

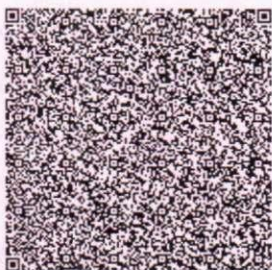


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

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Purchased by	: SUNIT BHATIA
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Property Description	: 187 SEC 49 A CHD
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ARBITRATION AWARD

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ARBITRATION AWARD

(On Stamp Paper)

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA

[NIXI]

ARBITRAL TRIBUNAL CONSISTING OF

SOLE ARBITRATOR:

DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.

Advocate, Punjab & Haryana High Court,

Chandigarh

In the matter of:

Navitas Life Sciences Limited,
Parklands Business Park, Forest Road,
Denmead, Hampshire, United Kingdom, PO7 6XP

...Complainant

VERSUS

Nikur Mody, Sarjen Systems Pvt. Ltd.
10th Floor Akshat Tower, SG Highway,
Ahmadabad, Gujrat-380054

...Respondent

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REGARDING: DISPUTE DOMAIN NAME: WWW.PVNET.IN

1. The Parties:

Complainant:

The Complainant in this arbitration proceedings is: Navitas Life Sciences Limited, Parklands Business Park, Forest Road, Denmead, Hampshire, United Kingdom, PO7 6XP.

Respondent:

The Respondent in this arbitration proceeding is Nikur Mody, Sarjen Systems Pvt. Ltd. 10th Floor Akshat Tower, SG Highway, Ahmadabad, Gujrat-380054.

2. The Domain Name and the Registrar:

The disputed domain name <www.pvnet.in> is registered with GoDaddy.com LLC (R101-AFIN) (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the disputed domain name <pvnet.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

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NIXI sent the hard copy of the complaint and annexures to the Respondent which has been duly delivered to the Respondent.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed the Respondent on 09.09.2015, with copy to Complainant and NIXI, through the email, to give his response within 15 days. There after the Respondent had sent his interim reply through email dated 22.09.2015 and subsequently a hard copy was also received from him.

4. Factual Background

The Complainant is a company registered in the United Kingdom and it had applied for registration of the Trade Mark PVNET on February 23 2005 under class 42 as per registration certificate issued by Trade Mark registry under the Trade Marks Act 1994 of Great Britain and Northern Ireland, which was granted on May 12, 2006.

The Respondent has registered the disputed domain name <pvnet.in> on 12.06.2012. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Complainant, Navitas Life Sciences Limited is a company registered in the United Kingdom and it is a subsidiary of TAKE Solutions Limited, India. It was formerly known as WCI Consulting Limited UK. The Complainant is a domain expert in the areas of clinical, regulatory, safety and compliance in the field of life sciences. The Complainant is involved in providing various services including advice, solutions, and services in

clinical, regulatory, safety, and content management to its clients in global pharma/life sciences market for regulatory compliance and customized solutions.

The Complainant introduced an "Online drug safety pharmacovigilance forum" in the year 2001. In the year 2004, the Complainant re-christened the name of this forum to be PVNET, with an online presence at <pvnet.wcigroup.com>. Hence the Complainant invented the mark PVNET by coining it in the year 2004, by virtue of which it is the proprietor thereof and also the associated badges and insignia having adopted and used the same internationally since the year 2004. Presently the said forum is linked at <http://pvnet.navitas.net> after the change in name of the Complainant. Being a non-dictionary word, unique and arbitrarily adopted mark, the trademark PVNET is inherently and prima facie distinctive of Complainant's services and business.

The Complainant is the owner of the top level and country level domain names under the mark PVNET, either directly or through its parent company TAKE SOLUTIONS: www.pvnet.info, www.pvnet.co.in, www.pvnet.us, www.pvnet.uk, www.pvnet.co

The Complainant holds trademark registrations for many PVNET marks in the United Kingdom (UK).

