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Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

: IN-DL10287016924925S
 : 15-Jan-2020 02:23 PM
 : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
 : SUBIN-DLDSLHIMP1729249228613017S
 : POOJA DODD
 : Article 12 Award
 : Not Applicable
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 : (Zero)
 : POOJA DODD
 : Not Applicable
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 : 100
 : (One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Statutory Alert:

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Disputed Domain Name: www.labcorpdiagnostics.co.in

Decision of Ms. Pooja Dodd, Sole Arbitrator

INDRP Case No. 1182

IN THE MATTER OF:

Laboratory Corporation of America Holdings,
531 South Spring Street,
Burlington, North Carolina -27215,
United States of America.

...Complainant

Versus

Suraj Chetan Lalit
C1/121, Aman Vihar,
Kirari Suleman,
New Delhi- 110086.

...Respondent

1. The Parties:

1.1. The Complainant in this arbitration proceeding is Laboratory Corporation of America Holdings, with office at 531, South Spring Street, Burlington, North Carolina-27215,

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United States of America and is represented by Mr. Bidyut Tamuly, Partner, Archer and Angel, K-4, South Extension Part – II, New Delhi- 110049, India.

1.2. The Respondent is Suraj Chetan Lalit, a resident of C1/121, Aman Vihar, Kirari Suleman New Delhi- 110086, The email address connected with the Respondent is office.sclgroups@gmail.com and the phone number connected with the Respondent is +91 9716924675

2. Domain Name and Registrar:

2.1. The Disputed Domain Name is labcorpdiagnostics.co.in

2.2. The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy.com, LLC situated at 14455 N. Hayden Rd., Ste. 226, Scottsdale, Arizona 85260, United States of America.

3. Procedural History:

3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the “Policy”), adopted by the National Internet Exchange of India (“NIXI”) and the INDRP Rules of Procedure (the “Rules”), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By

registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

The history of the proceedings is as follows:

- 3.2. The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.3. On December 13, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.4. NIXI notified the Parties of my appointment as the Arbitrator *via* email on December 16, 2019, and served an electronic as well as a physical copy of the Complaint on the Respondent. I informed the Parties about the commencement of arbitration proceedings on December 17, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.5. Thereafter, on December 17, 2019, I received a call from the Respondent asking for further information about the NIXI arbitration procedure. I informed him that it was not appropriate for him to contact me and all communication must be made only in writing



with a copy to all parties involved. I further informed him that it would be in his best interest to seek legal advice.

3.6. On December 26, 2019, the file was reviewed and no Response was received from the Respondent. Even though the time granted had lapsed, in the interest of justice, an additional 5 days were granted to the Respondent. The additional time granted also lapsed but no Response was received from the Respondent. As a result, the right of submitting a Response, stood foreclosed.

3.7. On January 20, 2020, I received an email from the Respondent's registered email address, apparently written through the web designer of the website resolving at the Disputed Domain Name, attaching a Certificate of Incorporation for Labcorp Diagnostics Private Limited, stating that the website was designed only after the incorporation of the above-mentioned company and the legal notice should be withdrawn. None of the other parties concerned were marked on this mail. This mail also had a reference to a mail dated January 1, 2020; however, for the record, no such email has been received by me.

4. **Summary of the Complainant's Contentions:**

In support of its case, the Complainant has made the following submissions:

4.1. The Complainant, is a leading life-sciences company which provides diagnostic, drug development and technology enabled solutions for more than 120 million patient encounters per year. The Complainant traces its origins to the year 1969 and has grown



over the last 50 years making it a true leader within the industry. The Complainant is colloquially referred to by its house mark i.e. LABCORP in the relevant trade circles and sections of the public. The Complainant offers a comprehensive array of frequently-requested and specialty tests through an integrated network of primary and specialty laboratories.

4.2. To protect and build upon its rights in the house mark, the Complainant has obtained registrations for the LABCORP mark and word/device variants (collectively, the 'LABCORP Marks') in multiple jurisdictions across the world including USA, its home country, as well as India. In particular, the Complainant owns the following registered trademarks in India:

Mark	Registration no.	Class	Application date
LABCORP BEACON	2097368	35	09 /02/ 2011
LABCORP BEACON	2097369	42	09 /02/ 2011
LABCORP BEACON	2097370	44	09 /02/ 2011
LABCORP LINK	3649339	35, 42 and 44	04/10/ 2017

4.3. The Complainant owns and operates a website which resolves at the domain name <www.labcorp.com> since 1996, where information about the Complaint and its business

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under the LABCORP Marks is freely available and accessible to millions of Internet users, who may be current or potential consumers. The LABCORP Marks are conspicuously displayed on the said domain, which consists of the Complainant's house mark and brand LABCORP in its entirety. The Complainant further asserts that it is the owner of various other domain names encompassing the LABCORP Marks such as <labcorpbeacon.com>, <labcorpsolutions.com>, <labcorplink.com>. A pursual of exhibit C 5 and C 4 substantiates the use of the LABCORP Marks as claimed by the Complainant and their ownership of other domain names encompassing the LABCORP Marks.

