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BEFORE THE .IN REGISTRY OF INDIA

INDRP CASE NO. 1674

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996**

for

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FINAL AWARD

**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1674
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN
NAME DISPUTE RESOLUTION POLICY
THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996**

IN THE MATTER OF:

**OrbiMed Advisors LLC
601, Lexington Avenue, 54th Floor
New York, NY 10022-4629**

...Complainant

Versus

**Sunder Gulati
Sundhfent huangbrat
huarabt gulati 2341
runbtanft huangbrabt
AL- 76564, US**

...Respondents

A DISPUTE RELATING TO THE DOMAIN NAME ORBIMED.IN

FINAL AWARD

Dated: April 14th, 2023

Venue: New Delhi, India



**ROBIN RATNAKAR DAVID
SOLE ARBITRATOR**

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant is OrbiMed Advisors LLC of 601 Lexington Avenue, 54th Floor, New York, NY 10022-4629, represented by IndusLaw, India, #101, 1st Floor, "Embassy Classic", #11 Vittal Mallaya Road, Bangalore- 560 001, India.

2. The Respondents

The Respondent is Sunder Gulati of Sundhfent huangbrabt, huarabt gulati 234, runbtanft huangbrabt, AL- 76564, US, email- central1812@gmail.com also central1812@gmail.com, phone +1876965545 is the registrant of the disputed Domain Name <orbimed.in>.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for the resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name <orbimed.in> with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted 2020(the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

Filing of the Complaint and Constitution of the Arbitral Tribunal



2. The Complainant filed the Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondents, seeking transfer of the Domain Name <orbimed.in> to the Complainant. Following which, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under 5 (a) of the Rules, to act as Arbitrator in the said matter.
3. On 14th March 2023, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, as Sole Arbitrator was constituted under 5(b) of the Rules in respect of the Complaint filed by OrbiMed Advisors LLC against Sundhfent huangbrabt, the Respondent.
4. On 15th March 2023, the Arbitral Tribunal issued the Notice of Arbitration under 5 (c) of the Rules.
5. The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

- Domain ID: ROID- D92701CBC752F4867B160FF199C87190F-IN
- Creation Date: 2023-01-13T14:01:03Z
- Expiration Date: 2024-01-13T14:01:03Z
- Registrar Name: Hosting Concepts B. V. d/b/a Openprovider
- Registrant Name: Sunder Gulati
- Registrant Address: Sundhfent huangbrabt, huarabt gulati 2341, runbtanft huangbrabt, AL- 76564, US
- Registrant Phone: 1.876965545
- Registrant Email: centrica1812@gmail.com
- Registrant Client ID- SG937454-US7609
- Registrant ROID- CF1D459A14C6C45F08CFA534BB065479F-IN
- Registry Admin ID- SG937454-US7609



- Registry Tech ID- SG937454-US7609

IV. PROCEDURAL HISTORY

1. On 15th March 2023, the Arbitral Tribunal issued the Notice of Arbitration to the Respondents by email with the Complaint and Annexures enclosed. The Respondents were given an opportunity to file a response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 29th March 2023.
2. Service of the Notice of Arbitration dated 15th March 2023 was effected by the Counsel and the same was intimated to the Tribunal by Induslaw representative of the Complainant. The Complaint (with annexures) was sent to the email address of the Respondents shown in the WHOIS details and also to the postmaster of the contested domain name consequently, the service of the Notice of Arbitration on the Respondents was done in accordance with Rule 2(a) of the Rules.
3. The Respondent did not respond to the notice issued on 15th March 2023.
4. All emails from the Arbitral Tribunal were copied to the Complainant, Respondents and NIXI.

V. COMPLAINANT'S CONTENTIONS

1. The Complainant, OrbiMed Advisors LLC states that it is the owner of the registered trademark 'ORBIMED' (word) and adopted its brand name "ORBIMED" and logo in relation to its business. The Complainant has been using the OrbiMed Marks for many years in relation to its business operations. The Complainant requests that the Tribunal issues a decision that the disputed domain name registration be transferred to the Complainant and costs be awarded in favour of the Complainant.