The Respondents domain name is identical to and fully comprises of the trademark in which the Complainant has prior rights. It is pertinent to note that the Complainant had adopted the mark PVNET since 2004 and used the same as part of its webpage at pvnet.wcigroup.com since 2005 for its online forum on pharmacovigilance and thus the consumers and the members of the

trade especially in the field of life sciences would invariably get confused that the impugned domain name belongs to the Complainant. It is apparent that the Respondent's domain name wholly contains and is identical to the Complainant's trademark **PVNET** in which the Complainant has statutory rights as detailed earlier in this complaint apart from common law rights.

Respondent has created this impugned domain name in 2012 in respect of identical filed of pharmacovigilance as that of the Complainant, many years subsequent to presence of Complainants in the Internet vide pvnet.wcigroup.com since 2005. Hence continuous use of the impugned domain name by the Respondent dilutes the trademark of the Complainant, thereby causing harm to its reputation.

The claimant had filed application on February 23, 2005 and his trademark PVNET was registered by the Trade Marks Registry under Trade Marks Act 1994 of Great Britain and Northern Ireland vide certificate dated May 12, 2006. The Respondent has got registered the disputed domain name on June 12, 2012. The Complainant came to know about registration of disputed domain name by the Respondent and he had sent letter dated December 19, 2014 to the Respondent, which was replied by him refusing to comply with the requirements demanded by the Complainant. There was some correspondence between the parties including a meeting on May 25, 2015, but matter could not be settled hence the present complaint has been filed.

B. Respondent

The Respondent has submitted his interim reply on September 22, 2015 denying the allegations contained in the Complaint.

The Respondent, Sarjen Systems Private Limited is a reputed software Development Company having spectrum of clientele for several years areas of software development, education and information technology solutions. This Respondent being a software development company has developed various innovative software solutions.

The Respondent submits that he has coined PVNET in or around 2006 and hosted the same on www.sarjen.com, since 2008 and subsequently it was given separate domain name in the year 2012 by registering the disputed domain name. Respondent has raised several contentions in his reply which are reproduced below:

"The Respondent respectfully submits its interim response to the subject Complaint of the Complainant, as under :

1. At the outset, the Respondent states that it does not submit to the jurisdiction of this Hon'ble Forum and is filing this interim reply without prejudice to this objection. Filing of this Interim Reply may not be construed as accepting the jurisdiction of this Hon'ble Forum.
2. The Respondent denies, all and singular, the averments and submissions made by the Complainant, as if the same are specifically set out herein and traversed, seriatim. No averment or submission of the Complainant be treated as having been admitted by the Respondent, merely because the same may not have been dealt with, by the Respondent herein.
3. The copy of the present Complaint has been received by the Respondent only on 7.9.2015. In view of the paucity of time at the Respondent's disposal, this interim reply is being filed and the Respondent craves leave to file a fuller and further reply, if and when necessary.
4. The Respondent states that the present complaint is completely misconceived, filed without any basis and deserves to be rejected, with exemplary costs. The Complaint has been filed with a malafide intention of hurting the reputation and goodwill of the Respondent and therefore, deserves to be rejected, in limini.
5. The present complaint is also hopelessly time barred and suffers from the vice of

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delay, laches and estoppel. The Complainant also has no locus standi to initiate and maintain the present Complaint since it has no presence in India and no right to the mark PvNET in India.