4.4. The Complainant has stated that they enjoy exclusive rights in the LABCORP Mark, which is a uniquely coined mark and is inherently distinctive due to use since the year 1996. An Internet search for the term labcorp reveals websites which either belong to the Complainant or to third-parties providing information on the Complainant's business and services under the LABCORP Mark, thereby augmenting the indisputable association between the Complainant and its LABCORP Marks and lending the LABCORP Marks an additional layer of distinctiveness in commerce.

4.5. The Complainant submits that the Disputed Domain Name <labcorpdiagnostics.co.in> is deceptively similar to the Complainant's various LABCORP Marks. The Disputed Domain Name incorporates the Complainant's registered trademark and brand LABCORP in its entirety with the additional word 'Diagnostics' and thus, the Disputed Domain Name is in direct conflict with the Complainant's legitimate rights over the LABCORP Marks.

- 4.6. The Complainant asserts that the Disputed Domain Name leads to the website of the Respondent offering services, identical to that offered by the Complainant such as laboratory tests and also makes use of marks such as LABCORP/DIAGNOSTICS which are deceptively similar to the LABCORP Marks. A pursual of exhibit C 6 substantiates these claims.
- 4.7. To the best of the Complainant's knowledge, the Respondent has never commonly been known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name. Furthermore, the Disputed Domain Name has been registered by the Respondent in April 2019, entirely negating any possibility of becoming commonly known by the same, due to use.
- 4.8. The Complainant alleges that the Respondent has not used, nor made any demonstrable preparations to use, the Disputed Domain Name in connection with a bona-fide offering of services or goods. The dubious content being hosted on the Disputed Domain Name by the Respondent is further evidenced by the fact that though the Respondent claims to be an Indian entity, the website that resolves at the Disputed Domain Name hosts pictures of foreign nationals bearing Indian names, stated to be their consultants. Moreover, the fact that certain webpages resolving in the Disputed Domain Name still have stock text in Latin, clearly demonstrate that the Respondent does not have any legitimate interests in respect of the Disputed Domain Name. A pursual of exhibit C 9 substantiates these claims.



4.9. The Complainant alleges the inclusion of the term labcorp in the Disputed Domain Name in its entirety along with the descriptive word 'diagnostics' suggests that the intention of the Respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent.

4.10. The Complainant has stated that it is vested with worldwide statutory and common law rights in its LABCORP Marks since the year 1996. In such circumstances, the Respondent's registration of an identical / deceptively similar Disputed Domain Name is of grave concern due to the likelihood of creating confusion in the minds of public. The Complainant apprehends that consumers searching for the Complainant's services online may perceive the Disputed Domain Name to be an India-specific domain name of the Complainant which in itself is evidence of bad-faith and *malafide* intention on part of the Respondent in the registration of the Disputed Domain Name.

4.11. In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure no.	Description
Annexure 1	Copy of the .IN Domain Name Dispute Re Solution Policy
Annexure 2	Copy of the email received from NIXI on November 04, 2019
Exhibit CI	Representative copies of Registration Certificates for LABCORP Marks in India



Exhibit C2	Press releases and third-party articles for awards received by the Complainant
Exhibit C3	Global Brand Database reflecting registrations in favor of the Complainant for LABCORP-Marks along with a few Registration Certificates
Exhibit C4	Whois search reports for representative domain registrations in favour of the Complainant
Exhibit C5	Extracts from the Website of the Complainant <www.labcorp.com>
Exhibit C6	Extracts -from disputed Website hosted on Disputed Domain Name- <www.labcorpdiagnostics.co.in>
Exhibit C7	Whois Search report for Disputed Domain Name <www.labcorpdianostics.co.in>
Exhibit C8	Copies of decisions in domain disputes in favor of the Complainant
Exhibit C9	Screenshots from the disputed Website of the Respondent evidencing bad faith

5. Discussions and findings:

5.1 The Complainant has sufficiently established that the LABCORP Marks form an integral part of the Complainant's business. Further, as per the submissions and documents provided by Complainant, the Respondent does not have any relationship with the business, or authorization from the Complainant nor does he have any legitimate interest in the Disputed Domain Name. The adoption and registration by the Respondent is thus, clearly with a view to unjustly enrich himself while riding on the goodwill associated with the Complainant's LABCORP Marks.

