the mark 'NOVARTIS'. Thus it can be said a) the web users associate the word 'NOVARTIS' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and company information at the www.novartis.co.in and c) they may believe it is a website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'NOVARTIS'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'NOVARTIS' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

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

The Complainant has not authorised the Respondent to register or use the 'www.novartis.co.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to explain his adoption. Further shown no interest in protecting his own rights and interest in the domain name. The website of the Respondent shows that it has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.



The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name novartis.co.in.


(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'NOVARTIS' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith' to attract internet traffic.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.novartis.co.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.novartis.co.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

May 14, 2013