6. The Respondent, before proceeding to deal with the complaint, proceeds to provide a brief background of itself.

a. The Respondent is a reputed Software Development and Programming Company having a wide spectrum of clientele for last several years in the areas of Software Development, Education and "Information Technology" Solutions.

b. The Respondent develops various innovative software solutions in the areas of Sales and Distribution, Sales Force Automation, Customer Relationship Management, Pharmacovigilance and Safety database, Regulatory Dossier Submission, Clinical Trial and eCRF, Quality Management and Documents Control.

c. The software products of the Respondent enjoy very high reputation and goodwill. The Respondent is developing and marketing its products under distinctive brand names, coined and adopted by the Respondent to distinguish its products from similar products of other software developers, as the Respondent's products enjoy very high reputation and goodwill amongst Pharma/Life Science Industry for excellent quality and very high efficacy.

d. The Respondent coined the name PvNET for its software product which is basically aimed at providing innovative software solutions in the areas of Pharmacovigilance (PV). The said name PvNET was coined as early as in the year 2007 and first hosted on the website www.sarjen.com in the year 2008. The Respondent registered its domain name www.pvnet.in with the .IN Registry in the year 2012 in India. The PvNET is inherently conceived and adopted by this Respondent and having regard to its uniqueness this Respondent has registered only one domain name i.e., www.pvnet.in rather than adding/registering other domain names. Annexed hereto and marked as Annexure-1 is a brochure, ppt presentation and screen shots of the Respondent's product – PvNET.

e. This Respondent's submits that it is the original adopter which conceived the name PvNET and it is so distinctive of this Respondent that all those associated in the trade identify, associate, refer and originate it as a quality product from this Respondent and none else. The PvNET's identity with this Respondent is so unique that on the social media too PvNET is identified with this Respondent only and no other entity. Annexure 1A are the screen shots of the social media platform from "Linkedin".

7. The Complainant is one Navitas Life Sciences Limited and claims to be formerly known as WCI Consulting Limited and further claims that it was acquired by one TAKE Solutions Limited, India in the year 2011, though no documents to prove this, have been placed on record. Though the Complainant claims that it holds trademark registrations of Pvnet in the United Kingdom since 2006, the application for registration of the mark "pvnet" in India was only filed in the year 2014 by the said TAKE Solutions Limited, India and not by the Complainant. The said application is made on "proposed to be used" basis. The Complainant has no presence in India.

8. The Respondent states that the basic ingredients that must necessarily exist, inter alia, in terms of clause 4 of the .IN Domain Name Dispute Resolution Policy



(the Policy), before a Complaint can be filed before this Hon'ble Forum, do not exist. The burden to prove that the said ingredients exist, is on the Complainant, The Complainant has failed to discharge the said burden.

(i) The Complainant has failed to prove that the Respondent's domain name is identical or confusingly similar to the name, trade mark or service mark in which the Complaint has rights. The rival domain names are: pvnet.navitas.net and pvnet.in. They are not identical and there is no similarity, much less confusing similarity. The Respondent states that for comparison as to whether the rival domain names are identical or confusingly similar, the entire domain names have to be considered and not a part thereof. Seen thus, there is no identity or confusing similarity between the rival domain names. The Complainant has not produced any evidence of anyone having been confused by the Respondent's domain name. More importantly, the Complainant has not proved that it has the rights in the name "PVNET" nor any trademark or service mark in "PVNET" in India, which is essential, before any claim can be even considered. Significantly, while the Complainant is basing the present action on the applications for trade mark registrations, made before the Indian Trade Mark office, such applications, apart from being made on "proposed to be used" basis, are not filed by the Complainant but by another entity – Take Solutions Ltd.

(ii) The Complainant has not proved that the Respondent has no rights and legitimate interests in respect to its domain name.

(iii) The Complainant has not proved that the Respondent has registered or used its domain name bad faith. Infact, considering that the Respondent has been genuinely using its domain name since several years, the Complainant cannot even allege bad faith, much less, prove it.