5.2 It is a well-established principle that that once a Complainant makes a *prima facie* case showing that a Respondent lacks rights to the domain name at issue, the Respondent must

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come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

5.3 There is no doubt that the Respondent has been duly served. He contacted me through by phone on December 17th 2019. However, the Respondent chose to ignore the Complaint thereby showcasing bad faith. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present its case. Even though adequate time (including additional time) was granted, the Respondent chose not to submit a Response within the timeline set. Thereafter, despite knowing fully well that his right to submit a Response had been foreclosed, the Respondent suddenly sent an email attaching a Certificate of Incorporation asking for withdrawal of the legal notice. The Respondent knew fully well that a domain name dispute had been filed by the Complainant and if he had justifiable reasons to protect the Disputed Domain Name, he would have sought to put forth a legitimate defense.

5.4 Paragraph 11(a) of the Rules empower the Arbitrator to proceed with an ex-parte decision in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, the Respondent failed to file a timely Response to the Complaint despite additional time being granted. As a result, I find that the Respondent has been given a fair opportunity to present its case but has chosen not to come forward and sufficiently defend himself as a mere certificate of incorporation does not tilt the case in favor of the Respondent.



5.5 Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint based on the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions and accompanying evidence, inferences drawn from the Respondent opting for domain name privacy and the blatant disregard of the Policy and the Rules, demonstrated by him.

6 The issues involved in the Dispute:

6.1 The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for filing a domain name dispute, which are;

- (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.

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These elements are discussed below in tandem with the facts and circumstances of this case.

Element (i)- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

6.2 I am of the view that the Complainant has proved that it is indeed the owner and proprietor of the LABCORP Marks through the ample evidence submitted along with the Complaint showcasing sufficient and prolonged use. The LABCORP Marks have acquired a secondary meaning as a result of such use. Previously in *Laboratory Corporation of America v. Registration Private Domains by Proxy, LLC* Case No. D2015-0413, a UDRP panel recognized the Complainant's proprietary rights in the LABCORP Marks. I am of the view that the Complainant has proprietary rights, more particularly trade mark rights and other common law rights in the LABCORP Marks as per submissions and documents provided by Complainant. The Disputed Domain Name completely encompasses the LABCORP Marks and is confusingly similar to the Complainant's LABCORP Marks. Moreover, the website that resolves at the Disputed Domain Name contains content that would invariably lead a rational potential customer to believe that it is maintained, hosted or is in some way affiliated with the Complainant.

6.3 Therefore, in light of the Complaint and documents, put forth by the Complainant, I am of the view that the Complainant has rights to the LABCORP Marks and that the Disputed Domain Name is confusingly similar to the Complainant's LABCORP Marks and Complainant's trading name. Upon perusal of the Disputed Domain Name, I am convinced that potential consumers will believe that the Disputed Domain Name is either maintained

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by or affiliated in some way to the Complainant. Hence, the first element is satisfied. [Decisions relied upon: *Laboratory Corporation of America Holdings v. Stevan Mira* Claim Number FA1901001826770; *Laboratory Corporation of America v. Registration Private Domains by Proxy, LLC/Labcorp Career* Case No. D2015-0413; *Six Continent Hotels, Inc v The Omnicorp*, WIPO Case No. D2005-1249; *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. D2001;0505; *PepsiCo, Inc. v PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)* - WIPO Case No. D2003-0696; *Hoffmann-La Roche AG v. Andrei Kosko*, WIPO Case No. D2010-0762; *Farouk Systems, Inc v. QYM*, WIPO Case No. D2009-1572; *Orange Personal Communications Services Ltd. v. Luttringer Alexander*, WIPO Case No. U2008-1979.]

Element (ii) - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

6.4 Through the Complaint and the accompanying documents, it is evident that the Complainant has never authorized or licensed the Respondent to use the Complainant's LABCORP Marks. Moreover, the Respondent does not have any relationship or business association with the Complainant.

6.5 In order to determine rights or legitimate interests, Paragraph 7 of the INDRP lays down certain considerations, including

- Use of, or preparations to use the domain name in connection with a *bona fide* offering of goods and services;



- Whether the Respondent has commonly been known by the domain name; and
- Legitimate noncommercial or fair use of the domain name.

6.6 The burden on the Respondent to successfully rely on the legitimate interest defense on the basis of a bona fide offering of goods and services, is to merely show "demonstrable preparations" to market the goods and services in association with lawful commerce. In the present dispute, the website resolving at the Disputed Domain Name and the Corporate Name contain the Complainant's LABCORP Mark in its entirety and is used to offer identical services. As a result of this deceptive similarity, consumers would be inclined to believe that the website resolving at the Disputed Domain Name is somehow associated with the Complainant, on account of the similar services provided by both parties. Thus, the use of the Disputed Domain Name does not qualify as bona fide use of the Disputed Domain Name.

