



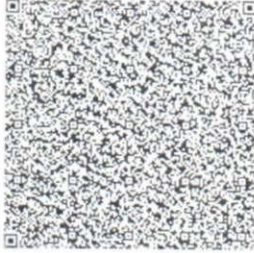
सत्यमेव जयते

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e-Stamp

Certificate No.	: IN-DL95442506548576Q
Certificate Issued Date	: 05-Mar-2018 12:39 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1794356445996708Q
Purchased by	: AMARJIT SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AMARJIT SINGH ADVOCATE
Second Party	: Not Applicable
Stamp Duty Paid By	: AMARJIT SINGH ADVOCATE
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ARBITRATION AWARD
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA

**.IN domain Name Dispute Resolution Policy INDRP Rules of
Procedure**

IN THE MATTER OF:

NOVARTIS AG
Postfach, CH-4002 Basel,
SWITZERLAND

.....Complainant

Aravind R
12-2-800/109/110,
Telangana 500028
Hyderabad
INDIA

.....Respondent

1. THE PARTIES:

- 1.1. The Complainant in this administrative proceeding is NOVARTIS AG, Postfach, CH-4002 Basel, Switzerland and is represented through BrandIT GmbH, Bellerivestrasse 49 / 8008 Zurich / Switzertland.
- 1.2. The Respondent in this administrative proceeding is Aravind R, 12-2-800/109/110, Telangana 500028, Hyderabad, India.

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <www.novartisindia.in> has been registered by the Complainant. The registrar with



whom the disputed domain is registered GoDaddy.com. LLC.

PROCEDURAL HISTORY

- 3.1** The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Aravind R, 12-2-800/109/110, Telangana 500028, Hyderabad, India. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").
- 3.2** In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with INDRP Policy and The Arbitration and Conciliation Act, 1996, Rules framed there under. The parties were first notified about my appointment of as Arbitrator on **5th January, 2018**.
- 3.3** The panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 10th January, 2018. In accordance with the rules, paragraph 5(c), the Respondent was notified about the commencement of arbitration proceedings and was sent the complaint along with all the Annexure by NIXI.



3.4 Copy of the Complaint and the annexures thereto were forwarded to the Respondent by e-mail dated 9th January 2018 which were duly delivered at the e-mail address of the Respondent. Copy of the Complaint and the annexures thereto were also forwarded to the Respondent through courier at the address furnished by the Respondent at the time of obtaining registration of the disputed domain name. The courier agency returned the envelope with the remarks “no such person/company at given address”. The Respondent by e-mail dated 10th January 2018 was also intimated by this panel about the arbitration proceedings and was granted 10 days time ending on 21st January 2018 to file his response/written statement. The e-mail dated 10th January 2018 was also duly delivered at the e-mail address furnished by the Respondent at the time of obtaining registration of the disputed domain name. This panel by its e-mail of 5th February 2018, copy whereof was also forwarded to the Respondent, and which was duly delivered, intimated the parties that the Respondent was duly served through e-mail and an opportunity to file his response was given to him. This panel also notified the parties that the Respondent has failed to file his response and that the matter will be decided on the basis of the material on record and in accordance with the law in due course. The Respondent potentially breached the provisions of 3(a) of INDRP Policy as the Respondent was under obligation to provide complete and



accurate address in the application form for registration of Domain name.

3.5 The panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.6 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

4 FACTUAL BACKGROUND

4.1 The Complainant is the registered proprietor of the trade mark "NOVARTIS" as a word and figure mark in numerous countries all over the world, including India. The trade mark NOVARTIS is registered in the name of the Complainant under No. 700020 in Class 5 as of 28th February 1996 in India. Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "Novartis", for example, <novartis.com> (created on April 2, 1996), <novartis.net> (created on April 25, 1998) and <novartis.in> (created on February 16, 2005).



4.2 The disputed domain name www.novartisindia.in was registered by the Respondent on 22nd February 2017. Aggrieved by the said registration, the present Complaint is filed.