9. The Respondent submits that the necessary ingredients of maintaining an action, in terms of Clause 4 of the Policy have to be proved by leading evidence. Without prejudice to that, even if one goes by the circumstances enumerated in Clause 6 of the Policy as being evidence, even then, the Complaint deserves immediate rejection, since none of such circumstance exists. Clause 6(i) of the Policy reads thus:

"- (i) circumstances indicating that the Registrant 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 bears the name or is the owner of the trademark or service mark, or to 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"

The Respondent states that there is no circumstance which indicates that Respondent's domain is solely for the purpose of selling, renting etc. On the contrary, the Respondent, having coined PvNET in 2007, has been using the same since 2008, initially on its website www.sarjen.com then as a domain name since 2012. The Respondent has a robust business which uses the subject domain name, which domain name has never been put up for sale, whether to the Complainant or otherwise whatsoever. Clause 6(ii) of the Policy reads thus:

"the Registrant 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 the Registrant has engaged in a pattern of such conduct; or"

This circumstance does not exist. The Respondent has not registered its domain name in order to prevent the alleged owner of the trademark or

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service mark from reflecting the mark in a corresponding domain name. Furthermore, there has certainly been no pattern of such supposed conduct, as alleged or otherwise.

10. Clause 6 (iii) of the Policy reads thus;

“(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant'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 the Registrant's website or location.”

There is no question of the existence of this circumstance. The Respondent is engaged in the business of advanced software solution that offers complex data analysis and querying of safety data sets, meeting all your risk management requirements, while ensuring global regulatory compliance (21CFR part 11, ICH, FDA, EMA etc.) also PvNET's innovative advanced technological features for early detection and assessment of safety signals by data mining techniques, and more attention to benefit-risk evaluation; improves patient safety thus contributing to the protection of patients' and public health. As against this, the Complainant is merely an online forum where users, once registered, engaged in online discussion. There is no competition between the Complainant and the Respondent. This is not a case of rival websites operating in the same business, where one would gain by attracting the users of the other. The nature of the rival websites also rules out the circumstance under this Clause since, in so far as the Complainant's website is concerned, one has to actually register, to enter and use the forum, which is essentially a discussion forum, unlike that of the Respondent which sells software.

11. Clearly therefore, even on a plain reading of Clause 6, no case of evidence of the Respondent's registration and use being in bad faith, is made out.

12. On the other hand, it is Clause 7 of the Policy which is satisfied in the present case and justifies the Respondent's right to, or legitimate interest in, the subject domain name for the purposes of Clause 4 of the Policy. The Respondent is admittedly using the domain name in connection with a bona fide offering of services, before any notice from the Complainant of the dispute and the Respondent has indeed been commonly known by the domain name and acquired rights thereto, in the course of its legitimate business without intent of misleadingly diverting consumers or to tarnish the supposed trade mark of the Complainant.

13. The present Complaint has been filed by the Complainant on the basis of its alleged right to the trade mark PVNET. It is submitted that the reliance upon the alleged trademark PVNET is misplaced since the comparison is not between the Complainant's alleged trade mark and the domain name of the Respondent, but between <http://pvnet.navitas.net> and <http://www.pvnet.in>. Clearly, when compared thus, the rival domain names are quite dissimilar, ruling out any confusion.

14. The Respondent has coined PvNET in or around 2007. The domain name in dispute www.pvnet.in is an innovative software solution aimed at providing integrated, robust, error free software solution that addresses the situations arising out of or associated with Adverse Events (AEs) of drugs and medicinal preparations. The Respondent's PvNET was coined in 2007 and hosted on www.sarjen.com, since 2008, but by 2012 with the increase in the clientele it was given a separate platform in the nature of domain www.pvnet.in to perform and at this time it got itself registered.

15. As against this, the domain name of the Complainant being pvnet.wcigroup.com

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which is alleged to have been subsequently changed to pvnet.navitas.net after being acquired by Take Solutions in 2011 is in the nature of informative blog or virtual platform to share ideas amongst each other on Pharmacovigilance. The Complainant's own case is that it was taken over by TAKE Solutions Ltd., Chennai, India in 2011 and that Take Solutions Ltd. (and not the Complainant) has applied for trade mark PVNET in class 35 on 23.1.2014. The said application is made on "proposed to be used" basis. Clearly therefore, the Respondent is the prior user of the trademark/term PvNET, which it has been actively using since the year 2007. Assuming therefore, whilst denying, that the Complainant's alleged trademark PVNET can be the basis for the present action, even then, the it is the Respondent, who has a prior user, will have a right to the trademark PVNET.