6.7 An additional source of legitimate interests involves indications that the Respondent has been commonly known by the domain name even if it has not acquired trademark rights. The Respondent wrongly relies on a certificate of incorporation (submitted beyond the time granted to the Respondent to put forth a defense.) A certificate of incorporation does not establish trade mark rights and given that the incorporation of the Respondent's company is as recent as May 2019, I am doubtful that the Respondent has accrued adequate goodwill to "commonly been known by the domain name".



6.8 The defense of fair use or non-commercial use of the Disputed Domain Name does not weigh in favor of the Respondent either.

6.9 The word LABCORP is not used in common parlance and has no dictionary meaning.

Further, given the fact that the Respondent registered the Disputed Domain Name a full 25 years after the Complainant began using the LABCORP Mark, the Respondent cannot be said to have any legitimate interest in the Disputed Domain Name. [Decisions relied upon *Deutsche Telekom AG v. Phonotie Ltd.* (WIPO Case No. U2005-1000); *The Sports Authority Michigan, Inc. v. Internet Hosting*, NAF Case No. 124516; *Alpha One Foundation, Inc. vs. Alexander Morozov*, NAF Case No. 766380; *Six Continents Hotels, Inc. vs. Patrick Ory*, WIPO Case No. D2003-0098; *Marriott International, Inc. v. Thomas, Burstein and Miller*, WIPO Case No. D2000-0610; *The Sports Authority Michigan, Inc. v. Internet Hosting*, NAF Case No. 124516; *Orange Brand Services Limited vs P.R.S. Reddy <orangesms.in>* - INDRP/644; *William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp. / WhoisGuard Protected, WhoisGuard, Inc.* (WIPO Case No. D2016-1049)]

6.10 Once the Complainant has established a *prima facie* case, the onus to establish any legitimate interests over the Disputed Domain Name falls on the Respondent. The Respondent did not file a Response timely, and even otherwise, even if email dated January 20, 2020 is to be treated as a Response, it is not sufficient to merit the claim of legitimate interest in respect of the Disputed Domain Name. Thus, in my view the Respondent does



not have any legitimate rights in the Disputed Domain Name. As a result, I find that Element (ii) has been satisfied.

Element (iii) - The domain name in question should be considered as having been registered and being used in bad faith.

6.11 Paragraph 6 of the INDRP lays down certain examples of what constitutes bad faith. It includes circumstances where a Respondent is using a domain name intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks.

6.12 A combination of factors leads me to believe that there is a merit in the Complainant's allegation of bad faith, including the Complainant's strong trademark rights, lack of evidence of good faith use, as well as the Respondent's attempt to conceal its identity in violation of INDRP law. Further, the website resolving at the Disputed Domain Name and the corporate name of the Respondent contain the Complainant's LABCORP Mark in its entirety and is used to offer identical services, I therefore have no reason to doubt that the use of "labcorp" was to take undue advantage of the Complainants' LABCORP Marks and the associated goodwill.

6.13 In several cases, UDRP panels have interpreted a Respondent's default as a virtual admission of the complainant's allegations. Reliance is place on *Noodle Time, Inc. v. Max*



Marketing, where the domain name in question was benihanaoftokyo.com. The Panel stated that the failure to respond "should be considered as an admission that such claims are true. In the present dispute, despite having knowledge of the Complaint the Respondent chose not to follow the procedure set by me in accordance with this Policy and the Rules. This failure on part of the Respondent can be construed as an admission that the Complainant's allegations are true.

6.14 The intent to confuse users is also evident when one considers that the Respondent uses stock photos of Caucasian people on the website that resolves at the Disputed Domain Name.

6.15 As such, the use of the Disputed Domain Name falls squarely within the third prong of Paragraph 6 and it appears beyond doubt that the Respondent adopted a deceptively similar domain name without authorization with the sole intention of deriving unjust commercial gain arising from the goodwill associated with the LABCORP Marks. Therefore, allowing the Disputed Domain Name to continue to operate will cause significant harm to the Complainant.

6.16 The above leads to the inescapable conclusion that registration and the adoption of the Disputed Domain Name by the Respondent shows opportunistic bad faith. Thus, I find that Element (iii) has been satisfied.



7 Decision:

7.1 In view of the foregoing and having established all three essential elements of section 4 of the INDRP rules , I am convinced that the Complainant has a legitimate right to the Disputed Domain Name <www.labcorpdiagnosstics.co.in> as it is deceptively similar to their LABCORP Marks; the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and the Respondent's registration and use of the Disputed Domain Name is in bad faith.

7.2 In accordance with the Policy and Rules, I direct that the Disputed Domain Name <www.labcorpdiagnostics.co.in> be transferred to the Complainant.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd

Sole Arbitrator

Dated: January 28, 2020