5. PARTIES CONTENTIONS

5A. COMPLAINANT

5A-1 Novartis is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide (please see, <https://www.novartis.com>). Novartis manufactures drugs such as clozapine (Clozaril), diclofenac (Voltaren), carbamazepine (Tegretol), valsartan (Diovan) and many others. Novartis was created in 1996 through a merger of Ciba-Geigy and Sandoz. Novartis and its predecessor companies trace roots back more than 250 years, with a rich history of developing innovative products. From beginnings in the production of synthetic fabric dyes, the companies that eventually became Novartis branched out into producing chemicals and ultimately pharmaceuticals.

5A-2 Novartis has offered its products and services globally since 1996. India is an important market in the global healthcare industry, and the Complainant specifically targets this market with a number of Novartis companies and premises located in India. As noted above, in India, Complainant uses its local official website www.novartis.in to connect to Indian customers.



5A-3 The Complainant submits that in no later than 1996 (see European Trademark Registration EU000304857) it coined, conceived and adopted the trademark/ trade name “NOVARTIS” and has been openly, continuously and extensively using the mark “NOVARTIS” as its trade name, corporate name, business name, trading style, trade mark worldwide since then. The Complainant’s products bearing the mark “NOVARTIS” are well known and are used by consumers all over the world. The following link connects customers to the official websites of the Complainant: www.novartis.com.

5A-4 The Complainant reiterates that it is the owner of the trademark NOVARTIS in various jurisdictions including in India, Europe, Asia and the US and has mostly used the trademark NOVARTIS in respect to goods and services covered under classes 1, 5, 9, 10, 29, 30, 31 and 32.

5A-5 The Complainant also reiterates that it is also the owner of websites which are accessible world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products and services marketed and sold under the trademark and corporate name “NOVARTIS”.

5A-6 The Complainant submits that it has painstakingly built up a good reputation worldwide and has invested substantial amounts of resources in advertising its products under the trademark



“NOVARTIS” in various media, Internet, other print and visual media and also through fairs, exhibitions and events. Annexed hereto and marked as **Annexure F** is a print out of the Complainant’s Indian website.

5A-7 The trademark registration of the Complainant predate the registration of the Disputed Domain Name. Due to extensive use, advertising, and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown around the world, including in India where Respondent is domiciled.

5A-8 The Complainant states that in and around September 2017 the Complainant became aware of the Respondent’s Disputed Domain Name <novartisindia.in>. Complainant contacted the Respondent on October 3, 2017 through a cease and desist letter. The letter was sent to the email address listed in the WHOIS Lookup record. Complainant advised the Respondent that the unauthorized use of its trademarks within the Disputed Domain Name violated their trademark rights and Complainant requested a voluntary transfer of the Disputed Domain Name. A reminder was sent on October 13, 2017, but no response was received, see Annexure G. Since the efforts of trying to solve the matter amicably were unsuccessful, Complainant chose to file a complaint according to the INDRP process.



5B. RESPONDENT

The Respondent, as aforesaid, failed/neglected and omitted to file any response to the averments made in the Complaint and/or the documents filed in support thereof.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the. In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers



the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.

6.5 The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent.

6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.




6.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

6A-1 The Complainant is the owner of the trademark NOVARTIS in various jurisdictions including in India, Europe, Asia and the US and has mostly used the trademark NOVARTIS in respect to goods and services covered under classes 1, 5, 9, 10, 29, 30, 31 and 32.

6A-2 The Complainant is also the owner of websites which are accessible world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products and services marketed and sold under the trademark and corporate name "NOVARTIS".

6A-3 The trademark registration of the Complainant predate the registration of the Disputed Domain Name. Due to extensive use, advertising, and



revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown around the world, including in India where Respondent is domiciled.

6A-4 The Disputed Domain Name <www.novartisindia.in.> contains the Complainant's complete trademark/trade name registered in India and other countries. The Disputed Domain Name is visually and phonetically identical to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to violation of Para 3 of the INDRP which states that a Registrant is solely responsible to ensure before the registration of the Disputed Domain Name that such domain name registration does not violate the rights of any proprietor/brand owner.

6A-5 As a matter of fact the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has prior rights.

6A-6 The INDRP decisions titled Taco Bell v. West Masters Casino, Dart Industries V. Lokesh laid down the proposition that incorporating a Trademark in its entirety, is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark.



6A-7 Internet users who are not aware that the complainant and the respondent have no affiliation, are bound to confuse or associate the respondent's activities as those either affiliated or endorsed by the Complainant.

6A-8 The Complainant refers to and relies on the case of NIKE, Inc. and Nike Innovate C.V. v. Zhaxia and Pfister Hotel <nike.co.in>, INDRP Case No. 804 where the Complainant argued that the county code co.in is insufficient to render the domain name dissimilar, the Arbitrator stated the identical character of the domain name. Please see Annexure K for a copy of the resolution. Based on the above, the Disputed Domain Name is regarded to be identical to Complainant's registered trademark.

6A-9 The Complainant is therefore successful in establishing the first element of INDRP and the panel finds that the disputed domain name is identical to the mark/domain name of the complainant. Consequently, the first requirement of paragraph 4 of the policy is satisfied.

B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

6B-1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the



Respondent has rights or legitimate interest in the disputed domain name:

(i) *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;*

(ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

(iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

6B-2 The Domain Names under the Policy are available to anyone on first come first serve basis. In case, any person or organization claims right over the Domain Name as violation of its trade/service mark rights, the onus is on such person/organization to prove the right in the mark and the burden thereafter shifts to the Respondent to prove its legitimate interest and the use of the Domain Name in good faith.

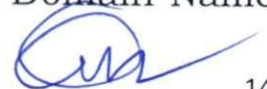
6B-3 Since the disputed domain name www.novartisindia.in comprises of the mark NOVARTIS as a whole which is used in connection with Complainant's goods, it is clear that the



Respondent can have no right or legitimate interest in the said domain name.

6B-4 The Respondents choice of the reputed Trademark as its domain name is completely unnecessary and lacks any legitimate business purpose and the sole purpose of carrying business through the impugned domain name is to create confusion as the source, sponsorship, affiliation or endorsement of activity being carried on through the website.

6B-5 Further, upon perusal of the Respondent's website www.novartisindia.in, the Disputed Domain Name is pointing to a parking page (see **Annexure I**) which is permissible -under WIPO rules- if the Respondent use the Disputed Domain Name for any lawful purpose. The Disputed Domain Name resolves to a website that merely states "website coming soon!". The Respondent has made no claims to either having any relevant prior rights of its own, or to having become commonly known by the Disputed Domain Name. Clearly, the Respondent is not known by the Disputed Domain Name, nor does the Respondent claim to have made legitimate, non-commercial use of the Disputed Domain Name. In addition, Complainant's core brand NOVARTIS has an extensive and long-term use worldwide and significant amount was spent on establishing NOVARTIS brand and goodwill. Thus, the Respondent is not using, nor demonstrated any preparation to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name



in connection with bona fide offering of goods and services”.

6B-6 As noted above, the Disputed Domain Name is not being used for a legitimate purpose. In the case Williams-Sonoma, Inc vs GaoGou, Yert International Ltd <potterybarndkids.in> INDRP/912, the domain did not resolve to a web page. In that case the Panel relevantly stated:

“In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainant has made out a prima facie case that of the Respondent has no right or legitimate interest in the Disputed Domain Name and as such the burden of proof shifts to the Respondent.”

See **Annexure J**. The same argumentation should be adopted in the current case.