16. The Complainant's alleged trade mark has not achieved any distinctiveness, neither it has achieved any secondary meaning. None is shown, even prima facie. The Complainant's mark is a not a well known mark.

17. The Complainant has alleged registration of the mark PVNET in UK in certain classes, from 2005 and 2006. This is irrelevant. Any alleged registration in UK cannot take away the right of established prior user, by the Respondent, in India.

18. The Respondent coined its domain name by combining two common names "Pharmacovigilance" and "INTERNET". The former deals with the medical condition on account of usage of the drug. "PV" is an abbreviation of "Pharmacovigilance". In common parlance "PV" refers to "Pharmacovigilance" making it a generic term for use. The words PV and NET have a direct connotation to the software services that were offered i.e. Pharmacovigilance. Pharmacovigilance being medical condition related to the science to assess and ascertain the problems related with the usage of the drugs, Pharmacovigilance is commonly associated with medical science, hospitals, general health care related matters, who use this word to describe Pharmacovigilance conditions. Pharmacovigilance is a descriptive word and no monopoly over the same can be claimed and no trade mark registered. Annexed hereto and marked as Annexure 11 2 is a print of the page of the World Health Organisation's website which demonstrate that even the World Health Organisation's recognises PV as being abbreviation of Pharmacovigilance (PV) .

19. PVNET is common to trade and there are several domain names registered with the term PV and PVNET. For instance: <http://edu.pvnet.com>, www.pvnet.com, www.pvnet.dk, www.pvnet.net, <http://pvnet.jhmhotels.com:8090/PVE.aspx>, www.pvnetmetering.eu, <http://pvnet.software.informer.com>, <http://pvnet.com.mx/>. Annexed hereto and marked as Annexure-3 (collectively) are the relevant web-page of the aforesaid web-site. screen shots from the relevant WHOIS website. The Complainant therefore cannot claim any monopoly over words which are generic, not distinctive and common to trade.

20. The Complainant's domain name is merely an online forum for discussion. The mission statement on the said website of the Complaint, reads thus: Our mission is to shape the future of pharmacovigilance by providing PV leaders with an environment to meet and discuss alternative solutions with other industry thought leaders and enable ongoing improvements. The Respondent's business consists of advanced software solutions that offers complex data analysis and querying of safety data sets, meeting all your risk management requirements, while ensuring global regulatory compliance (21CFR part 11, ICH, FDA, EMA etc.) and also PvNET's innovative advanced technological features for early detection and assessment of safety signals by automated data mining techniques, and more attention to benefit-risk evaluation; improves

patient safety thus contributing to the protection of patients' and public health.
As the Respondent's website brings out:

PvNET is an Adverse Event Reporting Software for Pharmacovigilance solution providers for Adverse Events (AE) case data management and regulatory reporting in pharmaceuticals industry.

The software can be used by medical device manufacturers, pharmaceutical manufacturers, marketing Authorisation Holders (MAHs) and contract research organisations (CROs) to collect, codify, scientifically assess and electronic / non electronic reporting to Competent Authorities (CAs) or Regulatory Agencies like FDA, EMEA and others.

PvNET offers advanced, customised work flow management to make sure from the entry of adverse event to QC to medical review / scientific assessment to submission – all are covered meeting global requirements and within dead lines defined.

PvNET is a comprehensive solution following ICH E2B standards for semiautomated and automated electronic submission of Individual Case Safety Reports (ICSRs) and Suspected Unexpected Serious Adverse Reactions (SUSARs).

PvNET also offers indigenously designed search mechanism to identify duplicates and mechanism to handle linked reports later to be submitted to Regulatory Agencies. Also available is Periodic Safety Update Report (PSUR) summary, line listing report and signal detection reports.