2. The Complainant states that the Disputed Domain Name <orbimed.in> is identical to the Complainant's domain name <orbimed.com>. Further, it is confusingly similar to Complainant's registered and distinctive and unique trademark as the disputed domain name was adopted long after the 'ORBIMED', word and label, became well known and reputed among users.
3. The Complainant adopted its brand name "ORBIMED" and logo in relation to its business. The same has been used continuously since its first adoption. The Complainant has also been using the OrbiMed service mark in relation to its business operations.
4. The Complainant alleges that the Respondent has registered the impugned domain name <orbimed.in> by misappropriating, illegally and without authority or consent, the trademark/ trade name 'ORBIMED' which is the exclusive property of the Complainant.
5. The Complainant avers that the purpose of registering the disputed domain name was to misappropriate the reputation associated with the Complainant's rights in the OrbiMed Marks goes back to 1998 and the Complainant enjoys substantial goodwill and reputation in OrbiMed Marks.
6. The Complainant states that the Respondent is illegitimately and unfairly using the impugned domain name. The Respondent does not have any legitimate right or interest in the impugned domain name which clearly indicates the Respondent's bad faith and malicious registration of the disputed domain.
7. The Complainant states that a simple trademark search of the word 'ORBIMED' would show the Complainant's prior right on the registered trademark. The Complainant states that it is settled law that what is required to be proved is that the Disputed Domain Name is identical or confusingly similar to the OrbiMed Marks. The Complainant relied on L'Oreal v. Domain Administrator, INDRP Case No. 1553, dated August 16, 2022; VFS Global Services Private Limited v. Trading Hub, INDRP Case No. 1580 dated August 11, 2022; LPL Financial LLC v. Privacy



Service Provided by Withheld for Privacy ehf / Steffen Hain, WIPO Case No. D2022-0542; Claudie Pierlot v. Yinglong Ma, WIPO Case No. D2018-2466.

8. The Complainant states that Respondent acquired the disputed domain name <orbimed.in> despite being aware of the Complainant's registered trademark 'ORBIMED' or, at the very least, in utter disregard of its obligation to verify the registration status of mark 'ORBIMED.' Accordingly, the Complainant states that this conduct indicates the Respondent's bad faith and fraudulent intention in registering the domain along with the imitation of the Complainant's well-known trademark.
9. The Complainant avers that the Respondent had registered the impugned domain name with the intention to unlawfully capitalize on the reputation and goodwill of the Complainant's registered trademark 'ORBIMED', and to hurt the business interest of the Complainant in the process.
10. The Complainant further relies on Fendri S.r.l. v. Ndiaye Therese, D2018-0179; Birdies, Inc. v. Registration Private, Domains By Proxy, LLC / Fu Li, WIPO Case No. D2019-2134 that domain extensions such as ".com" and ".in" are to be ignored while assessing whether a domain name is identical or confusingly similar to a trade mark.
11. The Complainant alleges that

"Since January 27, 2023, the Indian subsidiary of the Complainant has been receiving certain phone calls inquiring about certain 'OrbiMed mobile applications', the Disputed Domain Name and some investments schemes. The caller claimed to have invested in the investment scheme and asked for refund of their money. Accordingly, upon further research undertaken, various YouTube channels were found which have published videos explaining how the, 'OrbiMed mobile application' can be downloaded and used for earning money. The content in the said videos clearly provides details of the Impugned Website and the Disputed Domain Name as the registration link. The video(s) essentially includes unsuspecting victims to pay a certain sum of money and



provide their bank account details under the false promise of earning a higher sum of money as a return within a fixed number of days”.

It is alleged that a criminal complaint, seeking to block the Disputed domain Name was filed. However, a copy of the said criminal complaint is not placed on record by the Complainant.

12. The Complainant states that the Respondent has registered the disputed domain name and is using it in absolute bad faith. The Complainant requests the transfer of the disputed domain name and costs be imposed in favour of the Complainant.

VI. RESPONDENT'S CONTENTIONS

1. The Respondent has not filed any response to the Notice of Arbitration dated 15th March 2023. The Respondent has not replied to the contentions of the Complainant even though the Respondents have been served as required by the Rules. The emails of service sent to the Respondents were not returned undelivered and served on the postmaster of the contested domain name. However, the Respondents' default would not automatically result in a decision in favour of the Complainant.
2. Supreme Court of India in Sudha Agrawal v Xth Additional District Judge and others (1996) 6 SCC332 held that even in an uncontested matter the petitioner's case must stand on its own legs and it cannot derive any advantage by the absence of the defendants. Therefore, the Complainant must still establish each of the three elements required by Paragraph 4 of the Policy.

