



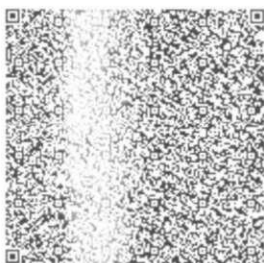
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL29098047988569L
Certificate Issued Date : 27-Jun-2013 01:33 PM
Account Reference : IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71220357291997572221L
Purchased by : V K Agarwal
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V K Agarwal
Second Party : Not Applicable
Stamp Duty Paid By : V K Agarwal
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



-----Please write or type below this line-----

NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

Novartis AG V. Norbert Roisch

V K Agarwal

AWARD

1. The Parties

The Complainant is Novartis AG, CH 4002, Basel, Switzerland

The Respondent is Norbert Roisch, Am Spielplatz 3, Backdorf 21643, Germany

2. The Domain Name and Registrar

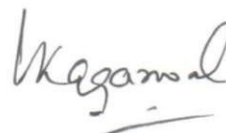
The disputed domain name is <www.sandoz.in>.

The particulars of registration of the disputed domain name are as follows:

- | | |
|----------------------------|---------------------------------|
| (a) Name of the Registrant | : Norbert Roisch |
| (b) Domain ID | : D2050153 – AFIN |
| (c) Created on | : 26 April 2005 |
| (d) Expiration date | : 26 April 2013 |
| (e) Sponsoring Registrar | : united-domains AG (R135-AFIN) |
| (f) Registrant ID | : UR-0003911970 |

3. Procedural History

- (a) A Complaint dated April 15, 2013 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.



- (c) In accordance with the Rules, the Sole Arbitrator, on 16th May 2013 formally notified the Respondent along with a copy of the Complaint by post. The Respondent was required to submit his defence within 15 days from the date of receipt of copy of the Complaint. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte. No response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant Novartis is a swiss industrial group formed in 1966 by the merger of companies Ciba-Geigy and Sandoz. The Complainant specializes in pharmaceutical products.

In fact, SANDOZ is the generic pharmaceutical division of Novartis. Sandoz is working on the quality healthcare and making the medicines affordable to all persons. The Complaint states that SANDOZ is a global leader in the development, manufacturing and marketing of high quality generic medicines. Further that, Sandoz is the second largest and one of the most reputed generics companies in the world.

Sandoz International has its headquarters in Germany. However, it has presence in almost 140 countries in the world including Asia.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.



In relation to element (i), the Complainant contends that the disputed domain name is <www.sandoz.in>. Thus, the disputed domain name contains the entire trademark of the Complainant. The addition of the words “in” is insignificant and insufficient to avoid likelihood of confusion between Complainant’s trademark and the disputed domain name. .

It is further contended that the word “Sandoz” is the trademark of the Complainant. The said trademark is adopted, used and registered in many countries of the world, such as, European Union, India, Madrid, etc. It is registered in various classes, such as, 01, 02, 03, 05, 09, 10, 11, 16, 17, 22, 23, 24, etc. Therefore, the Complainant is well known to its customers all around the world.

The Complainant contends that it has several domain names containing its trade name SANDOZ, (many of them include the name of the countries also) such as, <www.sandoz.com>; <www.sandoz.de>; <www.sandoz.cn>; etc.

In support of its contentions, the Complainant has relied on the decisions in the cases of *Tenneco Inc. v. Teri Li*, Case No. INDRP/130, March 5, 2010; *ITC Limited v. Travel India*, Case No. INDRP/065, April 15, 2008 wherein it has been held that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark. .

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark “sandoz”. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public or for making illegal profit by selling it.

In support of its contentions, the Complainants have relied on the decisions in the cases *ITC Limited v. Vishal*, Case No. INDRP/050, November 30, 2007; *Citrven v. Hyderabad*, Case No. INDRP/256, November 04, 2011; *Accor v. Tang Wei*, Case No. INDRP/127, February 24, 2010; *Strbucks Corporation v. Mohanraj*, Case No. INDRP/118, November 26, 2009; *Campagnie Gervais Danone v. Digitech Software Solutions*, Case No. INDRP/096, June 27, 2009

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.sandoz.in> by the Respondent is to make profit by illegally selling it and also to mislead the general public and the customers of the Complainant. The

Kagarnal

Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Complainants have relied on decisions in certain cases.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.sandoz.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The 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 that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

The Complainant has contended that its trademark “SANDOZ” is registered in many countries of the world in different Classes. Thus, the Complainant is the owner and registered proprietor of the mark “SANDOZ”.

The Complainant has an office at Mumbai in India. Further that, the trademark “SANDOZ” is also registered in India. By virtue of this registration, the Complainant has the exclusive rights to use the said

Kagarnal

trademark in India.

The present dispute pertains to the domain name <www.sandoz.in>. The Complainant possesses a number of other domain names, as mentioned above, with the word "sandoz". The Complainant is also the owner of trademark "SANDOZ". Most of these domain names and the trademarks/certification marks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademarks/service marks of the Complainant.

Therefore, I hold that the domain name <www.sandoz.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent'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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The trade mark "SANDOZ " has acquired unique importance and is



associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Norbert Roisch. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. The Complainant has no relationship whatsoever with the Respondent.


The decisions relied upon by the Complainant support its contentions that the use of domain name consisting of a trademark is not a bona fide offering or goods or services and cannot confer any rights or legitimate interests upon the Respondent.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

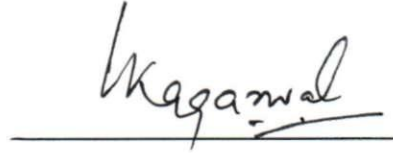
C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or



faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.sandoz.in> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Vinod K. Agarwal', is written over a horizontal line.

Vinod K. Agarwal

Sole Arbitrator

Date: July 15, 2013