KEY FEATURES OF Adverse Event Reporting Software, PvNET:

- Web based, easy-to-use interface
- Scalable, High performance system with advanced technology
- Collect, manage and analyse adverse drug reaction
- Work Flow support to segregate data entry, QC (Review) and Scientific assessment / medical review
- Single Screen for easy medical review
- Codification available for MedDRA and other ICH E2B 2.0 specifications
- Electronic reporting of ICSR based on ICH E2B 2.0 specifications
- Electronic reporting of ICSR based on ICH E2B 2.0 specifications
- Electronic reporting of ICSR based on ICH E2B specifications
- Produce PSUR summary and traces PSUR submissions requirements
- Signal detection and line listing reports available
- Dash board support and alerts to achieve deadlines.

Consequently, considering the difference in the field of activity, the Complainant cannot seek the reliefs sought for. The target customers for the rival domain names are completely different. Furthermore, the customers to both the domain name are clearly going to be highly literate and educated, who are incapable of being deceived, confused or mislead.

21. The Complainant has failed to prove any case for passing off, of its alleged trade mark PVNET, by the Respondent. For an effective action of passing off, it was imperative for the Complainant to:

- (i) establish a goodwill or reputation attached to the goods or services which supplies, in the mind of the purchasing public by association with its trade mark;
- (ii) to prove a mis-representation by the Respondent to the public to lead the public to believe that the goods or services offered by the Respondent are the goods or services of the Complainant; and
- (iii) to prove that the has suffered damage by reason of the erroneous belief engendered by the Respondent's mis-representation that the source of the Respondent's goods or services is the same as the source of those offered by the Complainant.

The Complainant has failed to satisfy the aforesaid ingredients of a passing off

action. The Complainant has failed to prove any goodwill or reputation, failed to prove any mis-representation by the Respondent and failed to prove any damage. The Complainant has not shown if any customer has been actually deceived by the Respondent's domain name. In fact, considering the totally different areas of activities of the Complainant and the Respondent, coupled with the difference in the rival domain names itself, as above stated and further considering the lay out and get up of the rival domain names, there is no possibility of any conclusion, whatsoever. The fact that the Complainant's domain name only powers a website for online discussion, there is no scope for any mis-representation by the Respondent, much less, of any damage being suffered by the Claimant. The difference in the rival business rules out any consequence on the Claimant's goodwill or reputation, assuming their exists any goodwill or reputation.

22. The Respondent, Sarjen Systems Private Limited is a reputed software Development Company having spectrum of clientele for several years areas of software development, education and information technology solutions. This Respondent being a software development company has developed various innovative software solutions. As a normal practice, when the Respondent creates a new product, it names it with suffice "NET" and manifests and displays the product on its website www.sarjen.com ("parent website"). First of such product was "PharmaNET" conceived and developed as such, which was displayed on its website in December 2003. Annexed hereto and marked as Annexure 4 is the screenshot of the PharmaNET from Wayback. Once the product matures and requires specific attention, the Respondent registers it under a unique domain name. Its first domain name www.pharmnet.in was registered on 15/10/2005 Annexed hereto and marked as Annexure-5 is the screenshot of www.pharmanet.in registration from WHOIS. As a part of its normal practice the Respondent has pursued various software development projects and named it with suffix "NET" as enumerated below. The screen shots from WAYBACK and WHOIS showing the respective website are annexed hereto and marked as Annexures-6 to 11 respectively.

Xxx xxx
Xxxxx
xxxxxx

In addition to the above, this Respondent has created products like DiamondNET, and CliniNET. All these sufficiently establishes that the Respondent's naming of the software product, displaying initially on its parent website and depending upon the need, registering a dedicated domain name are bonafide, honest and in accordance with normally prevailing business practices."