VII. DISCUSSIONS AND FINDINGS

1. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy namely:
 - a) The Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.

- b) The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c) The Respondent's domain name has been registered or is being used in bad faith.
2. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:
- a) Whether the Respondent domain name <orbimed.in> is identical and/or deceptively similar to the domain name and trademarks of the Complainant?
 - i. The Complainant provided evidence to establish that the Disputed Domain name is identical or confusingly similar to the Complainant's registered and distinctive trademark since the disputed domain name by the Respondent was acquired long after the 'ORBIMED' trademark was recognised.
 - ii. The Complainant holds 'ORBIMED' trademark registrations in India and the United States of America. Further, on account of the extensive use and promotion of the 'ORBIMED' trademark, the brand has gained recognition. A perusal of the trademark registration certificates and WHOIS records shows Complainant is the owner of the trademark registrations in India and the United States of America.
 - iii. The Arbitral Tribunal notes the decision of *Fendi S.r.l. v. Ndiaye Therese*, WIPO Case No. D2018-0179; *Birdies, Inc. v. Registration Private, Domains By Proxy, LLC / Fu Li*, WIPO Case No. D2019-2134, which states that domain extensions such as ".com" and ".in" are to be ignored while assessing whether a domain name is identical or confusingly similar to a trade mark, the disputed domain name is regarded confusingly similar to that mark for the purposes of UDRP standing.
 - iv. The Arbitral Tribunal notes the decision of WIPO Panel's in *Whatsapp Inc. v. Warrick Mulder*, INDRP Case No. 1233, dated July 22, 2020; *Havells India Limited v. Jojo Alappat*, INDRP Case No. 1025, dated October 4, 2018; *Voltas Limited v. Sergi Avaliani*, INDRP Case No. 1257, dated September 22,



2020; and beIN Media Group L.L.C v. Rima Muliawati WIPO Case No. D2021-1076 states that the Respondent is not commonly known by 'ORBIMED', nor does it conduct any legitimate business under such a name, thereby proving that the Respondent has no rights or legitimate interest in the Disputed Domain Name. The Complainant has a *prima facie* case and has proved the illegitimate interest and unlawful rights of the Respondent over the Disputed Domain Name.

v. The Arbitral Tribunal also notes the decision of HSBC Holdings plc v. Hooman Esmail Zadeh, INDRP Case no 032, dated March 20, 2007; Visteon Corporation v. Prahlad S., INDRP Case No. 1535, dated May 6, 2022; Solidium Oy v. Privacy Service Provided by Withheld for Privacy ehf / EstormH Etormhosting, Estorm Programming , WIPO Case No. D2022-3139; LPL Financial LLC v. Privacy Service Provided by Withheld for Privacy ehf / Steffen Hain , WIPO Case No. D2022-0542, that the Respondent is attempting to interfere with the business operations of the Complainant and the mere registration of an identical domain name by an unaffiliated entity can by itself create a presumption of bad faith.

vi. After taking into consideration the facts of the present case and the settled law on the issue, it can be said that the disputed domain name registered by the Respondent establishes a likelihood of confusion with the Complaint's trademark and this would mislead the internet users as it is confusingly similar. Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy Paragraph 4(a) is satisfied as the domain name is confusingly similar to Complainant's registered and distinctive 'ORBIMED' trademark.

b) Whether the Respondent has no rights or legitimate interests in respect of the domain name?

i. To pass muster under Paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights and legitimate interests in the disputed domain name under Paragraph 6 of the Policy.

ii. The Respondent is not affiliated with Complainant in any way and has never been authorised or licensed by the Complainant

to use or register its trademarks, or to seek registration of any domain name incorporating the trademark in question. Furthermore, the Respondent is not commonly known by the Disputed Domain Name or the name 'ORBIMED'. The Respondent does not operate a legitimate business under the 'ORBIMED' trademark. Additionally, the 'ORBIMED' trademark was registered years before the disputed domain name was registered.