6B-7 The Complainant has legitimate interest in the “NOVARTIS” trademark in India as it had registered the said mark on February 28, 1996 and has been openly, continuously and extensively using it in India for more than 20 years. By virtue of long and extensive use and advertising, the Complainant has acquired proprietary right in the Trade Mark “NOVARTIS”.

6B-8 Further, the Complainant has registered the domain name www.novartis.com on April 2, 1996 and www.novartis.in on February 16, 2005 whereas the Disputed Domain Name <www.novartisindia.in> was registered by the Respondent on February 22, 2017. Hence, such subsequent adoption and registration of the Disputed Domain Name shows that the



Respondent has no right or legitimate interest in the Disputed Domain Name <www.novartisindia.in>.

6B-9 The Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark "NOVARTIS" or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India. The WHOIS information is the only evidence in the WHOIS Lookup record which relates the Respondent to the Disputed Domain Name. It identifies the registrant as "Aravind R", which is not in the slightest way similar to the Disputed Domain Name.

6B-10 It is apparent that the Disputed Domain Name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the Disputed Domain Name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant. The Disputed Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant's well-recognized products. The Disputed Domain Name also contains a reference to the country name India where the Complainant has a significant business presence. There is no evidence that the Respondent has a history of using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a



distinctive identifier associated with the term “NOVARTIS” and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant.

6B-11 From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the Disputed Domain Name.

C. RESPONDENT REGISTERED THE DOMAIN NAME IN BAD FAITH

6C-1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C-2 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:-

- i) Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented

out of pocket costs directly related to the Domain Name; or

- ii) The Registrant has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- iii) By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's Website or location or of a product or service on Registrant's Website or location.

6C-3 The domain name registered by the respondent www.novartisindia.in fully incorporates Complainant's trademark NOVARTIS which shows Respondent's intent to misappropriate Complainant's trademark.


6C-4 By using the Disputed Domain Name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the



Respondent's website thereby violating Para 6 of INDRP.

6C-5 Further, it is apparent that the Respondent has deliberately registered the Disputed Domain Name with the intention of preventing the Complainant who is the owner of the trademark "NOVARTIS" from reflecting the said trademark in its domain name in India.

6C-6 In the *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003 the Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly references the Complainant's trademark may constitute registration and use in bad faith. In the current case it is clear that the Respondent has registered the Disputed Domain Name in bad faith by intentionally adopting Complainant's widely known marks in violation of Complainant's rights. Panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark, no response to the cease and desist letter has been sent.



6C-7 To summarize, the identical nature of the Disputed Domain Name to the Complainant's trademarks, the lack of any explanation from the Respondent as to why he registered the Disputed Domain Name of a well-known brand all over the world including in India, indicates bad faith registration. Moreover, Respondent registered the Disputed Domain Name in February 2017 and has had ample time to activate the Disputed Domain Name to demonstrate that the use would not constitute bad faith use. Such has not occurred and a contrario, the Respondent failed to respond to the cease and desist letter which further proves that the Disputed Domain Name is registered in bad faith. Finally, Complainant's international, Indian and other trademark registrations significantly predate Respondent's Disputed Domain Name registration and it is highly unlikely that the Respondent was not aware of the rights Complainant has in the trademarks and the value of said trademarks, at the point of the registration. Consequently, the Respondent should be considered to have registered and to be using the Disputed Domain Name in bad faith.

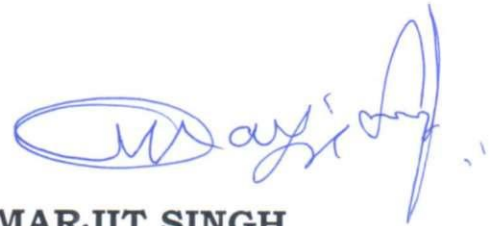
6C-8 In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.



7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel directs the transfer of impugned domain name <www.novartisindia.in> to the complainant. The Respondent is also burdened with cost of Rs. 20,000/- being the cost of proceedings.



AMARJIT SINGH
Sole Arbitrator

Dated: 3rd March 2018