6. Discussion and Findings

Arbitrator has considered the entire matter including detailed contentions contained in the Reply submitted by the Respondent but does not find any merit in the submissions made by the Respondent.

It remains incumbent on the Complainant to make out its case in all

respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;*
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and*
- (iii) the Registrant's domain name has been registered or is being used in bad faith.*

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant has established that it has made applications for registration of the trademark across various classes under the Trade Marks Act, 1994 of Great Britain and Northern Ireland and he had

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got the registration certificates from the Trade Marks Registry in the year 2005-2006 and few certificates have been enclosed as Annexure -E.

The trademark PVNET has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration as well as website incorporating the trademark PVNET.

The Respondent has registered the disputed domain name <pvnet.in> wholly incorporating the trademark PVNET of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The generic Top-Level Domain (gTLD) is typically not an element of distinctiveness that is taken into consideration when evaluating the identity or confusing similarity between a Complainant's trademark and a disputed domain name¹. The Arbitrator finds that the registration of the trademark PVNET is *prima facie* evidence of the Complainant's trademark rights for the purposes of the Policy². Internet users who enter the domain name <pvnet.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <pvnet.in> is confusingly similar to the website and trademark PVNET of the Complainant.

¹ See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Phoenomedia AG V. Meta Verzeichnis Com*, WIPO Case No. D2001-0374.

² See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name³.

The Complainant has registered the disputed domain name consisting of the trademark PVNET. The Complainant has been using the trademark for long time. The Complainant has not authorized or permitted the Respondent to use the trademark PVNET. The Arbitrator finds that the Complainant has made out a *prima facie* case.

Paragraph 7 of the .IN Domain Name Dispute Resolution Policy provides as under:

"Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :

(i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to

³ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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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."

The Respondent has submitted that he had coined the word PVNET in the year 2007 and used the same on his website www.sarjen.com in the year 2008 and the disputed domain name was actually registered on June 12, 2012. He has taken a period of five years to register the disputed domain name. There is no credible evidence of use of the mark PVNET by the Respondent Prior to registration of disputed domain name. The Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name <pvnet.in> prior to registration of disputed domain name in the year 2012.

The Complainant and Respondent deal with the similar subject of Pharmacovigilence. The Complainant had registered the Trademark in the year 2005-06 and the complainant's URL: pvnet.wcigroup.com which has been in existence from 2005. The Complainant has produced extracts of Annual Reports of PVNET

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Form since 2001 besides other documents indicating its popularity on the net hence it cannot be said that the Respondent who was dealing with similar subject was not aware about Trademark of the Complainant in the year 2012, when he had registered the disputed domain name.

The Respondent has not been commonly known by the domain name and moreover he is making commercial use of the disputed domain name which incorporates Trademark of the Complainant.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <pvnet.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant 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

bears the name or is the owner of the trademark or service mark, or to 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 trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant'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 the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <pvnet.in> in the year 2012 after about 6-7 years of registration of the trademark by the Complainant. The Complainant has not

granted the Respondent permission, or, a license of any kind to use its trademark and register the disputed domain name <pvnet.in>. Such unauthorized registration of the trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <pvnet.in> which incorporates the trademark of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the trademark.

The Arbitrator therefore finds that the disputed domain name <pvnet.in> has been registered by the Respondent in bad faith.

The trademark has been a well-known name. The domain disputed name <pvnet.in> is confusingly similar to the Complainant's trademark PVNET and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <pvnet.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <pvnet.in> from the Respondent. The Arbitrator allows the Complaint and directs that the Respondent's domain name <pvnet.in> be transferred in favour of the Complainant.

Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <pvnet.in> is similar to the trademark PVNET in which the Complainant has rights.

The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.pvnet.in> be transferred to the Complainant.

APL

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 25.10.2015



Dr. Ashwinie Kumar Bansal

Sole Arbitrator

Advocate, Punjab and Haryana High Court

#187, Advocates Society, Sector 49-A

Chandigarh, India