- iii. Evidence was provided by the Complainant to show that the Respondent's actions are most certainly not a bona fide offering of goods and services under Policy Paragraph 6(a), and therefore domain name impersonates the Complainant's domain name. Particular reference has been made to the Complainant's website hosted on the domain name <orbimed.com> (at Annexure 11) and the Respondent's disputed domain name <orbimed.in>. A careful perusal of the above shows that the Respondent's domain name impersonates the Complainant and the same is not *bona fide*.
 - iv. Accordingly, the Arbitral Tribunal finds that the Complainant has made out a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name <orbimed.in> as the Complainant has never assigned, granted, licensed, sold, transferred, or otherwise authorised Respondent to register or use the Disputed Domain Name or the ORBIMED trademark and the same is also not used for making legitimate non-commercial use. Thus, it satisfies the second element under Paragraph 4 (b) of the Policy.
- c) Whether the Respondent's domain name was registered or is being used in absolute bad faith?
- i. The Complainant is a well-known and reputed investment firm focused on making public and private investments in the healthcare industry. The Complainant invests globally across the healthcare industry, from start-ups to large multinational

corporations, utilizing a range of private/ public equity funds and royalty/credit funds. The Complainant was founded in the year 1989 in New York. In 2000, it launched its first dedicated venture capital fund. By 2011, owing to its successful operations in New York, the Complainant expanded its business overseas by opening offices in San Francisco, Shanghai, Herzliya and Mumbai. The Complainant provided the following reasons to show that the Respondent acquired the disputed domain name in bad faith—

1. Firstly, the Respondent used the 'ORBIMED' trademark and tradename (at Annexure 3) without the consent of the Complainant.
 2. Secondly, Respondent was aware of Complainant's rights in its well-known trademark as a consequence of Complainant's substantial use of the Mark which long predates before the Respondent acquired the domain name.
 3. The Respondent impersonated the Complainant's domain name <orbimed.com>, which demonstrates his purpose to deceive users for commercial benefit and to harm the Complainant's business by redirecting people to the infringing domain name and also making illegitimate commercial gains by banking on the hard-earned goodwill and reputation of the Complainant which is done in bad faith.
 4. The Respondent has deliberately provided false and incorrect information when registering the Domain Name <orbimed.in>.
- ii. On careful consideration of the above findings, Arbitral Tribunal holds that the Respondent domain name <orbimed.in> has been registered with an opportunistic intention and is being



used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

3. Costs

- a) The Complainant has prayed for the transfer of the disputed domain name <orbimed.in> be transferred to the Complainant and further award costs in favour of the Complainant.
- b) Para 11 of the INDRP Policy states as under

“11. Remedies

The remedies available to a Complainant pursuant to any proceeding before an Arbitrator shall be limited to praying for the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs as may be deemed fit may also be awarded by the Arbitrator. However, the implementation of such award of cost will not be supervised or controlled by .IN Registry.”

- c) Therefore, this Tribunal is empowered to award costs as may be deemed fit under the INDRP Policy and the Arbitration and Conciliation Act, 1996.
- d) Considering that the Respondent domain name is identical and confusingly similar to the complainant's trademark 'ORBIMED' and the Respondent has no rights or legitimate interests in the disputed domain name <orbimed.in> and the same has been registered in bad faith. This tribunal deems it fit to award costs of Rs. 1,00,000/ (Rupees One Lakh Only) to the Complainant under para II of the Policy read with Section 31A of the Arbitration and Conciliation Act, 1996.

VIII. DISPOSITIONS

The Arbitral Tribunal holds that the Respondent domain name <orbimed.in> is identical and confusingly similar to the name, trademark and brand name 'ORBIMED' Power owned by the Complainant. The Respondent has no rights or legitimate

interests in the domain name <orbimed.in> and the same has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant. The Arbitral Tribunal further awards cost Rs. 1,00,000 (Rupees One Lakh Only) to the Complainant which shall be paid by the Respondent.

The Arbitral Tribunal directs that -

- a) The disputed domain name <orbimed.in> be transferred to the Complainant, OrbiMed Advisors LLC having its headquarters at 601 Lexington Avenue, 54th Floor, New York, NY 10022-4629, United States of America.
- b) The Complainant is awarded costs of Rs.1,00,000 (Rupees Only) which shall be paid by the Respondent.

Place of Arbitration: New Delhi, India

Date: April 14th, 2023



Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal